CHAPTER 712

An Act to amend and reenact §§ 54.1-2345 through 54.1-2354 of the Code of Virginia; to amend the Code of Virginia by adding in Title 1 a chapter numbered 6, containing sections numbered 1-600 through 1-610, by adding in Chapter 3 of Title 8.01 an article numbered 13.1, containing sections numbered 8.01-130.1 through 8.01-130.13, and an article numbered 15.1, containing sections numbered 8.01-178.1 through 8.01-178.4, by adding in Title 8.01 a chapter numbered 18.1, containing articles numbered 1 and 2, consisting of sections numbered 8.01-525.1 through 8.01-525.12, by adding in Title 32.1 a chapter numbered 20, containing sections numbered 32.1-373, 32.1-374, and 32.1-375, by adding in Title 36 a chapter numbered 12, containing sections numbered 36-171 through 36-175, by adding in Title 45.1 a chapter numbered 14.7:3, containing sections numbered 45.1-161.311:9, 45.1-161.311:10, and 45.1-161.311:11, by adding a section numbered 54.1-2345.1, by adding in Chapter 23.3 of Title 54.1 an article numbered 2, containing sections numbered 54.1-2354.1 through 54.1-2354.5, by adding a title numbered 55.1, containing a subtitle numbered I, consisting of chapters numbered 1 through 5, containing sections numbered 55.1-100 through 55.1-506, a subtitle numbered II, consisting of chapters numbered 6 through 11, containing sections numbered 55.1-600 through 55.1-1101, a subtitle numbered III, consisting of chapters numbered 12 through 17, containing sections numbered 55.1-1200 through 55.1-1703, a subtitle numbered IV, consisting of chapters numbered 18 through 23, containing sections numbered 55.1-1800 through 55.1-2306, and a subtitle numbered V, consisting of chapters numbered 24 through 29, containing sections numbered 55.1-2400 through 55.1-2906, and by adding sections numbered 57-6.1 and 64.2-108.2; and to repeal § 18.2-324.1 and Title 55 (§§ 55-1 through 55-559) of the Code of Virginia, relating to real and personal property conveyances, recordation of deeds, rental property, common interest communities, escheats, and unclaimed property.

[S 1080]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2345 through 54.1-2354 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 1 a chapter numbered 6, containing sections numbered 1-600 through 1-610, by adding in Chapter 3 of Title 8.01 an article numbered 13.1, containing sections numbered 8.01-130.1 through 8.01-130.13, and an article numbered 15.1, containing sections numbered 8.01-178.1 through 8.01-178.4, by adding in Title 8.01 a chapter numbered 18.1, containing sections numbered 8.01-525.1 through 8.01-525.12, by adding in Title 32.1 a chapter numbered 20, containing sections numbered 32.1-373, 32.1-374, and 32.1-375, by adding in Title 36 a chapter numbered 12, containing sections numbered 36-171 through 36-175, by adding in Title 45.1 a chapter numbered 14.7:3, containing sections numbered 45.1-161.311:9, 45.1-161.311:10, and 45.1-161.311:11, by adding a section numbered 54.1-2345.1, by adding in Chapter 23.3 of Title 54.1 an article numbered 2, containing sections numbered 54.1-2354.1 through 54.1-2354.5, by adding a title numbered 55.1, containing a subtitle numbered I, consisting of chapters numbered 1 through 5, containing sections numbered 55.1-100 through 55.1-506, a subtitle numbered II, consisting of chapters numbered 6 through 11, containing sections numbered 55.1-600 through 55.1-1101, a subtitle numbered III, consisting of chapters numbered 12 through 17, containing sections numbered 55.1-1200 through 55.1-1703, a subtitle numbered IV, consisting of chapters numbered 18 through 23, containing sections numbered 55.1-1800 through 55.1-2306, and a subtitle numbered V, consisting of chapters numbered 24 through 29, containing sections numbered 55.1-2400 through 55.1-2906, and by adding sections numbered 57-6.1 and 64.2-108.2 as follows:

CHAPTER 6.

VIRGINIA COORDINATE SYSTEMS.

§ 1-600. Virginia coordinate systems designated.

The systems of plane coordinates that have been established by the National Ocean Service/National Geodetic Survey or its successors for defining and stating the positions or locations of points on the surface of

the earth within the Commonwealth are to be known and designated as the "Virginia Coordinate System of 1927" and the "Virginia Coordinate System of 1983."

§ 1-601. North and South Zones.

For the purpose of the use of the Virginia Coordinate System of 1927 and the Virginia Coordinate System of 1983, the Commonwealth is divided into a "North Zone" and a "South Zone."

The area now included in the following counties and cities shall constitute the North Zone: Arlington, Augusta, Bath, Caroline, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Highland, King George, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren, and Westmoreland Counties and the Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Harrisonburg, Manassas, Manassas Park, Staunton, Waynesboro, and Winchester.

The area now included in the following counties and cities shall constitute the South Zone: Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Carroll, Charles City, Charlotte, Chesterfield, Craig, Cumberland, Dickenson, Dinwiddie, Essex, Floyd, Fluvanna, Franklin, Giles, Gloucester, Goochland, Grayson, Greensville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King and Queen, King William, Lancaster, Lee, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Pulaski, Richmond, Roanoke, Rockbridge, Russell, Scott, Smyth, Southampton, Surry, Sussex, Tazewell, Washington, Wise, Wythe, and York Counties and the Cities of Bristol, Buena Vista, Charlottesville, Chesapeake, Colonial Heights, Covington, Danville, Emporia, Franklin, Galax, Hampton, Hopewell, Lexington, Lynchburg, Martinsville, Newport News, Norfolk, Norton, Petersburg, Poquoson, Portsmouth, Radford, Richmond, Roanoke, Salem, Suffolk, Virginia Beach, and Williamsburg.

§ 1-602. Designation of systems in land description.

A. As established for use in the North Zone, the Virginia Coordinate System of 1927 or the Virginia Coordinate System of 1983 shall be named, and in any land description in which it is used, it shall be designated the "Virginia Coordinate System of 1927, North Zone" or "Virginia Coordinate System of 1983, North Zone."

B. As established for use in the South Zone, the Virginia Coordinate System of 1927 or the Virginia Coordinate System of 1983 shall be named, and in any land description in which it is used, it shall be designated the "Virginia Coordinate System of 1927, South Zone" or "Virginia Coordinate System of 1983, South Zone."

§ 1-603. Plane coordinates used in systems.

The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of these systems, shall be expressed in U.S. survey feet and decimals of a foot. One of these distances, to be known as the "x-coordinate," shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate," shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinate values for the monumented points of the North American Horizontal Geodetic Control Network as published by the National Ocean Service/National Geodetic Survey, or its successors, and whose plane coordinates have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection to either Virginia coordinate system.

When converting coordinates in the Virginia Coordinate System of 1983 from meters and decimals of a meter to feet and decimals of a foot, the U.S. survey foot conversion factor (one foot equals 1200/3937 meters) shall be used. This requirement does not preclude the continued use of the International foot conversion factor (one foot equals 0.3048 meters) in those counties and cities where this factor was in use prior to July 1, 1992. The plat or plan shall contain a statement of the conversion factor used and the coordinate values of a minimum of two project points in feet.

§ 1-604. Tract of land lying in both coordinate zones.

When any tract of land to be defined by a single description extends from one into the other of the two coordinate zones established in this chapter, the positions of all points on its boundaries may be referred to either of the two zones, with the zone that is used being specifically named in the description.

§ 1-605. Definition of systems by National Ocean Service/National Geodetic Survey; adopted.

A. For purposes of more precisely defining the Virginia Coordinate System of 1927, the following definition by the National Ocean Service/National Geodetic Survey is adopted:

The Virginia Coordinate System of 1927, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1896, having standard parallels at north latitudes 38° 02' and 39° 12', along which parallels the

scale shall be exact. The origin of coordinates is at the intersection of the meridian 78° 30' west of Greenwich with the parallel 37° 40' north latitude, such origin being given the coordinates: x = 2,000,000', and y = 0'.

The Virginia Coordinate System of 1927, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1896, having standard parallels at north latitudes 36° 46' and 37° 58', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 78° 30' west of Greenwich with the parallel 36° 20' north latitude, such origin being given the coordinates: x = 2,000,000', and y = 0'.

B. For purposes of more precisely defining the Virginia Coordinate System of 1983, the following definition by the National Ocean Service/National Geodetic Survey is adopted:

The Virginia Coordinate System of 1983, North Zone, is a Lambert conformal conic projection based on the North American Datum of 1983, having standard parallels at north latitudes 38° 02' and 39° 12', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 78° 30' west of Greenwich and the parallel 37° 40' north latitude, such origin being given the coordinates: x = 3,500,000 meters and y = 2,000,000 meters.

The Virginia Coordinate System of 1983, South Zone, is a Lambert conformal conic projection based on the North American Datum of 1983, having standard parallels at north latitudes 36° 46' and 37° 58', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 78° 30' west of Greenwich and the parallel 36° 20' north latitude, such origin being given the coordinates: x = 3,500,000 meters and y = 1,000,000 meters.

§ 1-606. Position of systems.

The position of the Virginia coordinate systems shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards of accuracy and specifications for first-order and second-order geodetic surveying as prepared and published by the Federal Geodetic Control Subcommittee of the Federal Geographic Data Committee of the U.S. Department of Commerce. The geodetic position of stations defining the position of the Virginia Coordinate System of 1927 shall have been rigidly adjusted on the North American Datum of 1927, and the plane coordinates shall have been computed on the Virginia Coordinate System of 1927. The geodetic position of stations defining the position of the Virginia Coordinate System of 1983 shall have been rigidly adjusted on the North American Datum of 1983, and the plane coordinates shall have been computed on the Virginia Coordinate System of 1983. Any such station may be used for establishing a survey connection with the Virginia coordinate systems.

§ 1-607. Limitation on use of systems.

No coordinates based on the Virginia coordinate systems, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within two kilometers of a public or private monumented horizontal control station established in conformity with the standards of accuracy and specifications for second-order, class II or better geodetic surveying as prepared and published by the Federal Geodetic Control Subcommittee of the Federal Geographic Data Committee of the U.S. Department of Commerce. Standards and specifications of the Federal Geodetic Control Subcommittee or its successor in force on the date of such survey shall apply. The publishing of the existing control stations, or the acceptance with intent to publish the new established control stations, by the National Ocean Service/National Geodetic Survey constitutes evidence of adherence to the Federal Geodetic Control Subcommittee specifications. The two kilometers' limitation may be modified by a duly authorized state agency to meet local conditions. Nothing contained in this chapter shall be interpreted as preventing the use of the Virginia coordinate systems in any unrecorded deeds, maps, or computations.

§ 1-608. Limitation on use of name of systems.

The use of the terms "Virginia Coordinate System of 1927" or "Virginia Coordinate System of 1983" on any map, report of survey, or other document shall be limited to coordinates based on the Virginia coordinate systems as defined in this chapter.

§ 1-609. Use of system not compulsory.

For purposes of describing the location of any survey station or land boundary corner in the Commonwealth, it shall be considered a complete, legal, and satisfactory description of such location to give the position of such survey station or land boundary corner on the system of plane coordinates defined in this chapter. Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description any part of which depends exclusively upon either Virginia coordinate system.

§ 1-610. Old Dominion University designated as administrative agency.

Old Dominion University is designated as the authorized state agency to collect and distribute information, to authorize such modifications as are referred to in § 1-607, and generally to advise with and assist appropriate state and federal agencies and individuals interested in the development of the provisions of this chapter.

Article 13.1.

Warrants in Distress.

§ 8.01-130.1. Remedy for rent and for use and occupation.

Rent of every kind may be recovered by distress or action. A landlord may also, by action, recover, when the agreement is not by deed, a reasonable satisfaction for the use and occupation of lands. On the trial of such action, if any parol demise or any agreement not by deed whereon a certain rent was reserved appears in evidence, the plaintiff shall not therefor be nonsuited, but may use the same as evidence of the amount of his debt or damages. In any action for rent, or for such use and occupation, interest shall be allowed as on other contracts.

§ 8.01-130.2. Who may recover rent or compensation.

If a person is entitled to rent or compensation, whether such person has the reversion or not, then his personal representative or assignee may recover it as provided in § 8.01-130.1, whatever the estate of the person owning it, or though his estate or interest in the land has ended. When the owner of real estate in fee, or holder of a term, yielding him rent dies, the rent due after such owner's or termholder's death shall be recoverable by such owner's heir or devisee or such termholder's personal representative. If the owner or holder alienates or assigns his estate or term, or the rent falls due after such alienation or assignment, the alienee or assignee may recover such rent.

§ 8.01-130.3. Who is liable for rent.

Rent may be recovered from the lessee or other person owing it, or his assignee, or the personal representative of either; however, no assignee shall be liable for rent that became due before his interest began. Nothing in this section shall impair or change the liability of heirs or devisees for rent, as for other debts of their ancestor or devisor.

§ 8.01-130.4. When and by whom distress made.

A distress action for rent may be brought no later than five years from the time the rent becomes due, whether the lease is ended or not. The distress shall be made by a sheriff of the county or city where the premises yielding the rent, or some part thereof, is located or the goods liable to distress may be found, under warrant from a judge of, or a magistrate serving, the judicial district. Such warrant shall be founded upon a sworn petition of the person claiming the rent, or his agent, that (i) the petitioner believes the amount of money or other thing by which the rent is measured, to be specified in the petition in accordance with § 8.01-130.6, is justly due to the claimant for rent reserved upon contract from the person of whom it is claimed, (ii) the petitioner alleges one or more of the grounds mentioned in § 8.01-534 and sets forth in the petition specific facts in support of such allegation, and (iii) the rent claimed is for rent due within five years from the time that it becomes due. The petition shall also specify the amount of the rent claimed and request either levy or seizure of the affected property prior to trial. The plaintiff shall, at the time of suing out a distress, give bond in conformity with the provisions of § 8.01-537.1. The plaintiff praying for a distress warrant shall, at the time that he files his petition, pay the proper costs, fees, and taxes, and in the event of his failure to do so, the distress warrant shall not be issued.

A judge or magistrate shall make an ex parte review of the petition and may receive evidence only in the form of a sworn petition, which shall be filed in the office of the clerks of court. The warrant may be issued in accordance with the prayer of the petition by a judge or magistrate only upon a determination that there appears from the petition that there is reasonable cause to believe that one of the grounds mentioned in § 8.01-534 exists, the allegations required to be in the petition are true, and bond that complies with § 8.01-537.1 has been posted.

Each copy of the distress warrant shall be issued and served on each defendant together with (a) a form for requesting a hearing of exemption from levy or seizure, as provided in § 8.01-546.1, and (b) a copy of the bond. The distress warrant may be issued or executed on any day, including a Saturday, Sunday, or other legal holiday. Service shall be made in accordance with the methods described in § 8.01-487.1. The provisions of § 8.01-546.2 shall govern claims for exemption.

The officer into whose hands the warrant is delivered shall levy or seize as directed in the warrant, except as may be provided by statute, the property found on the premises of the tenant as provided by § 8.01-130.6.

The officer shall return the warrant of distress to the court to which the warrant of distress is returnable by the return date unless otherwise notified by the court to make return by an earlier date.

§ 8.01-130.5. Procedure for trial on warrant in distress.

The distress warrant shall contain a return date and be tried in the same manner as an action on a warrant as prescribed in § 16.1-79, except that the case shall be returnable not more than 30 days from its date of issuance. The trial or hearing of the issues, except as otherwise provided, shall be the same, as near as may be, as in actions in personam.

§ 8.01-130.6. On what goods levied; to what extent goods liable; priorities between landlord and other lienors.

The distress may be levied on any goods of the lessee, his assignee, or any sublessee that are found on the premises or that may have been removed from the premises not more than 30 days prior to the levy. A levy within such 30 days shall have like effect as if the goods levied on had not been removed from the leased premises. If the goods of such lessee, assignee, or sublessee, when carried on the premises, are subject to a lien that is valid against his creditors, his interest only in such goods shall be liable to such distress. If any lien is created on such goods while they are upon the leased premises, or within 30 days after such lien is created, they are liable to distress, but for not more than six months' rent if the premises are used for residential purposes, and not for farming or agriculture, and for not more than 12 months' rent if the lands or premises are used for farming or agriculture, whether such rent has accrued before or after the creation of the lien. No other goods shall be liable to distress than such as are declared to be so liable in this section, nor shall the goods of the sublessee be liable to a greater amount than such sublessee owed the tenant at the time the distress was levied.

§ 8.01-130.7. Procedure when distress levied and tenant unable to give forthcoming bond; what defense may be made.

A. On affidavit by a tenant, whose property has been levied on under a warrant of distress, that (i) he is unable to give the bond required in § 8.01-526 and (ii) he has a valid defense under subsection B, the officer levying the warrant shall permit the property to remain in the possession and at the risk of the tenant, and shall return the warrant forthwith, together with the affidavit, to the court to which such warrant is returnable. Thereupon the landlord, after 10 days' notice in writing to the tenant, may make a motion for a judgment for the amount of the rent and for a sale of the property levied on. The tenant may make such defense as he is authorized to make, including defenses permitted under subsection B to an action or motion on the bond when one is given. Upon making such defense, the officer shall permit the property to remain in the possession of and at the risk of the tenant. If the property is perishable, or expensive to keep, the court may order it to be sold, and on the final trial of the cause, the court shall dispose of the property, or proceeds of sale, according to the rights of the parties.

B. In an action or motion on a forthcoming bond, when it is taken under a distress warrant, the defendants may make defense on the ground that the distress was for rent not due in whole or in part or was otherwise illegal.

§ 8.01-130.8. Review of decision to issue ex parte order or process; claim of exemption.

Promptly after levy on the property or promptly after possession of the property is taken by the officer pursuant to an ex parte order, or after denial of an application to issue such order by a magistrate, upon application of either party, and after reasonable notice, a judge of the general district court having jurisdiction shall conduct a hearing to review the decision to issue the ex parte order or process. In the event that the judge finds that the order or process should not have been issued, the court may dismiss the distraint or award actual damages and reasonable attorney fees to the person whose property was taken, or both. The provisions of § 8.01-546.2 shall govern claims for exemption.

§ 8.01-130.9. On what terms purchasers and lienors inferior to landlord may remove goods; certain liens not affected.

If, after the commencement of any tenancy, a lien is obtained or created by deed of trust, mortgage, or otherwise upon the interest or property in goods on premises leased or rented of any person liable for the rent, or such goods are sold, the party having such lien, or the purchaser of such goods, may remove them from the premises only on the following terms: On paying to the person entitled to the rent so much as is in arrear, and securing to him so much as to become due, what is so paid or secured not being more altogether than six months' rent if the premises are in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes, and not for

farming or agriculture, and not being more altogether than 12 months' rent, if the lands or premises are used for farming or agriculture. If the goods are taken under legal process, the officer executing it shall, out of the proceeds of the goods, make such payment of what is in arrear, and as to what is to become due he shall sell a sufficient portion of the goods on a credit until then, taking from the purchasers bonds, with good security, payable to the person so entitled, and delivering such bonds to him. If the goods are not taken under legal process, such payment and security shall be made and given before their removal. Neither this section nor § 8.01-130.6 shall affect any lien for taxes, levies, or militia fines.

For the purpose of this section and § 8.01-130.6, a monthly or weekly tenancy shall not be construed as a new lease for every month or week of occupation of the premises by the tenant, but his tenancy shall be considered as a continuance of his original lease so long as he continues to occupy the property without making any new written lease.

§ 8.01-130.10. When goods of a sublessee may be removed from leased premises.

The following limitations shall apply to § 8.01-130.9: a sublessee, or a purchaser from him, or a creditor holding a deed of trust, mortgage, or other encumbrance created on his goods after they were carried on the leased premises, may remove the same upon payment of so much of the rent contracted to be paid by him as is in arrear, and securing the residue, not exceeding six months' rent, if the premises are in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes, and not for farming or agriculture, and for not more than 12 months' rent if the lands or premises are used for farming or agriculture. If the goods are taken under legal process against him, the officer executing the same shall, out of the proceeds of his goods, make payment of so much of the rent as to which he is in arrear, and as to what is to become due from him shall sell sufficient of the goods upon credit until then, taking from the purchaser bonds with good security, payable to the party entitled to receive the same, and deliver them to him.

§ 8.01-130.11. When officer may enter by force to levy distress or attachment.

The officer having such distress warrant, or an attachment for rent, if there be need for it, may, in the daytime, break open and enter into any house or close in which there may be goods liable to the distress or attachment and may, either in the day or night, break open and enter any house or close wherein there may be any goods so liable that have been fraudulently or clandestinely removed from the demised premises. He may also levy such distress warrant or attachment on property liable for the rent found in the personal possession of the party liable therefor.

§ 8.01-130.12. When distress not unlawful because of irregularity, etc.

When distress is made for rent justly due and any irregularity or unlawful act is afterwards done by the party distraining, or his agent, the distress itself shall not be deemed to be unlawful, nor is the party making it therefore deemed a trespasser ab initio. The party aggrieved by such irregularity or unlawful act may, by action, recover full satisfaction for the special damage he has sustained thereby.

§ 8.01-130.13. Return of execution; process of sale thereunder.

The sheriff under writ of execution from the court after hearing and judgment for the landlord, except as otherwise provided by law, shall make return on his execution as may be placed in his hands for collection and file the same, within 90 days after the same may have come to his hands, with the clerk of the court in which the case was heard. Upon the return of such execution such clerk shall preserve such execution in his office as is now provided as to other executions. If such return shows that a levy has been made and that property levied on remains unsold, it shall be lawful for the clerk of the court in whose office such return is filed to issue a writ of venditioni exponas thereon just as if the return were upon writ of fieri facias.

Article 15.1.

Waste.

§ 8.01-178.1. Waste; who is liable.

A. Any tenant of land or any person who has aliened land who commits any waste while he is in possession of such land, unless he has special license to do so, shall be liable for damages.

B. Any tenant in common, joint tenant, or parcener who commits waste, shall be liable to his cotenants, jointly or severally, for damages.

C. Any guardian or conservator who commits waste of the estate of his ward shall be liable to the ward, at the expiration of his guardianship or conservatorship, for damages.

§ 8.01-178.2. Civil action for waste; double damages.

Any person who is injured due to another person's committing waste on his land may recover damages for such waste by initiating a civil action. If a jury finds that the waste was a result of wanton misconduct, judgment shall be for double the amount of damages assessed.

§ 8.01-178.3. Waste for tenant to sell or remove manure from leased premises.

If a tenant at will or for years, without a special license to do so, sells or otherwise removes manure made on such leased premises in the ordinary course of husbandry, consisting of (i) ashes leached or unleached; (ii) collections from the stables, barnyard, or cattle pens or other places on the leased premises; or (iii) composts formed by an admixture of any such manure with the soil or other substances, such removal shall be deemed waste for the purposes of the provisions of this article.

§ 8.01-178.4. Waste committed during pendency of action.

If a defendant who is a tenant in possession of land in an action initiated pursuant to § 8.01-178.2 commits any waste on the land, the court may, on petition of the plaintiff alleging such waste, verified by oath, and after reasonable notice to the tenant, prohibit the tenant from committing further waste on the land during the pendency of the action. Violation of such order by the tenant after he has been served with a copy may be punished as contempt. The order shall not be effective until the plaintiff gives bond with sufficient surety as prescribed by the court, with condition to pay to the tenant, in case the plaintiff does not succeed in recovering or charging the land, such damages as may accrue to the tenant as a consequence of such order. If the plaintiff succeeds in recovering or charging the land, he may recover three times the amount of the damages assessed for such waste.

CHAPTER 18.1.

ASSIGNMENTS FOR BENEFIT OF CREDITORS.

Article 1.

Assignment of Property.

§ 8.01-525.1. Recordation; notice of sale; preferences prohibited.

Whenever a deed of assignment for the benefit of creditors is executed, the deed shall be recorded. If no notice of the sale has previously been given, the trustee named in such deed, or the one substituted in the manner prescribed in this article, before selling under the deed of assignment, shall, at least 10 days before the sale, notify each of the creditors named in the deed by certified mail, return receipt requested, advising of (i) the execution of such sale; (ii) when, where, and how the sale will be held; (iii) the terms of such sale; and (iv) whether or not the deed provides that acceptance shall be in full satisfaction. No creditor shall be preferred in the deed except those given a lien or preference by law, or those having a valid lien upon the property conveyed, or some part of such lien, and those having a lien shall be preferred only to the extent of the value of the property upon which they have a lien.

§ 8.01-525.2. Substitution of another trustee by creditors.

A majority of the unsecured creditors in number and amount of the assignor may agree in writing upon a trustee different from the one named in the deed of assignment, and upon petition to the court that would have jurisdiction if an action were brought against the assignor, such agreed trustee may be substituted in lieu of such named trustee with all of the rights, powers, and duties conferred upon such named trustee in the deed of assignment. The clerk of the court where the deed of assignment is recorded shall record such order presented by one of the parties and shall include a reference to the order book and page where such deed is recorded, together with the name of the substituted trustee, and shall make proper indexing. The substitute trustee shall reside in the county or city in which the property that is conveyed in the deed of assignment or the greater portion thereof in value is located.

§ 8.01-525.3. Procedure to question claim of creditor.

Any creditor of the assignor who questions the validity of any other creditor's claim, or the trustee if he questions the validity of any claim, may file, within 30 days after the recordation of the deed, a petition against the creditor whose claim is questioned in the court that would have jurisdiction if the action was brought by the creditor whose claim is questioned against the assignor, and the burden of proof shall be upon the creditor whose claim is questioned. Upon the filing of such petition, the court may order the party whose claim is questioned to appear to defend such claim and the court shall determine the matter in a summary way.

§ 8.01-525.4. Provision to bar further claim by creditors who accept deed.

Any deed of assignment may contain a provision to the effect that those creditors who accept such assignment do so in full satisfaction of their respective claims and shall be forever barred from further recovery of any balance.

§ 8.01-525.5. Compensation of trustee.

Every trustee referred to in this article shall receive reasonable compensation for services.

Article 2.

Assignment of Salary, Wages, or Income.

§ 8.01-525.6. Petition for assignment of salary, wages, or income for the benefit of creditors.

Upon petition of a debtor for the assignment of his salary, wages, or income to a trustee for the benefit of his creditors, a judge may appoint a trustee, subject to the supervision and order of the court, to receive such salary, wages, or income of such debtor and pay off the obligations due by such debtor as provided in this article, provided that a majority of the creditors have provided written consent of such assignment to the court. If the debtor is employed on a salary or for wages, the written consent of his employer is required.

§ 8.01-525.7. Trustee; rights and duties; compensation.

A trustee appointed pursuant to § 8.01-525.6 shall make written reports to the court as required by the court. The trustee may charge a fee of five percent of such salary, wages, or income received and disbursed by him; however, no public officer or employee who receives a full-time salary and who acts as trustee under this article shall retain such fee for his personal use.

The trustee, upon being appointed, shall give written notice to any person, firm, or corporation who may owe the debtor any salary, wages, or income, and upon receiving such notice such person, firm, or corporation shall pay to the trustee any salary, wages, or income that are owed to such debtor, at the time it would otherwise be due to the debtor.

The trustee may compromise and settle any claims against the debtor when he believes such compromise shall be for the benefit of all the creditors.

§ 8.01-525.8. Resignation of trustee.

The trustee may resign at any time after accounting for all funds in his possession, and the court may appoint another trustee.

§ 8.01-525.9. Debts; order of payment.

The trustee shall immediately upon receipt of such salary, wages, or income, or at such other time as the court may direct, disburse the funds as follows:

1. The trustee shall first pay to the debtor directly, or for his benefit as the court may direct, any amount the debtor may be entitled to as exempt by law if he is a householder and head of a family or, if he is not a householder or head of a family, then such amount for the necessities of life as may be agreed upon by the creditors in the assignment. Nothing in this subdivision shall prevent the trustee from paying to the debtor a greater amount than is exempt by law if agreed to by the creditors and approved by the court.

2. The trustee shall next pay, according to such funds as he has in his possession, a pro rata share of the balance to all the creditors on an equal basis or in such proportions as the creditors may agree.

§ 8.01-525.10. Exemption from garnishment, levy, or distress.

When the assignment is executed and approved by the court and the trustee has been appointed and notice given to the creditors listed in the assignment, such assignment shall be deemed legal and binding upon all creditors and such salary, wages, or income shall be exempt from garnishment, levy, or distress during such time as the assignment is in existence. Such assignment shall have priority over all liens subsequently obtained.

§ 8.01-525.11. Termination of assignment by court.

The court may, at any time, upon a motion stating that the terms of the assignment are not being complied with, order the debtor and trustee to appear before the court, and the court may, if the evidence justifies, or, in its discretion, declare the assignment null and void. When such action is taken by the court, a written notice shall be sent to all persons named in the assignment.

The court may, on its own motion, revoke the assignment whenever it determines that the ends of justice are not being attained.

When the assignment has been fully complied with, the court shall discharge the trustee and notify the employer of the debtor, if there is one, that the debtor is entitled to receive his entire salary, wages, or income directly.

§ 8.01-525.12. Clerk to preserve assignment; fees.

The clerk of the court wherein any assignment is filed, as otherwise provided by law, shall maintain the court records of such assignment, together with all reports of the trustee, and shall keep an index of all such assignments. For filing the assignment, the fee as prescribed in § 17.1-275 shall be charged.

CHAPTER 20.

DISPOSITION OF ASSETS BY NONPROFIT HEALTH CARE ENTITIES.

§ 32.1-373. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Disposition of assets" means any action undertaken by a nonprofit entity to dispose of control of all or substantially all of its assets pursuant to an agreement of sale, transfer, lease, exchange, option, joint venture, or partnership, or to convert to a for-profit entity or to otherwise restructure the nonprofit entity or its assets, resulting in a change in control or governance of the entity or assets.

"Nonprofit entity" means (i) a foreign or domestic nonstock corporation licensed and subject to regulation under Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 or (ii) a person that is exempt from taxation under 26 U.S.C. § 501(c)(3) or (4) and is, or owns, one of the following: (a) a hospital licensed under Chapter 5 (§ 32.1-123 et seq.) of this title or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2; (b) a health maintenance organization licensed under Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2; (c) a nursing home, including a facility known by varying nomenclature or designation such as convalescent home, skilled nursing facility or skilled care facility, intermediate care facility, extended care facility, or certified nursing facility or nursing care facility, licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of Chapter 5; or (d) a facility for the provision of continuing care registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2.

§ 32.1-374. Obligations of nonprofit entity.

Prior to disposition of assets, any nonprofit entity shall provide to the Attorney General written notice, on a form provided by the Attorney General, of its intent to dispose of such assets, including the terms of the proposal. The notice shall be given at least 60 days in advance of the effective date of such proposed transaction in order that the Attorney General may exercise his common law and statutory authority over the activities of these organizations. The Attorney General may employ expert assistance in reviewing any proposed transaction, and such reasonable expenses incurred by the Attorney General shall be paid by a party to the proposed transaction.

Within 10 days of receipt of the notice from the entity, the Attorney General shall cause a public notice of the transaction to be published in a newspaper in which legal notices may be published in that jurisdiction.

No later than 40 days prior to any disposition of assets, the nonprofit entity shall convene a public meeting to set forth its expectations concerning how the health care needs of the community will be served following the proposed disposition of assets and to receive comments and respond to questions on the potential impact of the proposed disposition of assets on the community served by the nonprofit entity. Notice of the time and place of such meeting shall be published at least 10 days prior to the meeting in a newspaper in which legal notices may be published in that jurisdiction.

Notice to the Attorney General pursuant to this section shall be given for State Corporation Commission approval sought pursuant to Article 11 (§ 13.1-893.1) of Chapter 10 of Title 13.1 and §§ 38.2-203 and 38.2-1322 through 38.2-1328 and subdivision A 1 of § 38.2-4316. Such notice need not be given where the State Corporation Commission determines, in its sole discretion, that there is a reasonable expectation that the foreign or domestic nonstock corporation licensed and subject to regulation under Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 or health maintenance organization referenced in this chapter will not be able to meet its obligations to subscribers or enrollees.

The provisions of this section shall not apply to any disposition of assets subject to the provisions of § 38.2-4214.1 or any of the provisions of Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2.

§ 32.1-375. Applicability of chapter.

This chapter shall apply to any disposition of assets proposed to take effect on or after July 1, 1997.

CHAPTER 12.

FIRST-TIME HOME BUYER SAVINGS PLAN ACT.

§ 36-171. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Account holder" means an individual who establishes, individually or jointly with one or more other individuals, an account with a financial institution for which the account holder claims a first-time home buyer savings account status on his Virginia income tax return.

"Allowable closing costs" means a disbursement listed on a settlement statement for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

"Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, or credit union or any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the Commonwealth.

"First-time home buyer savings account" or "account" means an account with a financial institution for which the account holder claims first-time home buyer savings account status on his Virginia income tax return for taxable year 2014 or any taxable year thereafter, pursuant to this chapter for the purpose of paying or reimbursing eligible costs for the purchase of a single-family residence in the Commonwealth by a qualified beneficiary. Financial institutions shall not be required to (i) designate an account as a first-time home buyer savings account, or designate the beneficiaries of such accounts, in the financial institutions' account contracts or systems or in any other way; (ii) track the use of funds withdrawn from such accounts; (iii) allocate funds in such accounts among joint account owners or multiple beneficiaries; or (iv) report any of the information stated in clause (i), (ii), or (iii) to the Department of Taxation or other governmental agency. Financial institutions shall not be responsible for or liable for (a) determining or ensuring that an account satisfies the requirements to be a first-time home buyer savings account, (b) determining or ensuring that costs are eligible costs, or (c) reporting or remitting taxes or penalties for such accounts.

"Qualified beneficiary" means only an individual who resides in the Commonwealth at the time of settlement on the purchase of a single-family residence in the Commonwealth who (i) has never owned or purchased under contract for deed, either individually or jointly, a single-family residence in the Commonwealth or outside of the Commonwealth; (ii) is designated as the beneficiary of an account designated by the account holder as a first-time home buyer savings account; and (iii) may apply moneys or funds held in such account for eligible costs. A qualified beneficiary may use the funds from such account for eligible costs regardless of whether such qualified beneficiary purchases the single-family residence as sole owner or jointly with another individual.

"Settlement statement" means the statement of receipts and disbursements for a transaction related to real estate, including a statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601 et seq., as amended, and the regulations thereunder, or an executed sales agreement for the purchase of a manufactured home being conveyed as personal property.

"Single-family residence" means a single-family residence owned and occupied by a qualified beneficiary, including a manufactured home, trailer, mobile home, condominium unit, or cooperative.

§ 36-172. Claiming first-time home buyer status.

A. The account holder shall be responsible for the use or application of moneys or funds in an account for which the account holder claims first-time home buyer savings account status.

B. The account holder shall (i) not use moneys or funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution; (ii) maintain documentation, which may include the settlement statement, of the segregation of moneys or funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence in the Commonwealth; (iii) file, with the account holder's Virginia income tax return, forms developed by the Department of Taxation regarding treatment of the account as a first-time home buyer savings account under this chapter, along with the Form 1099 issued by the financial institution for such account; and (iv) remit to the Department of Taxation the tax on any amounts (a) added to individual income pursuant to subdivision 6 of § 58.1-322.01 or (b) recaptured pursuant to subdivision 25 of § 58.1-322.02.

C. The Tax Commissioner shall develop guidelines applicable to account holders to implement the provisions of this chapter. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Such guidelines shall not apply to, or impose administrative, reporting, or other obligations or requirements on, financial institutions-related accounts for which first-time home buyer savings account status is claimed by the account holder.

§ 36-173. Tax exemption; conditions.

A. All interest or other income earned attributable to an account shall be excluded from the Virginia taxable income of the account holder as provided under subdivision 25 of § 58.1-322.02.

B. There shall be an aggregate limit of $50,000 per account on the amount of principal for which the account holder may claim first-time home buyer savings account status. Only cash and marketable securities may be contributed to an account.

C. Subject to the aggregate limit on the amount of principal that may be contributed to an account pursuant to subsection B, there shall be a limitation of $150,000 on the amount of principal and interest or other income on the principal that may be retained within an account.

D. An account holder shall be subject to Virginia income tax pursuant to subdivision 6 of § 58.1-322.01 to the extent of any loss deducted as a capital loss by the individual for federal income tax purposes attributable to the person's account.

E. Upon being furnished proof of the death of the account holder, a financial institution shall distribute the principal and accumulated interest or other income in the account in accordance with the terms of the contract governing the account.

§ 36-174. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.

If moneys or funds are withdrawn from an account for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, there shall be imposed a penalty calculated using the Form 1099 showing the amount of income exempted from state income tax, and a five percent penalty shall be assessed on the amount of exempted income. The penalty shall be paid to the Department of Taxation. In addition, as provided under subdivision 25 of § 58.1-322.02, the account holder shall also be subject to recapture of income that was subtracted pursuant to that subdivision.

Such five percent penalty shall not apply to, and there shall be no recapture of income with regard to, the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330; or (iii) transferred from an account established pursuant to this chapter into another account established pursuant to this chapter for the benefit of another qualified beneficiary.

§ 36-175. False claims prohibited; penalty.

A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to avoid or evade taxes or penalties upon the withdrawal of money or funds from an account for which the account holder claims first-time home buyer savings account status is guilty of a Class 1 misdemeanor.

CHAPTER 14.7:3.

MINERAL RIGHTS.

§ 45.1-161.311:9. Presumption that no minerals, coals, oils, or ores exist in certain lands.

In any case when a claim to minerals, coals, oils, ores, or subsurface substances, in, on, or under lands in the Commonwealth, it shall be prima facie presumed that no minerals, coals, oils, ores, or subsurface substances existing in, on, or under such lands, except lands lying west of the Blue Ridge Mountains other than in Amherst, Augusta, Bland, Botetourt, Craig, Giles, Nelson, Page, Rockingham, Roanoke, Shenandoah Counties or counties having a population of more than 16,500 but less than 16,900, of more than 32,000 but less than 32,940, of more than 30,000 but less than 31,000, of more than 15,700 but less than 16,000, of more than 60,000 but less than 70,000, of more than 5,000 but less than 5,350, and of more than 26,670 but less than 26,800, of more than 26,300 but less than 27,525, of more than 6,200 but less than 6,750, of 17,500 but less than 18,200, of 56,000 but less than 57,500, of 53,000 but less than 54,500, or in any county having population of more than 21,950 but less than 22,000, or in the case of manganese ores only in counties having a population of more than 21,300 and less than 21,900 or in any county having a population of more than 43,000 but less than 50,000, or the right to enter such land for the purpose of exploring, mining, boring, and sinking shafts for such minerals, coals, oils, ores, or subsurface substances is derived or reserved by any writing made 35 years or more prior to the institution of the action pursuant to § 45.1-161.311:11, and (i) such right to explore or mine has not for a like period been exercised and for a like period the person having such claim or right has never been charged with taxes thereon but all the taxes on the land have been charged to and paid by the person holding the land subject thereto, and for a like period no deed of bargain and sale of such claim or reservation in such mineral rights in the lands embraced in such claim has been recorded in the clerk's office of the county wherein the lands are located, or (ii) when the right to explore and mine has been exercised and the minerals, coals, oils, ores, and subsurface substances in or on the land have been exhausted and the right of mining or boring has been abandoned for a like period.

§ 45.1-161.311:10. Presumption regarding estate of owner of mineral rights.

A. Except as otherwise provided in the deed by which the owner of minerals derives title, the owner of minerals shall be presumed to be the owner of the shell, container chamber, passage, and space opened

underground for the removal of the minerals, with full right to haul and transport minerals from other lands and to pass men, materials, equipment, water, and air through such space. No injunction shall lie to prohibit the use of any such shell, container chamber, passage, or space opened underground by the owner of minerals for the purposes herein described. The provisions of this subsection shall not affect contractual obligations and agreements entered into prior to July 1, 1981.

B. Notwithstanding the provisions of subsection A, with respect to the coal mineral estate, unless expressly excepted by the instrument creating the mineral ownership or lease interest, the owner or, if leased, the lessee of the coal mineral estate or its successor, assign, sublessee, or affiliate retains the right to any coal remaining in place after the removal of surrounding coal, as well as the right to use the shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal.

1. Any such shell, container chamber, passage, space, or void opened underground that is within the boundaries of a mine permit issued under this title may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved, and no injunction shall lie to prohibit such use.

2. Any such shell, container chamber, passage, space, or void opened underground that is located in a sealed mine for which a mining permit no longer exists may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved only with the consent of the owner of such shell, container chamber, passage, space, or void. Such consent shall not be unreasonably withheld if the owner has been offered reasonable compensation for such use. In determining whether an offer of compensation is reasonable, a court shall be guided by the compensation set forth in other leases for the use of mine voids as is customary in the area.

C. The provisions of subdivisions B 1 and 2 (i) shall not affect any provision contained in any contract in effect as of July 1, 2012, expressly prohibiting the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; (ii) shall not alter any contract entered into prior to July 1, 2012, that provides for the payment of compensation from the lessee to the lessor expressly for the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; and (iii) shall have no bearing on or application to any determination of ownership rights in natural gas or coalbed methane.

§ 45.1-161.311:11. Actions to extinguish certain claims.

The owner or owners of the land subject to such claim or right separately or jointly may bring an action praying for the extinguishment of such claim or right, to which action shall be made party defendant the person by whom such claim by such writing was derived or reserved, or his successors in title, by name so far as known, and as defendants unknown, so far as such successors in title are unknown. The venue for such action shall be as specified in subdivision 3 of § 8.01-261. The court shall allow a period of not less than six months from the time the cause is docketed and set for hearing to elapse within which time the defendant may explore and discover commercial minerals, coals, oils, ores, or subsurface substances, if any, and in the absence of satisfactory evidence to the contrary, it shall be presumed that there are no commercial minerals, coals, oils, ores, or subsurface substances in or on the land, and the court shall enter an order declaring the claim or right to be a cloud on the title and releasing the land therefrom and extinguishing the same; but if the defendant or defendants shall thereupon prove that there are commercial minerals, coals, oils, ores, or subsurface substances in or on the land, the court shall require such minerals, coals, oils, ores, or subsurface substances to be charged with taxes according to law.

CHAPTER 23.3.

COMMON INTEREST COMMUNITIES.

Article 1.

Common Interest Community Board.

§ 54.1-2345. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Association"~~ means the same as that term is defined in § 55-528~~ *includes condominium, cooperative, or property owners' associations*.

"Board" means the Common Interest Community Board.

"Common interest community" means~~ the same as that term is defined in § 55-528;~~ *real estate subject to a declaration with respect to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses,* provided

that for the purposes of this chapter only, a common interest community ~~shall~~ *does* not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ ~~55-360~~ *55.1-2200* et seq.) or any additional land that is a part of such registration. *"Common interest community" does not include an arrangement described in § 54.1-2345.1.*

"Common interest community manager" means a person or business entity, including ~~but not limited to~~ a partnership, association, corporation, or limited liability company, ~~who~~ *that*, for compensation or valuable consideration, provides management services to a common interest community.

"Declaration" means ~~the same as that term is defined in § 55-528~~ *any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual assessment in connection with the provision of maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition*.

"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors or other governing body of a property owners' association.

"Lot" means ~~the same as that term is defined in § 55-528~~ *(i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative*.

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

§ 54.1-2345.1. Certain real estate arrangements and covenants not deemed to constitute a common interest community.

A. An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community, or an arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. Assessments against the lots in the common interest community required by such arrangement shall be included in the periodic budget for the common interest community, and the arrangement shall be disclosed in all required public offering statements and disclosure packets.

B. A covenant requiring the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree to create such community.

§ 54.1-2346. License required; certification of employees; renewal; provisional license.

A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this ~~chapter~~ *article* prior to engaging in such management services.

B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this ~~chapter,~~ *article* shall be subject to the provisions of § 54.1-111.

C. On or after July 1, 2012, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be $10,000.

E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

~~F. The Board shall issue a provisional license to any person, partnership, corporation, or other entity offering management services to a common interest community on or before December 31, 2008, who makes application for licensure prior to January 1, 2009. Such provisional license shall expire on June 30, 2012, and shall not be renewed. This subsection shall not be construed to limit the powers and authority of the Board.~~

§ 54.1-2347. Exceptions and exemptions generally.

A. The provisions of this ~~chapter~~ *article* shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;

2. An employee of an association from providing management services for that association's common interest community;

3. A resident of a common interest community acting without compensation from providing management services for that common interest community;

4. A resident of a common interest community from providing bookkeeping, billing, or recordkeeping services for that common interest community for compensation, provided the blanket fidelity bond or employee dishonesty insurance policy maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;

5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;

6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;

7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;

8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ ~~55-360~~ *55.1-2200* et seq.) from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this ~~chapter~~ *article* if he would be otherwise exempt from such licensure.

§ 54.1-2348. Common Interest Community Board; membership; meetings; quorum.

There is hereby created the Common Interest Community Board (the Board) as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. Members of the Board shall be appointed by the Governor and consist of ~~eleven~~ *11* members as follows: three shall be representatives of Virginia common interest community managers, one shall be a Virginia attorney whose practice includes the representation of associations, one shall be a representative of a Virginia certified public accountant whose practice includes providing attest services to associations, one shall be a representative of the Virginia time-share industry, two shall be representatives of developers of Virginia common interest communities, and three shall be Virginia citizens, one of whom serves or who has served on the governing board of an association that is not professionally managed at the time of appointment and two of whom reside in a common interest community. Of the initial appointments, one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of two years and one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of three years; the Virginia attorney shall serve a term of three years; the Virginia certified public accountant shall serve a term of one year; the Virginia citizen who serves or who has served on the governing board of an association shall serve a term of two years, and the two Virginia citizens who reside in a common interest community shall serve terms of one year. All other initial appointments and all subsequent appointments shall be for terms for four years, except that vacancies may be filled for the remainder of the unexpired term. Each appointment of a representative of a Virginia common interest community manager to the Board may be made from nominations submitted by the Virginia Association of Community Managers, who may nominate no more than three persons for each manager vacancy. In no case shall the Governor be bound to make any appointment from such nominees. No person shall be eligible to serve for more than two successive four-year terms.

The Board shall meet at least once each year and at other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. A majority of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this ~~chapter~~ *article*.

§ 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce the provisions of this ~~chapter~~ *article*. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this ~~chapter~~ *article* in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) ~~to include but not be limited to~~, *including* the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) $1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding year. For the purposes of clause (ii), no minimum payment shall be less than $10. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management *Information* Fund established pursuant to § ~~55-529~~ *54.1-2354.2*;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such

designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination~~,~~ or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the ~~National Board of Certification for~~ Community Association Managers *International Certification Board*, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § ~~55-529~~ *54.1-2354.2*;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this ~~chapter~~ *article*;

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this ~~chapter~~ *article*; ~~and~~

8. *Issue a certificate of registration to each association that has properly filed in accordance with this chapter; and*

9. Develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act (§ ~~55-508~~ *55.1-1800* et seq.).

B. 1. The Board shall have the sole responsibility for the administration of this ~~chapter~~ *article* and for the promulgation of regulations to carry out the requirements thereof.

2. The Board shall also be responsible for the enforcement of this ~~chapter~~ *article*, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this ~~chapter~~ *article* with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

3. For purposes of enforcement of this ~~chapter~~ *article* or ~~Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55~~ *the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.),* any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

D. Notwithstanding the provisions of subsection ~~E~~ *A* of § ~~55-530~~ *54.1-2354.4*, the Board may receive a complaint directly from any person aggrieved by an association's failure to deliver a resale certificate or disclosure packet within the time period required under § ~~55-79.97, 55-79.97:1, 55-484, 55-509.5, 55-509.6, or 55-509.7~~ *55.1-1809, 55.1-1810, 55.1-1811, 55.1-1900, 55.1-1992, or 55.1-2161*.

§ 54.1-2350. Annual report; form to accompany resale certificates and disclosure packets.

In addition to the provisions of § 54.1-2349, the Board shall:

1. Administer the provisions of ~~Chapter 29~~ *Article 2* (§ ~~55-528~~ *54.1-2354.1* et seq.) ~~of Title 55~~;

2. Develop and disseminate an association annual report form for use in accordance with §§ ~~55-79.93:1, 55-504.1, and 55-516.1~~ *55.1-1836, 55.1-1980, and 55.1-2182*; and

3. Develop and disseminate a form to accompany resale certificates required pursuant to § ~~55-79.97~~ *55.1-1990* and association disclosure packets required pursuant to § ~~55-509.5~~ *55.1-1809*, which form shall summarize the unique characteristics of common interest communities generally that may affect a prospective purchaser's decision to purchase a lot or unit located in a common interest community. The form shall include information on the following, which may or may not be applicable to a particular common interest community: (i) the obligation on the part of an owner to pay regular annual or special assessments to the association; (ii) the penalty for failure or refusal to pay such assessments; (iii) the purposes for which such assessments, if any, may be used; (iv) the importance the declaration of restrictive covenants or condominium instruments, as applicable, and other governing documents play in association living; (v) limitations on an owner's ability to rent his lot or unit; (vi) limitations on an owner's ability to park or store certain types of motor vehicles or boats within the common interest community; (vii) limitations on an owner's ability to maintain an animal as a pet within the lot or unit, or in common areas or common elements; (viii) architectural guidelines applicable to an owner's lot or unit; (ix) limitations on an owner's ability to operate a business within a dwelling unit on a lot or within a unit; (x) the period or length of declarant control; and (xi) that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law. The form shall also provide that (a) the purchaser remains responsible for his own examination of the materials that constitute the resale certificate or disclosure packet and of any table of contents that may be contained therein; (b) the purchaser shall carefully review the entire resale certificate or disclosure packet; and (c) the contents of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies between the form and the resale certificate or disclosure packet.

§ 54.1-2351. General powers and duties of Board concerning associations.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this ~~chapter~~ *article*, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this ~~chapter~~ *article* or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act or practice in violation of this ~~chapter~~ *article*, ~~Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55~~ *the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.),* or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring ~~suit~~ *an action* in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action ~~or suit~~ involving a violation by a declarant or a developer of a time-share project of this ~~chapter~~ *article*, ~~Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55~~ *the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.),* or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this ~~chapter~~ *article*.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order, the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this ~~chapter~~ *article*, the Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this ~~chapter~~ *article*, ~~Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55~~ *the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.)*, or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than $1,000 per violation against any governing board that violates any provision of this ~~chapter~~ *article*, ~~Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55~~ *the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.)*, or any of the Board's regulations or orders. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this ~~chapter~~ *article*, ~~Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55~~ *the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.)*, or any of the Board's regulations or orders unless the governing board has been given notice and an opportunity to be heard pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

§ 54.1-2352. Cease and desist orders.

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this ~~chapter~~ *article*, if the Board determines after notice and hearing that the governing board of an association has:

1. Violated any statute or regulation of the Board governing the association regulated pursuant to this ~~chapter~~ *article*, including engaging in any act or practice in violation of this ~~chapter~~ *article*, ~~Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55~~ *the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.)*, or any of the Board's regulations or orders;

2. Failed to register as an association or to file an annual report as required by statute or regulation;

3. Materially misrepresented facts in an application for registration or an annual report; or

4. Willfully refused to furnish the Board information or records required or requested pursuant to statute or regulation.

B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Board shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

§ 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager.

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or

generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager~~;~~ and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets~~,~~ shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment~~,~~ and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject

common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Recovery Fund as a cost of administering the Fund pursuant to § ~~55-530.1~~ *54.1-2354.5*, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. The provisions of this ~~chapter~~ *article* are declared to be remedial. The purpose of this ~~chapter~~ *article* is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this ~~chapter~~ *article* shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

§ 54.1-2354. Variation by agreement.

Except as expressly provided in this ~~chapter~~ *article*, provisions of this ~~chapter~~ *article* may not be varied by agreement, and rights conferred by this ~~chapter~~ *article* may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this ~~chapter~~ *article* and the provisions of ~~Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55~~ *the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.),* as applicable.

Article 2.

Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund.

§ 54.1-2354.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions A 1, 2, and 4 of § 2.2-4519, and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations to the fund.

"Claimant" means upon proper application to the Director, a receiver for a common interest community manager appointed pursuant to § 54.1-2353 in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver.

"Director" means the Director of the Department of Professional and Occupational Regulation.

§ 54.1-2354.2. Common Interest Community Management Information Fund.

A. There is hereby created the Common Interest Community Management Information Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to promote the improvement and more efficient operation of common interest communities through research and education. The Fund shall be established on the books of the Comptroller. The Fund shall consist of money paid into it pursuant to §§ 54.1-2349, 55.1-1835, 55.1-1980, and 55.1-2182, and such money shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to § 54.1-2354.5.

B. Expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Common Interest Community Ombudsman, shall be paid first from interest earned on deposits constituting the Fund and the balance from the moneys collected annually in the Fund. The Board may use the remainder of the interest earned on the balance of the Fund and of the moneys collected annually and deposited in the Fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;

2. Expeditious and inexpensive procedures for resolving complaints about an association from members of the association or other citizens;

3. Seminars and educational programs designed to address topics of concern to community associations; and

4. Other programs deemed necessary and proper to accomplish the purpose of this article.

§ 54.1-2354.3. Common Interest Community Ombudsman; appointment; powers and duties.

A. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.

B. The Office shall:

1. Assist members in understanding rights and the processes available to them according to the laws and regulations governing common interest communities and respond to general inquiries;

2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;

3. Receive notices of final adverse decisions;

4. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;

5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;

6. Maintain data on inquiries received, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;

7. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;

8. Monitor changes in federal and state laws relating to common interest communities;

9. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and

10. Carry out activities as the Board determines to be appropriate.

§ 54.1-2354.4. Association complaint procedures; final adverse decisions; certificate of registration.

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.

2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mailing address of the Office. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

B. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a $25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

C. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.

§ 54.1-2354.5. Common Interest Community Management Recovery Fund.

A. There is hereby created the Common Interest Community Management Recovery Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date shall be assessed $25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three business days after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency shall be secured under the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 64.2-1502.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest Community Management Information Fund, established pursuant to § 54.1-2354.2, or accrue to the Fund.

C. On and after July 1, 2011, the minimum balance of the Fund shall be $150,000. Whenever the Director determines that the principal balance of the Fund is or will be less than such minimum principal balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount from the Common Interest Community Management Information Fund to the Fund to bring the principal balance of the Fund to the amount required by this subsection. Such transfer shall be considered by the Board within 30 days of the notification of the Director.

D. If any such transfer of funds is insufficient to bring the principal balance of the Fund to the minimum amount required by this section, or if a transfer to the Fund has not occurred, the Board shall assess each association and each common interest community manager, within 30 days of notification by the Director, a sum sufficient to bring the principal balance of the Fund to the required minimum amount. The amount of such assessment shall be allocated among the associations and common interest community managers in proportion to each payor's most recently paid annual assessment, or if an association or common interest community manager has not paid an annual assessment previously, in proportion to the average annual assessment most recently paid by associations or common interest community managers, respectively. The Board may order an assessment at any time in addition to any required assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

Notice to common interest community managers and the governing boards of associations of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within 45 days after the mailing of such notice.

E. If any common interest community manager fails to remit the required payment within 45 days of the mailing, the Director shall notify the common interest community manager by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

F. If any association fails to remit the required payment within 45 days of the mailing, the Director shall notify the association by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, it shall be deemed a knowing and willful violation of this section by the governing board of the association.

G. At the close of each fiscal year, whenever the balance of the Fund exceeds $5 million, the amount in excess of $5 million shall be transferred to the Virginia Housing Trust Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36. Except for payments of costs as set forth in this article and transfers pursuant to this subsection, there shall be no transfers out of the Fund, including transfers to the general fund, regardless of the balance of the Fund.

H. A claimant may seek recovery from the Fund subject to the following conditions:

1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, the Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any award of

fees, costs, and expenses pursuant to subsection G of § 54.1-2353 by the court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, as certified by the court appointing the receiver.

3. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment of the amount of such shortfall to the claimant from the Fund, provided that in no event shall such payment exceed the balance in the Fund. When the Fund balance is not sufficient to pay the aggregate amount of such shortfall, the Board shall direct that payment be applied first in satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore the funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager. If the Board has reason to believe that there may be additional claims against the Fund, the Board may withhold any payment from the Fund for a period of not more than one year. After such one-year period, if the aggregate of claims received exceeds the Fund balance, the Fund balance shall be prorated by the Board among the claimants and paid in the above payment order from the Fund in proportion to the amounts of claims remaining unpaid.

4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the Fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations receiving distributions from the Fund against the common interest community manager to the extent that such rights were satisfied from the Fund.

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a case decision as defined in § 2.2-4001, and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court that is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the Fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions resulted in payment from the Fund. The common interest community manager whose license was so revoked shall not be eligible to apply for a license as a common interest community manager until he has repaid in full the amount paid from the Fund on his account, plus interest at the judgment rate of interest from the date of payment from the Fund.

8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action against any common interest community manager for any violation of statute or regulation, nor shall the repayment in full by a common interest community manager of the amount paid from the Fund on such common interest community manager's account nullify or modify the effect of any disciplinary proceeding against such common interest community manager for any such violation.

TITLE 55.1.

PROPERTY AND CONVEYANCES.

SUBTITLE I.

PROPERTY CONVEYANCES.

CHAPTER 1.

CREATION AND LIMITATION OF ESTATES.

Article 1.

Creation and Transfer of Estates.

§ 55.1-100. Aliens may acquire, hold, and transmit real estate; when reciprocity required.

Any alien, not an enemy, may acquire by purchase or descent and hold real estate in the Commonwealth, and such real estate shall be transmitted in the same manner as real estate held by citizens. However, if, at the time of the transfer, a court of the Commonwealth determines that the laws of a foreign country or sovereignty effectively deny a Virginia resident, legatee, or distributee the benefit, use, or control of money or other property held in such foreign country or sovereignty, a judgment or order issued in the Commonwealth concerning the rights of a resident of that foreign country or sovereignty to the benefit, use, or control of money or property held in the Commonwealth may direct that the money or property be paid into the court for the benefit of the alien. The money or property paid into court shall be paid out only upon order of the court or pursuant to the order or judgment of a court of competent jurisdiction. Any of the money or property remaining with the court upon expiration of three years from the decedent's death shall be paid out by the court as if the alien had predeceased the decedent.

§ 55.1-101. When deed or will necessary to convey estate; no parol partition or gift valid.

No estate of inheritance or freehold or for a term of more than five years in lands shall be conveyed unless by deed or will, and no voluntary partition of lands by coparceners, having such an estate in such land, shall be made except by deed. In addition, no right to a conveyance of any such estate or term in land shall accrue to the donee of the land or those claiming under him, under a gift or promise of gift of such estate or term in land not in writing, even if such gift or promise is followed by possession and improvement of the land by the donee or those claiming under him.

§ 55.1-102. When gift of personal property invalid.

No gift of any personal property is valid (i) unless conveyed by deed or will or (ii) unless the donee or a person claiming under the donee has and remains in actual possession of such personal property. If the donor and donee reside together at the time of the gift, possession at the place of their residence is not a sufficient possession within the meaning of this section. This section shall not apply to personal paraphernalia used exclusively by the donee.

§ 55.1-103. Suicide or attainder of felony.

Neither suicide nor attainder of felony shall cause a corruption of blood or forfeiture of estate.

§ 55.1-104. Estates to lie in grant as well as in livery.

All real estate shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery.

§ 55.1-105. Same estates may be created by deed as by will.

Any interest in or claim to real estate, including easements in gross, may be transferred by deed or will. Any estate may be made to commence at a future date, by deed, in like manner as by will, and any estate that would be valid as an executory devise or bequest is valid if created by deed.

§ 55.1-106. Power of disposal in life tenant not to defeat remainder unless exercised; power of disposal held by fiduciary.

If any interest in or claim to real estate or personal property is disposed of by deed or will for life, with a limitation in remainder over, and the same instrument confers expressly or by implication a power upon the life tenant in his lifetime or by will to dispose absolutely of such property, the limitation in remainder over shall not fail, or be defeated, except to the extent that the life tenant lawfully exercised such power of disposal. A deed of trust or mortgage executed by the life tenant shall not be construed to be an absolute disposition of the estate, unless such estate is sold under the deed of trust or mortgage. A power of disposal held by any person in a fiduciary capacity under an express trust in writing shall not be deemed to be held by such fiduciary in a beneficial capacity and shall not be construed in any manner to enlarge the beneficial interest otherwise given to him under such trust.

§ 55.1-107. Default or surrender of tenant for life not to prejudice remainderman.

If any tenant for life of land make default or surrender, the heirs or those entitled to the remainder may, before judgment, be admitted to defend their right or, after judgment, may assert their right without prejudice from such default or surrender.

§ 55.1-108. Conveyance of estate or interest in property by grantor to himself and another.

Any person having an estate or interest in real or personal property may convey such estate or interest to himself or to himself and another or others, including to himself and his spouse as tenants by the entirety or otherwise, and the fact that one or more persons are both grantor or grantee or grantors and grantees in the same conveyance shall be no objection to the conveyance. The grantee or grantees in any such conveyance shall take title in like manner, and the estate vested in them shall be the same as if the conveyance had been made by one or more persons who are not also grantee or grantees.

All such conveyances made prior to July 1, 1986, are validated notwithstanding defects in the form thereof that do not affect vested rights.

§ 55.1-109. Deed valid for grantor's right; operation of warranty.

A writing that purports to pass or assure a greater right or interest in real estate than the person making it may lawfully pass or assure shall operate as an alienation of such right or interest in such real estate as such person might lawfully convey or assure; and when the deed of the alienor mentions that he and his heirs will warrant what it purports to pass or assure, if anything descends from him, his heirs shall be barred for the value of what is so descended or liable for such value.

§ 55.1-110. Conveyance, devise, or grant without words of limitation.

When any real estate is conveyed, devised, or granted to any person without any words of limitation, such conveyance, devise, or grant shall be construed to pass the fee simple or other whole estate or interest that the testator or grantor has power to dispose of in such real estate, unless a contrary intention is apparent in the conveyance, devise, or grant.

§ 55.1-111. Fee tail converted into fee simple.

Every estate in lands so limited that, as the law was on October 7, 1776, such estate would have been an estate tail shall be deemed an estate in fee simple, and every limitation upon such an estate shall be held valid if the same would be valid when limited upon an estate in fee simple created by technical language.

§ 55.1-112. Estate of freehold to one with remainder to heirs, etc.; rule in Shelley's Case abolished.

Wherever any person by deed, will, or other writing takes an estate of freehold in land, or takes such an interest in personal property as would be an estate of freehold if it were an estate in land, and in the same deed, will, or writing an estate is afterwards limited by way of remainder to his heirs, or the heirs of his body, or his issue, the words "heirs," "heirs of his body," and "issue," or other words of like import used in the deed, will, or writing in the limitation therein by way of remainder shall not be construed as words of limitation carrying to such person the inheritance as to the land, or the absolute estate as to the personal property, but they shall be construed as words of purchase, creating a remainder in the heirs, heirs of the body, or issue.

§ 55.1-113. Doctrine of worthier title abolished.

The doctrine of worthier title is abolished in the Commonwealth as a rule of law and as a rule of construction.

§ 55.1-114. When contingent remainder not to fail.

A contingent remainder shall not fail for want of a particular estate to support it.

§ 55.1-115. When remainders not defeated.

The alienation of a particular estate on which a remainder depends, or the union of such estate with the inheritance by purchase or descent, shall not operate, by merger or otherwise, to defeat, impair, or otherwise affect such remainder.

§ 55.1-116. In what conveyances possession transferred to the use.

By deed of bargain and sale, or by deeds of lease and release, or by covenant to stand seized to the use, or deed operating by way of covenant to stand seized to the use, the possession of the grantor shall be deemed transferred to the grantee or other person entitled to the use, for the estate or interest that such person has in the use, as perfectly as if the grantee or other person entitled to the use had been enfeoffed with livery of seisin of the land intended to be conveyed by such deed or covenant.

§ 55.1-117. Land trusts not to fail because no beneficiaries are specified by name and no duties laid on trustee; when interest of beneficiaries deemed personal property; liens.

No trust relating to real estate shall fail nor shall any use relating to real estate be defeated because no beneficiaries are specified by name in the recorded deed of conveyance to the trustee or because no duties are imposed upon the trustee. The power conferred by any such instrument on a trustee to sell, lease, encumber, or otherwise dispose of property described in such instrument shall be effective, and no person dealing with such a trustee shall be required to make further inquiry as to the right of such trustee to act, nor shall he be required to inquire as to the disposition of any proceeds.

In any case under this section where there is a recorded deed of conveyance to a trustee, the interest of the beneficiaries thereunder shall be deemed to be personal property. Judgments against a beneficiary and consensual liens against real property of a beneficiary do not attach to real property that is the subject of such a deed of conveyance unless the judgment is docketed or the lien recorded in the county or city where the property is located (i) before recordation of the deed creating the land trust and (ii) while the beneficiary has record title to the real property.

In any case under this section where there is a recorded deed of conveyance to a trustee and the trustee named in the deed declines to serve, resigns, is disqualified or removed, or is adjudicated incapacitated and there is (a) no successor trustee named in the deed, (b) no successor trustee designated by the terms of the trust instrument, or (c) no procedure set forth in the deed or trust instrument to designate a successor trustee, the beneficiaries of the trust, by majority decision, shall name a successor trustee. However, if the identities of the beneficiaries of the trust cannot be identified from the recorded deed of conveyance or a majority of the beneficiaries are unable to agree upon a successor trustee, the circuit court of the county or city in which the deed was recorded, upon the motion of any party interested in the administration of the trust, shall appoint a successor trustee whenever the court considers the appointment necessary for the administration of the trust.

The name and address of any successor trustee so named or appointed shall be recorded with the clerk of the circuit court of the county or city in which the deed was recorded, and such successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities imposed upon, the original trustee unless the deed of conveyance expressly provides to the contrary.

Nothing in this section shall be construed to (1) affect any right that a creditor may otherwise have against a trustee or beneficiary except as provided in this section, (2) enlarge upon the power of a corporation to act as trustee under § 6.2-1001, or (3) affect the rule against perpetuities.

§ 55.1-118. Deed of release effectual.

Every deed of release of any estate or interest capable of passing by deed of lease or release shall be as effectual for the purposes expressed in such deed of release, without the execution of a lease, as if the same had been executed.

§ 55.1-119. When person not a party, etc., may take or sue under instrument.

An immediate estate or interest in or the benefit of a condition respecting any estate may be taken by a person under an instrument, although he is not a party to such instrument; and if a covenant or promise is made for the benefit, in whole or in part, of a person with whom it is not made, or with whom it is made jointly with others, such person, whether named in the instrument or not, may maintain in his own name any action thereon that he might maintain as though it had been made with him only and the consideration had moved from him to the party making such covenant or promise. In such action, the covenantor or promisor shall be permitted to make all defenses he may have, not only against the covenantee or promisee, but also against such beneficiary.

§ 55.1-120. Informalities in deeds made by attorneys-in-fact.

If, in a deed made by one as attorney-in-fact for another, the words of conveyance or the signature is in the name of the attorney, it is as much the principal's deed as if the words of conveyance or the signature were in the name of the principal by the attorney, if it is manifest on the face of the deed that it should be construed to be that of the principal to give effect to its intent.

§ 55.1-121. Time for objections to irregularities in advertising sales made by trustees.

All deeds made and executed prior to January 1, 1940, by trustees conveying property sold under deeds of trust in which default was made in the debt secured and as to which irregularities in advertising such sales have occurred shall be held and the same are hereby declared valid in all respects, if otherwise valid according to law then in force, after the expiration of 15 years from the date on which such sale was made by such trustees.

§ 55.1-122. Recovery at death of life tenant of taxes paid on life estate.

When any person dies possessed of a life estate in real estate that was assessed with taxes in the name of such life tenant for the year in which such life tenant dies and such taxes are paid for that year by any person other than the remainderman entitled to such real estate, such person or his estate so paying such taxes shall be entitled to recover from such remainderman such proportionate part of the sum so paid as that part of the year following the death of the life tenant bears to the entire year, provided, however, that if upon the death of the life tenant the real estate shall come into the possession of another life tenant, such recovery shall be had from the subsequent life tenant and not from the remainderman.

§ 55.1-123. Removal of a cloud on title; nature of plaintiff's title.

When a petition is filed to remove a cloud on the title to real estate, relief shall not be denied the complainant because he has only an equitable title to such real estate and is out of possession, but the court shall grant to the complainant such relief as he would be entitled to if he held the legal title and was in possession. If an issue of fact is raised which but for this section would entitle either party to a trial by jury, the court shall, upon the request of the party so entitled, order such issue to be tried by a jury.

Article 2.

Rule Against Perpetuities.

§ 55.1-124. Uniform Statutory Rule Against Perpetuities.

A. A nonvested property interest is invalid unless:

1. When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

2. The interest either vests or terminates within 90 years after its creation.

B. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

1. When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

2. The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

C. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

1. When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

2. The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

D. In determining whether a nonvested property interest or a power of appointment is valid under subdivision A 1, B 1, or C 1, the possibility that a child will be born to an individual after the individual's death is disregarded.

E. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until, or (iii) seeks to operate in effect in any similar fashion upon, the later of (a) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (b) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

§ 55.1-125. When nonvested property interest or power of appointment created.

A. Except as provided in subsections B and C and in § 55.1-128, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

B. For the purposes of §§ 55.1-124 through 55.1-129, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in subsection B or C in § 55.1-124, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

C. For the purposes of §§ 55.1-124 through 55.1-129, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

§ 55.1-126. Reformation.

Upon the petition of an interested person, a circuit court in the county or city in which the affected property or the greater part of such property is located shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by subdivision A 2, B 2, or C 2 of § 55.1-124 if:

1. A nonvested property interest or a power of appointment becomes invalid under § 55.1-124;

2. A class gift is not but might become invalid under § 55.1-124 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

3. A nonvested property interest that is not validated by subdivision A 1 of § 55.1-124 can vest but not within 90 years after its creation.

§ 55.1-127. Exclusions from statutory rule against perpetuities.

A. Section 55.1-124 does not apply to:

1. A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of (i) a premarital or postmarital agreement; (ii) a separation or divorce settlement; (iii) a spouse's election; (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties; (v) a contract to make or not to revoke a will or trust; (vi) a contract to exercise or not to exercise a power of appointment; (vii) a transfer in satisfaction of a duty of support; or (viii) a reciprocal transfer;

2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

3. A power to appoint a fiduciary;

4. A discretionary power of trustee to distribute principal before termination of a trust to a beneficiary having an indefensibly vested interest in the income and principal;

5. A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

6. A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

7. A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of the Commonwealth; or

8. A nonvested interest in or power of appointment over personal property held in trust, or a power of appointment over personal property granted under a trust, if the trust instrument, by its terms, provides that § 55.1-124 shall not apply.

B. The exception to the Uniform Statutory Rule Against Perpetuities under subdivision A 8 shall not extend to real property held in trust. For purposes of this subsection, real property does not include an interest in a corporation, limited liability company, partnership, business trust, or other entity, even if such entity owns an interest in real property.

§ 55.1-128. Prospective application.

Sections 55.1-124 through 55.1-129 apply to a nonvested property interest or a power of appointment that is created on or after July 1, 2000. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

§ 55.1-129. Uniformity of application and construction.

Sections 55.1-124 through 55.1-129 shall be applied and construed to effectuate their general purpose to make the law uniform with respect to the rule against perpetuities among states enacting it.

§ 55.1-130. Certain limitations construed.

Every limitation in any deed or will contingent upon the dying of any person without heirs, heirs of the body, issue, issue of the body, children, offspring or descendants, or other relatives shall be construed a limitation to take effect when such person dies not having such heir, issue, child, offspring, descendant, or other relative, as the case may be, living at the time of his death, or born to him within 10 months after his death, unless the intention of such limitation be otherwise plainly declared on the face of the deed or will creating it.

§ 55.1-131. Employee trusts.

Pension, profit sharing, stock bonus, annuity, or other employee trusts established by employers for the purpose of distributing the income and principal of such trust to some or all of their employees, or the beneficiaries of such employees, shall not be invalid as violating any laws or rules against perpetuities or restraints on the power of alienation of title to property; but such trusts may continue for such period of time as may be required by their provisions to accomplish the purposes for which they are established.

§ 55.1-132. Determination of "lives in being" for purpose of rule against perpetuities.

A. For the purpose of determining whether the terms of an inter vivos trust provide for a duration in excess of that allowed under the rule against perpetuities, the determination of "lives in being" shall be made as of the death of the settlor, if the settlor has at his death the unrestricted right, acting alone, to revoke the trust or to have transferred to himself the entire legal and beneficial interest in all property, both principal and income, held in the trust. In the event that the settlor surrenders both such rights at any time prior to his death, the determination of "lives in being" shall be made as of the time that the settlor, upon establishment of the trust or otherwise, surrenders the unrestricted right acting alone to revoke the trust and the unrestricted right acting alone to have transferred to himself the entire legal and beneficial interest in all property, both principal and income, held in the trust.

B. This section shall apply only to a nonvested property interest in an inter vivos trust created before July 1, 2000.

§ 55.1-133. Application of the rule against perpetuities to nondonative transfers.

A. Except for the transactions set forth in § 55.1-127, which are governed by the provisions of §§ 55.1-124 through 55.1-129, a nondonative transfer of an interest in property fails, if the interest does not vest, if it ever vests, within the period of the common-law rule against perpetuities.

B. The provisions of this section (i) in force on June 30, 2000, shall apply to all donative interests created on or after July 1, 1982, and before July 1, 2000, and (ii) in force on July 1, 2000, shall apply to all nondonative interests created on or after July 1, 1982.

Article 3.

Joint Ownership of Real or Personal Property.

§ 55.1-134. Survivorship between joint tenants abolished.

A. When any joint tenant dies, before or after the vesting of the estate, whether the estate is real or personal, or whether partition could have been compelled or not, his part shall descend to his heirs, pass by devise, or go to his personal representative, subject to debts or distribution, as if he had been a tenant in common.

B. This section shall not apply to any estate that joint tenants have as fiduciaries or to any real or personal property transferred to persons in their own right when it manifestly appears from the tenor of the instrument transferring such property or memorializing the existence of a chose in action that it was intended the part of the one dying should then belong to the others. This section does not affect the mode of proceeding on any joint judgment or order in favor of or on any contract with two or more one of whom dies.

§ 55.1-135. Joint ownership in real and personal property.

Any persons may own real or personal property as joint tenants with or without a right of survivorship. When any person causes any real or personal property, or any written memorial of a chose in action, to be titled, registered, or endorsed in the name of two or more persons "jointly," as "joint tenants," in a "joint tenancy," or other similar language, such persons shall own the property in a joint tenancy without survivorship as provided in § 55.1-134. If, in addition, the expression "with survivorship," or any equivalent language, is employed in such titling, registering, or endorsing, it shall be presumed that such persons are intended to own the property as joint tenants with the right of survivorship as at common law. This section is not applicable to multiple party accounts under Article 2 (§ 6.2-604 et seq.) of Chapter 6 of Title 6.2 or to any other matter specifically governed by another provision of the Code.

If any real or personal property is conveyed or devised to spouses, they shall take and hold such property by moieties in the same manner as if a distinct moiety had been given to each spouse by a separate conveyance, unless language as provided in this section or in § 55.1-136 is used that designates the tenancy as a joint tenancy or a tenancy by the entirety and all requirements for holding property by such tenancy are met.

§ 55.1-136. Tenants by the entirety in real and personal property; certain trusts.

A. Spouses may own real or personal property as tenants by the entirety for as long as they are married. Personal property may be owned as tenants by the entirety whether or not the personal property represents the proceeds of the sale of real property. An intent that the part of the one dying should belong to the other shall be manifest from a designation of the spouses as "tenants by the entireties" or "tenants by the entirety."

B. Except as otherwise provided by statute, no interest in real property held as tenants by the entirety shall be severed by written instrument unless the instrument is a deed signed by both spouses as grantors.

C. Notwithstanding any contrary provision of § 64.2-747, any property of spouses that is held by them as tenants by the entirety and conveyed to their joint revocable or irrevocable trusts, or to their separate revocable or irrevocable trusts, and any proceeds of the sale or disposition of such property, shall have the same immunity from the claims of their separate creditors as it would if it had remained a tenancy by the entirety, so long as (i) they remain married to each other, (ii) it continues to be held in the trust or trusts, and (iii) it continues to be their property, including where both spouses are current beneficiaries of one trust that holds the entire property or each spouse is a current beneficiary of a separate trust and the two separate trusts together hold the entire property, whether or not other persons are also current or future beneficiaries of the trust or trusts. The immunity from the claims of separate creditors under this subsection may be waived as to any specific creditor, including any separate creditor of either spouse, or any specifically described property, including any former tenancy by the entirety property conveyed into trust, by the trustee acting under the express provision of a trust instrument or with the written consent of both spouses.

Article 4.

Virginia Solar Easements Act.

§ 55.1-137. Creation of solar easements.

Any easement obtained for the purpose of exposure of solar energy equipment, facilities, or devices shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

§ 55.1-138. Contents of solar easement agreements.

Any instrument creating a solar easement shall include, at a minimum:

1. The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement;

2. Any terms or conditions under which the solar easement is granted or will be terminated; and

3. Any provisions for compensation of the owner of the property subject to the solar easement.

CHAPTER 2.

PROPERTY RIGHTS OF MARRIED PERSONS.

§ 55.1-200. How married persons may acquire and dispose of property.

Married persons shall have the right to acquire, hold, use, control, and dispose of property as if they were unmarried. Such power of use, control, and disposition shall apply to all property of a married person. The marital rights of persons married to each other shall not entitle either spouse to the possession or use, or to the rents, issues, and profits, of such real estate of the other spouse during the coverture, nor shall the property of either spouse be subject to the debts or liabilities of the other spouse.

§ 55.1-201. Contracts of, and actions by and against, married persons.

A married person may contract and be contracted with and sue and be sued in the same manner and with the same consequences as if he were unmarried, regardless of the date on which the right or liability asserted by or against him accrued. In an action by a married person to recover for a personal injury inflicted on him, he may recover the entire damage sustained, including the personal injury and expenses arising out of the injury, whether chargeable to him or his spouse, notwithstanding that the spouse may be entitled to the benefit of his services about domestic affairs and consortium, and any sum recovered therein shall be chargeable with expenses arising out of the injury, including hospital, medical, and funeral expenses, and any person, including the spouse, partially or completely discharging such debts shall be reimbursed out of the sum recovered in the action, whensoever paid, to the extent that such payment was justified by services rendered or expenses incurred by the obligee, provided that written notice of such claim for reimbursement, and the amount and items thereof, shall be served on such married person and on the defendant prior to any settlement of the sum recovered by him, and no action for such injury, expenses, or loss of services or consortium shall be maintained by his spouse.

§ 55.1-202. Spouse not responsible for other spouse's contracts, etc.; mutual liability for necessaries; responsibility of personal representative.

Except as otherwise provided in this section, a spouse shall not be responsible for the other spouse's contract or tort liability to a third party, whether such liability arose before or after the marriage. The doctrine of necessaries as it existed at common law shall apply equally to both spouses, except where they are permanently living separate and apart, but shall in no event create any liability between such spouses as to each other. No lien arising out of a judgment under this section shall attach to the judgment debtors' principal residence held by them as tenants by the entirety or that was held by them as tenants by the entirety prior to the death of either spouse where the tenancy terminated as a result of the death of either spouse.

§ 55.1-203. Spouse's right of entry into land not barred by certain judgments; when a spouse may defend his right in lands that are his inheritance.

A spouse shall not be barred of his right of entry into land by a judgment in the other spouse's lifetime by default or collusion, but after the other spouse's death may prosecute the same by any proper action; or, in the lifetime of the other spouse, if the other spouse will not appear or, against the spouse's consent, will render the spouse's lands during the coverture in an action against both spouses for lands that are the spouse's inheritance, the spouse may come at any time before judgment and defend his right.

§ 55.1-204. Rights of spouse not affected by other spouse's acts only.

No conveyance or other act by one spouse only of any land that is the inheritance of the other spouse shall be or make any discontinuance thereof, or be prejudicial to the other spouse or his heirs or to any having right or title to the same by his death, but they may respectively enter into such land, according to their right and title in such land, as if no such conveyance or act had been done.

§ 55.1-205. Conveyance from married persons; effect on right of either spouse.

When persons married to each other have signed and delivered a writing purporting to convey any estate, real or personal, such writing, whether recorded or not, shall (i) if delivered prior to January 1, 1991, operate

to convey from the spouse her right of dower or his right of curtesy in the real estate embraced in such writing and (ii) if delivered after December 31, 1990, operate to manifest the spouse's written consent or joinder, as contemplated in § 64.2-305 or 64.2-308.9 to the transfer embraced in such writing. In either case, the writing passes from such spouse and his representatives all right, title, and interest of every nature that at the date of such writing he may have in any estate conveyed thereby as effectually as if he were at such date an unmarried person. If, in either case, the writing is a deed conveying a spouse's land, no covenant or warranty in such land on behalf of the other spouse joining in the deed shall operate to bind him any further than to convey his interest in such land, unless it is expressly stated that such spouse enters into such covenant or warranty for the purpose of binding himself personally.

§ 55.1-206. How infant spouse may release interests in spouse's property.

Notwithstanding the disability of infancy, on or after January 1, 1991, an infant spouse, whether married before or after January 1, 1991, may release his marital rights in the other spouse's real or personal property by uniting in any contract, deed, or other instrument executed by the other spouse or by a commissioner of a court pursuant to an order entered under §§ 8.01-67 through 8.01-77 or any other law with respect to the infant's property.

§ 55.1-207. Appointment of attorney-in-fact by married person; effect of writing executed by such attorney.

A married person, whether a resident of the Commonwealth or not, may, by power of attorney duly executed and acknowledged as prescribed in § 55.1-612 or 55.1-613, appoint an attorney-in-fact to execute and acknowledge, for him and in his name, any deed or other writing that he might execute. Every deed or other writing so executed by such attorney-in-fact in pursuance of such power of attorney while the same remains in force shall be valid and effectual, in all respects, to convey the interest and title of such married person in and to any real estate thereby conveyed or otherwise transferred.

§ 55.1-208. How estate of a married person to pass at death.

When a married person, having title to any estate, dies intestate, such estate, or any part of such estate, shall pass according to the provisions of Chapter 2 (§ 64.2-200 et seq.) of Title 64.2, subject to his debts.

§ 55.1-209. Equitable separate estates abolished.

The estate known as the equitable separate estate no longer exists and any language in any writing, whenever executed, that purports to convey real property to a person as an equitable separate estate has no legal or equitable significance after January 1, 1991, except as provided in § 64.2-301 or 64.2-308.2.

§ 55.1-210. Tangible personal property.

No presumption of ownership of tangible personal property shall arise by operation of law to prefer one spouse of a marriage over the other if such presumption is based solely on the sex of the spouse.

CHAPTER 3.

FORM AND EFFECT OF DEEDS AND COVENANTS; LIENS.

Article 1.

Form and Effect of Deeds; Easements.

§ 55.1-300. Form of a deed.

Every deed and corrected or amended deed may be made in the following form, or to the same effect: "This deed, made the _____ day of _____, in the year _____, between (here insert names of parties as grantors or grantees), witnesseth: that in consideration of (here state the consideration, nominal or actual), the said _____ does (or do) grant (or grant and convey) unto the said _____, all (here describe the property or interest therein to be conveyed, including the name of the city or county in which the property is located, and insert covenants or any other provisions). Witness the following signature (or signatures)."

§ 55.1-301. How construed.

Unless the deed provides otherwise, any deed conveying land shall be construed to include all the estate, right, title, and interest, both at law and in equity, of the grantor in or to such land.

§ 55.1-302. Construction of generic terms.

In the interpretation of deeds, adopted persons and persons born out of wedlock are included in class gift terminology or terms of relationship in accordance with rules for determining relationships for purposes of intestate succession unless a contrary intent appears on the face of the deed. In determining the intent of a grantor, adopted persons are presumptively included in such terms as "children," "issue," "kindred," "heirs," "relatives," "descendants," or similar words of classification and are presumptively excluded by such terms as

"natural children," "issue of the body," "blood kindred," "heirs of the body," "blood relatives," "descendants of the body," or similar words of classification.

§ 55.1-303. Appurtenances, etc., included in deed of land.

Every deed conveying land shall be construed to include all buildings, privileges, and appurtenances of every kind belonging to such land unless an exception is made in the deed.

§ 55.1-304. Relocation of easement.

The owner of land that is subject to an easement for the purpose of ingress and egress may relocate the easement, on the servient estate, by recording in the office of the clerk of the circuit court of the county or city in which the easement or any part of such easement is located, a written agreement evidencing the consent of all affected persons and setting forth the new location of the easement. In the absence of such written agreement, the owner of the land that is subject to such easement may seek relocation of the easement on the servient estate upon petition to the circuit court and notice to all parties in interest. The petition shall be granted if, after a hearing held, the court finds that (i) the relocation will not result in economic damage to the parties in interest, (ii) there will be no undue hardship created by the relocation, and (iii) the easement has been in existence for not less than 10 years.

§ 55.1-305. Enjoyment of easement.

Unless otherwise provided for in the terms of an easement, the owner of a dominant estate shall not use an easement in a way that is not reasonably consistent with the uses contemplated by the grant of the easement, and the owner of the servient estate shall not engage in an activity or cause to be present any objects either upon the burdened land or immediately adjacent to such land that unreasonably interferes with the enjoyment of the easement by the owner of the dominant estate. For the purposes of this section, "object" does not include any fence, electric fence, cattle guard, gate, or division fence adjacent to such easement as those terms are defined in §§ 55.1-2800 through 55.1-2826. Any violation of this section may be deemed a private nuisance, provided, however, that the remedy for a violation of this section shall not in any manner impair the right to any other relief that may be applicable at law or in equity.

§ 55.1-306. Utility easements.

A. For the purposes of this section, "utility services" means any products, services, and equipment related to energy, telecommunications, water, and sewerage.

B. Where an easement, whether appurtenant or gross, is expressly granted by an instrument recorded on or after July 1, 2006, that imposes on a servient tract of land a covenant (i) to provide an easement in the future for the benefit of utility services; (ii) to relocate, construct, or maintain facilities owned by an entity that provides utility services; or (iii) to pay the cost of such relocation, construction, or maintenance, such covenant shall be deemed for all purposes to touch and concern the servient tract, to run with the servient tract, its successors, and assigns for the benefit of the entity providing utility services, its successors, and assigns.

§ 55.1-307. Public road easements; maintenance and improvements.

Whenever a public road that has never been abandoned but is no longer publicly maintained serves as access for more than one property owner and operates as the primary source of ingress and egress for that property, any one of the property owners may maintain, repair, or improve the road at his own expense without the express permission of the other property owners but only after administrative review by the local government. All other property owners shall be notified by mail of any pending maintenance, repair, or improvements prior to commencement of the work. Nothing in this section shall be construed as allowing the property owner who is doing the maintenance, repairs, or improvements to the road to interfere with the other property owners' use of the road for ingress and egress.

§ 55.1-308. Private roads; public use; maintenance and improvements.

Notwithstanding any provision of a recorded deed or plat to the contrary, a private road serving a subdivision of 50 or fewer lots may be dedicated for public use and may be taken into the secondary state highway system, subject to the provisions and requirements set forth in §§ 33.2-335 and 33.2-336, if the owner of the fee interest in such private road obtains the written consent of every lot owner in the subdivision whose lot is served by the private road and the holder of any restrictive covenant or easement rights over and concerning the private road prior to making such dedication and before requirements for acceptance of the road into the secondary state highway system are met. Such consent shall be recorded in the land records of the clerk's office of the circuit court of the county in which the private road is located.

§ 55.1-309. Deeds good between parties.

Any deed, or a part of a deed, that fails to take effect by virtue of this chapter shall, nevertheless, be as valid and effectual and as binding upon the parties, so far as the rules of law and equity permit, as if this chapter had not been enacted.

§ 55.1-310. Conveyance of property not owned but subsequently acquired.

When a deed purports to convey property, real or personal, describing it with reasonable certainty, that the grantor does not own at the time of the execution of the deed, but subsequently acquires, such deed shall, as between the parties, have the same effect as if the title that the grantor subsequently acquires were vested in him at the time of the execution of such deed and thereby conveyed.

§ 55.1-311. Vendor's equitable lien abolished.

If any person conveys any real estate and the purchase money or any part thereof remains unpaid at the time of the conveyance, he shall not thereby have a lien for such unpaid purchase money, unless such lien is expressly reserved on the face of the conveyance.

§ 55.1-312. Certain deeds to county real estate validated.

All deeds executed prior to January 1, 1920, by a county commissioner, county commissioners, or a board of supervisors that convey any part of the real estate previously acquired by such county for county purposes are hereby validated and declared to have effectually passed the title to the part so conveyed even though the conveyance thereof reduced the real estate of the county to an area less than the county was required by law to own at the time of such conveyance.

§ 55.1-313. Validation of sales, etc., by county courts prior to 1860.

All sales or leases made prior to the year 1860 by the county court, or court of monthly session, of any county of any land or building then owned by such county and situated within the limits of land previously acquired by such county as a site for its courthouse and other public buildings, when the consideration therefor has been fully paid and the purchaser, or lessee as the case may be, and those claiming through or under him, shall have held continuous possession of such land or building from January 1, 1860, until January 1, 1934, are hereby validated and declared to be forever binding upon such county.

§ 55.1-314. Deeds and writings executed for persons in military service, etc., under defective powers.

All deeds or other writings executed by an agent or attorney-in-fact for a person in the armed forces or military service of the United States, or for a person who after executing a power of attorney or agency agreement entered the armed forces or military service of the United States, or for a person who departed from the United States by permission or direction of any department or official of the United States in connection with work relating to the prosecution of the war, when the power of attorney or agency agreement under which the deed or other instrument was signed was not executed in such a manner as to be valid as a sealed instrument, shall be held, and the same are hereby declared, valid and effective in all respects if otherwise valid according to the law then in force.

The provisions of this section shall not operate to affect adversely intervening vested rights.

§ 55.1-315. Effect of option; recording.

A. Any option to purchase real estate, and any memorandum, renewal, or extension of such option, shall be void as to (i) all purchasers for valuable consideration without notice who are not parties to such instrument and (ii) lien creditors, until such instrument is recorded in the county or city in which the property embraced in the option, memorandum, renewal, or extension is located.

B. Notwithstanding any rule of law or equity denominated "fettering," "clogging the equity of redemption" or "claiming a collateral advantage" or any similar rule:

1. A party secured by a mortgage or deed of trust, without adversely affecting his security interest, may acquire from a borrower any direct or indirect present or future ownership interest in the collateral encumbered thereby, including rights to any income, proceeds, or increase in value derived from such collateral; and

2. An option to acquire an interest in real estate granted to a party secured by a mortgage or deed of trust, other than an option granted to such party in connection with a mortgage loan as defined in § 6.2-1600, is effective according to its terms and takes priority as provided in subsection A if the right to exercise the option is not dependent upon the occurrence of a default under the mortgage or deed of trust.

Article 2.

Form and Effect of Deeds of Trust; Sales Thereunder; Assignments; Releases.

§ 55.1-316. Form of deed of trust to secure debts, etc.

A deed of trust to secure debts or indemnify sureties may be in the following form, or to the same effect: "This deed, made the _____ day of _____, in the year _____, between _____

(the grantor) and _____ (the trustee), witnesseth: that the said _____ (the grantor) does (or do) grant (or grant and convey) unto the said _____ (the trustee), the following property (here describe it): In trust to secure (here describe the debts to be secured or the sureties to be indemnified and insert covenants or any other provisions the parties may agree upon). Witness the following signature (or signatures)."

§ 55.1-317. Requirements for trustees.

A. No person may be named or act, in person or by agent or attorney, as the trustee of a deed of trust conveying property to secure the payment of money or the performance of an obligation, either individually or as one of several trustees, unless such person is a resident of the Commonwealth. No corporation, limited liability company, partnership, or other entity may be named or act as the trustee or as one of the trustees of a deed of trust conveying property to secure the payment of money or the performance of an obligation, unless it is organized under the laws of the Commonwealth or of the United States. However, the foregoing requirements shall not apply to any deed of trust conveying property lying partly in the Commonwealth and partly outside the Commonwealth or to a deed of trust conveying property in the Commonwealth to secure bonds or obligations that are also secured by one or more deeds of trust or mortgages conveying property outside of the Commonwealth.

B. A deed of trust conveying property to secure the payment of money or the performance of an obligation shall state the full residence or business address of the trustee named in such deed of trust, including street address and zip code, and such address shall be valid for purposes of all notices under the deed of trust to the trustee. Such address of the trustee may be changed by amendment of the deed of trust or by a separate instrument executed by the trustee, or by the beneficiary of such deed of trust, stating the changed address and otherwise in recordable form, and recorded in the office of the clerk of the circuit court where the deed of trust was recorded.

C. Notwithstanding any other provisions of this section, if any deed of trust is recorded by a clerk, it shall be conclusively presumed that such deed of trust complies with all the requirements of this section, and it shall be deemed to be validly recorded.

D. All deeds of trusts, mortgages, bonds, or other instruments recorded by a clerk prior to January 1, 1999, without the residence or business address of the trustee named in such deed of trust shall be valid for all purposes as if such address had been named if such recordation is otherwise valid according to the law then in force, provided that this section shall not affect any right or remedy of any third party that accrued after the recordation of such instrument or before July 1, 1960.

§ 55.1-318. Credit line deed of trust defined; relative priority of credit line deed of trust and other instruments of judgment.

A. For the purpose of this section:

"Beneficiary" means the noteholder, lender, or other party or parties identified in the credit line deed of trust as secured thereby. In the case of a credit line deed of trust that identifies a party acting as agent for all of the lenders or parties secured by a credit line deed of trust, such agent shall be the beneficiary for purposes of this section.

"Credit line deed of trust" means any deed of trust, mortgage, bond, or other instrument entered into after July 1, 1982, in which title to real property located in the Commonwealth is conveyed, transferred, encumbered, or pledged to secure payment of money, including advances or other extensions of credit to be made in the future.

B. A credit line deed of trust shall set forth on the front page, either in capital letters or in language underscored, the words "THIS IS A CREDIT LINE DEED OF TRUST." Such phrase shall convey notice to all parties that advances or other extensions of credit are to be made or are contemplated to be made from time to time against the security described in the credit line deed of trust. Such credit line deed of trust shall specify the maximum aggregate amount of principal to be secured at any one time.

C. From the date and actual time of the recording of a credit line deed of trust, the lien shall have priority (i) as to all other deeds, conveyances, or other instruments, or contracts in writing, that are unrecorded as of such date and time of recording and of which the beneficiary has no knowledge or notice and (ii) as to judgment liens subsequently docketed, except as provided in subsection D. Such priority shall extend to any advances or other extensions of credit made following the recordation of the credit line deed of trust. Amounts outstanding, together with interest, and other items provided by § 55.1-320, shall continue to have priority until paid or curtailed. Mechanics' liens created under Title 43 shall continue to enjoy the same priority as created by that

title. Purchase money security interests in goods and fixtures shall have the same priority as provided in Subpart 3 (§ 8.9A-317 et seq.) of Part 3 of Title 8.9A.

D. Notwithstanding the provisions of subsections A, B, and C, if a judgment creditor gives written notice to the beneficiary of record at the address indicated in the credit line deed of trust, such credit line deed of trust shall have no priority as to such judgment for any advances or extensions of credit made under such credit line deed of trust from the day following receipt of that notice except those that have been unconditionally and irrevocably committed prior to such date.

E. In addition to the language specified in subsection B, the credit line deed of trust shall set forth the name of the beneficiary and the address at which communications may be mailed or delivered to the beneficiary. Such name or address may be changed or modified by duly recorded instrument executed by the beneficiary only. If the note or indebtedness secured by the credit line deed of trust is assigned or transferred, the name and address of the new beneficiary may be set forth in the certificate of transfer provided by § 55.1-336. Such original name or address, or if changed, such changed name or address, shall be the address for delivery of notices contemplated by this section. Receipt of notice at such address shall be deemed receipt by the beneficiary.

F. The grantor may require at any time a modification under the credit line deed of trust whereby any priority over subsequently recorded deeds of trust is surrendered as to future advances or other extensions of credit, which advances or extensions of credit are in the discretion of the party secured by the credit line deed of trust.

G. Notwithstanding the provisions of subsections A, B, and C, if a deed of trust under this section is a subordinate mortgage, as defined in subsection A of § 55.1-319, upon the recording of a refinance mortgage, as defined in subsection A of § 55.1-319, the credit line deed of trust shall retain the same subordinate position with respect to the refinance mortgage as it had with the prior mortgage, as defined in subsection A of § 55.1-319, provided that the refinance mortgage complies with the requirements of § 55.1-319.

§ 55.1-319. Priority of residential refinance mortgage over subordinate mortgage.

A. As used in this section:

"Prior mortgage" means a mortgage, deed of trust, or other instrument encumbering or conveying an interest in residential real estate containing not more than one dwelling unit to secure a financing.

"Refinance mortgage" means a mortgage, deed of trust, or other instrument encumbering or conveying an interest in residential real estate containing not more than one dwelling unit to secure a refinancing.

"Refinancing" means the replacement of a loan secured by a prior mortgage with a new loan secured by a refinance mortgage and the payment in full of the debt owed under the original loan secured by the prior mortgage.

"Subordinate mortgage" means a mortgage or deed of trust securing an original principal amount not exceeding $150,000, encumbering or conveying an interest in residential real estate containing not more than one dwelling unit that is subordinate in priority (i) under subdivision A 1 of § 55.1-407 or (ii) as a result of a previous refinancing.

B. Upon the refinancing of a prior mortgage, a subordinate mortgage shall retain the same subordinate position with respect to a refinance mortgage as the subordinate mortgage had with the prior mortgage, provided that:

1. Such refinance mortgage states on the first page thereof in bold or capitalized letters: "THIS IS A REFINANCE OF A (DEED OF TRUST, MORTGAGE OR OTHER SECURITY INTEREST) RECORDED IN THE CLERK'S OFFICE, CIRCUIT COURT OF (NAME OF COUNTY OR CITY), VIRGINIA, IN DEED BOOK _____, PAGE _____, IN THE ORIGINAL PRINCIPAL AMOUNT OF _____, AND WITH THE OUTSTANDING PRINCIPAL BALANCE WHICH IS _____.";

2. The principal amount secured by such refinance mortgage does not exceed the outstanding principal balance secured by the prior mortgage plus $5,000; and

3. The interest rate is stated in the refinance mortgage at the time it is recorded and does not exceed the interest rate set forth in the prior mortgage.

C. The priorities among two or more subordinate mortgages shall be governed by subdivision A 1 of § 55.1-407.

D. The provisions of subsection B shall not apply to a subordinate mortgage securing a promissory note payable to any locality or any agency, authority, or political subdivision of the Commonwealth if such subordinate mortgage is financed pursuant to an affordable dwelling unit ordinance adopted pursuant to § 15.2-2304 or 15.2-2305, or pursuant to any program authorized by federal or state law or local ordinance or

resolution, for (i) low-income and moderate-income persons or households or (ii) improvements to residential potable water supplies and sanitary sewage disposal systems made to address an existing or potential public health hazard, and which mortgage, if recorded on or after July 1, 2003, states on the first page thereof in bold or capitalized letters: "THIS (DEED OF TRUST, MORTGAGE OR OTHER SECURITY INTEREST) SHALL NOT, WITHOUT THE CONSENT OF THE SECURED PARTY HEREUNDER, BE SUBORDINATED UPON THE REFINANCING OF ANY PRIOR MORTGAGE."

§ 55.1-320. How deed of trust construed; duties, rights, etc., of parties.

Every deed of trust to secure debts or indemnify sureties is in the nature of a contract and shall be construed according to its terms to the extent not in conflict with the requirements of law. Unless the deed of trust provides otherwise, it shall be construed to impose and confer upon the parties and beneficiaries the following duties, rights, and obligations in like manner as if the same were expressly provided for by such deed of trust:

1. The deed shall be construed as given to secure the performance of each of the covenants entered into by the grantor as well as the payment of the primary obligation.

2. The grantor shall be deemed to covenant that he will pay all taxes, levies, assessments, and charges upon the property, including the fees and charges of such agents or attorneys as the trustee may deem advisable to employ at any time for the purpose of the trust, so long as any obligation upon the grantor under the deed of trust remains undischarged.

3. The grantor shall be deemed to covenant that he will keep the improvements on the property in tenantable condition, whether such improvements were on the property when the deed of trust was given or were placed there at a later time.

4. The grantor shall be deemed to covenant that no waste shall be committed or suffered upon the property.

5. The grantor shall be deemed to covenant that in the event of his failure to meet any obligations imposed upon him, then the trustee or any beneficiary may, at his option, satisfy such obligations. The money so advanced, with interest as provided in the deed of trust, shall be a part of the debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust, and shall be otherwise recoverable from the grantor as a debt. In addition, to the extent not otherwise covered, the grantor shall be deemed to covenant that amount advanced or incurred by the trustee or any beneficiary under a deed of trust (i) with respect to an obligation secured by a lien or encumbrance prior to the lien of the deed of trust or (ii) for the protection of the lien secured by the deed of trust, together with interest as provided in the deed of trust, shall be a part of the debt secured by the deed of trust, to be paid next after expenses of executing the trust.

6. A covenant to pay interest shall be deemed a covenant to pay interest on the principal balance as such rate may vary or be modified from time to time by the parties under the original instruments or agreements or a written agreement of modification, whether or not recorded, and all the interest on the principal secured by the deed of trust shall be on an equal priority with the principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust.

Any covenant, otherwise authorized by law, that the lender shall be entitled to share in the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the property, or in any portion of the proceeds or appreciation upon sale or appraisal or similar event, shall be on an equal priority with the principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust, and shall be specified in the recorded deed of trust or other recorded document in order to be notice of record as against subsequent parties.

7. In the event of default in the payment of the debt secured, or any part thereof, at maturity, or in the payment of interest when due, or of the breach of any of the covenants entered into or imposed upon the grantor, then at the request of any beneficiary the trustee shall forthwith declare all the debts and obligations secured by the deed of trust at once due and payable and may take possession of the property and proceed to sell the same at auction at the premises or in the front of the circuit court building or at such other place in the county or city in which the property or the greater part thereof lies, or in the corporate limits of any city surrounded by or contiguous to such county, or in the case of annexed land, in the county of which the land was formerly a part, as the trustee may select upon such terms and conditions as the trustee may deem best.

8. If the sale is upon credit terms, the deferred purchase money shall bear interest from the day of sale and shall be secured by a deed of trust upon the property contemporaneous with the trustee's deed to the purchaser.

9. The party secured by the deed of trust, or the holders of greater than 50 percent of the monetary obligations secured thereby, shall have the right and power to appoint one or more substitute trustees for any reason and, regardless of whether such right and power is expressly granted in such deed of trust, by executing

and acknowledging an instrument designating and appointing a substitute. When the instrument of appointment has been executed, the substitute trustee named therein shall be vested with all the powers, rights, authority, and duties vested in the trustee in the original deed of trust. The instrument of appointment shall be recorded in the office of the clerk in which the original deed of trust is recorded prior to or at the time of recordation of any instrument in which a power, right, authority, or duty conferred by the original deed of trust is exercised.

§ 55.1-321. Notices required before sale by trustee to owners, lienors, etc.; if note lost.

A. In addition to the advertisement required by § 55.1-322, the trustee or the party secured shall give written notice of the time, date, and place of any proposed sale in execution of a deed of trust, and such notice shall include either (i) the instrument number or deed book and page numbers of the instrument of appointment filed pursuant to § 55.1-320, or (ii) a copy of the executed and notarized appointment of substitute trustee by personal delivery or by mail to (a) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the party secured; (b) any subordinate lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust; (c) any assignee of such a note secured by a deed of trust, provided that the assignment and address of assignee are likewise recorded at least 30 days prior to the proposed sale; (d) any condominium unit owners' association that has filed a lien pursuant to § 55.1-1966; (e) any property owners' association that has filed a lien pursuant to § 55.1-1833; and (f) any proprietary lessees' association that has filed a lien pursuant to § 55.1-2148. Written notice shall be given pursuant to clauses (d), (e), and (f) only if the lien is recorded at least 30 days prior to the proposed sale. If the secured party has received notification that the owner of the property to be sold is deceased, the notice required by clause (a) shall be given to (1) the last known address of such owner as such address appears in the records of the party secured; (2) any personal representative of the deceased's estate whose appointment is recorded among the records of the circuit court where the property is located, at the address of the personal representative that appears in such records; and (3) any heirs of the deceased who are listed on the list of heirs recorded among the records of the circuit court where the property is located, at the addresses of the heirs that appear in such records. Mailing of a copy of the advertisement or a notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders, the property owners' association or proprietary lessees' association, their assigns, and the condominium unit owners' association, at the address noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice. The written notice of proposed sale when given as provided in this subsection shall be deemed an effective exercise of any right of acceleration contained in such deed of trust or otherwise possessed by the party secured relative to the indebtedness secured. The inadvertent failure to give notice as required by this subsection shall not impose liability on either the trustee or the secured party.

B. If a note or other evidence of indebtedness secured by a deed of trust is lost or for any reason cannot be produced and the beneficiary submits to the trustee an affidavit to that effect, the trustee may nonetheless proceed to sale, provided that the beneficiary has given written notice to the person required to pay the instrument that the instrument is unavailable and a request for sale will be made of the trustee upon expiration of 14 days from the date of mailing of the notice. The notice shall be sent by certified mail, return receipt requested, to the last known address of the person required to pay the instrument as reflected in the records of the beneficiary and shall include the name and mailing address of the trustee. The notice shall further advise the person required to pay the instrument that if he believes he may be subject to a claim by a person other than the beneficiary to enforce the instrument, he may petition the circuit court of the county or city where the property or some part thereof lies for an order requiring the beneficiary to provide adequate protection against any such claim. If deemed appropriate by the court, the court may condition the sale on a finding that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. If the trustee proceeds to sale, the fact that the instrument is lost or cannot be produced shall not affect the authority of the trustee to sell or the validity of the sale.

C. When the written notice of proposed sale is given as provided in this section, there is a rebuttable presumption that the lienholder has complied with any requirement to provide notice of default contained in a deed of trust. Failure to comply with the requirements of notice contained in this section shall not affect the validity of the sale, and a purchaser for value at such sale shall be under no duty to ascertain whether such notice was validly given.

D. In the event of postponement of sale, which may be done in the discretion of the trustee, no new or additional notice is required to be given pursuant to this section.

§ 55.1-322. Advertisement required before sale by trustee.

A. Advertisement of sale by a trustee or trustees in execution of a deed of trust shall be in a newspaper having a general circulation in the county or city in which the property to be sold, or any portion of such property, lies pursuant to the following provisions:

1. If the deed of trust itself provides for the number of publications of such newspaper advertisement, which may be done by using the words "advertisement required" or similar words followed by the number agreed upon, then no other or different advertisement shall be necessary, provided that, if such advertisement be inserted on a weekly basis, it shall be published not less than once a week for two weeks, and if such advertisement be inserted on a daily basis, it shall be published not less than once a day for three days, which may be consecutive days, and in either case shall be subject to the provisions of § 55.1-330 in the same manner as if the method were set forth in the deed of trust. Should the deed of trust provide for advertising on other than a weekly or daily basis, either of the foregoing provisions shall be complied with in addition to those provided in such deed of trust. Notwithstanding the provisions of the deed of trust, the sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement or more than 30 days following the last advertisement.

2. If the deed of trust does not provide for the number of publications of such newspaper advertisement, the trustee shall advertise once a week for four successive weeks, provided, however, that if the property or some portion of such property is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement or more than 30 days following the last advertisement.

B. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale.

C. In addition to the advertisement required by subsection A, the trustee shall give such other further and different advertisement as the deed of trust may require and in addition may give such additional advertisement as he may deem appropriate.

D. In the event of postponement of sale, which postponement shall be at the discretion of the trustee, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

E. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

§ 55.1-323. Contents of advertisements of sale.

A. The advertisement of sale under any deed of trust, in addition to such other matters as may be required by such deed of trust or by the trustee, in his discretion, shall set forth a description of the property to be sold. Such description need not be as extensive as that contained in the deed of trust, but it shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the time, place, and terms of sale and shall give the name or names of the trustee or trustees. It shall set forth the name, address, and telephone number of a person, either a trustee or the party secured or his agent or attorney who may be able to respond to inquiries concerning the sale.

B. 1. If the property being sold is a time-share estate, the advertisement of sale required under subsection A of § 55.1-322 shall set forth, in addition to such other matters as the trustee finds appropriate, (i) a description of the specific time-share estate or estates to be sold, and such description shall also include (a) the name of the time-share project and (b) the street address of the time-share project or, if no street address, the general location of the time-share project with reference to streets, routes, or known landmarks; (ii) the date, time, place, and terms of sale; (iii) the name of the trustee; and (iv) the name, address, and telephone number of the representative, agent, or attorney who is authorized to respond to inquiries concerning the sale and shall give additional information concerning the time-share estate or estates to be sold.

2. In lieu of the requirements of subdivision 1, the advertisement shall set forth (i) the name of the time-share project in which the time-share estate or estates to be sold are contained; (ii) the street address of the time-share project in which the time-share estate or estates to be sold are contained or, if no street address, the general location of the time-share project with reference to streets, routes, or known landmarks; (iii) the date, time, place, and terms of sale; (iv) the name of the trustee; and (v) the name, address, and telephone number of

the representative, agent, or attorney who is authorized to respond to inquiries concerning the sale and shall give additional information concerning the time-share estate or estates to be sold, including providing, upon request, in either hard copy or electronic form, a schedule of the time-share estate or estates to be sold. In addition, the advertisement shall contain a website address where a description of the specific time-share estate or estates to be sold is displayed.

§ 55.1-324. Powers and duties of trustee in event of sale under or satisfaction of deed of trust.

A. In the event of sale under a deed of trust, the trustee shall have the following powers and duties in addition to all others:

1. Written one-price bids may be made and shall be received by the trustee from the beneficiary or any other person for entry by announcement of the trustee at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Whenever the written bid of the beneficiary is the highest bid submitted at the sale, such document shall be filed by the trustee with his account of sale required under § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the beneficiary, its agent, or its attorney.

2. The trustee may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price, unless the deed of trust specifies a higher or lower maximum, which may be done by the words "bidder's deposit of not more than _____ dollars may be required" or similar words, before his bid is received, which shall be refunded to the bidder unless the property is sold to him, otherwise to be applied to his credit in settlement or, should he fail to complete his purchase promptly, to be applied to pay the costs and expense of sale and the balance, if any, to be retained by the trustee as his compensation in connection with that sale.

3. The trustee shall receive and receipt for the proceeds of sale, account for the same to the commissioner of accounts pursuant to § 64.2-1309 and apply the same, first, to discharge the expenses of executing the trust, including a reasonable commission to the trustee; secondly, to discharge all taxes, levies, and assessments, with costs and interest if they have priority over the lien of the deed of trust, including the due pro rata thereof for the current year; thirdly, to discharge in the order of their priority, if any, the remaining debts and obligations secured by the deed, and any liens of record inferior to the deed of trust under which sale is made, with lawful interest; and, fourthly, the residue of the proceeds shall be paid to the grantor or his assigns, provided, however, that the trustee as to such residue shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the grantor's equity, without actual notice thereof prior to distribution, and provided further that such order of priorities shall not be changed or varied by the deed of trust. The trustee's deed shall show the trustee's mailing address.

B. Upon discharge, other than by sale by the trustee, of all debts, duties, and obligations imposed by the deed upon the grantor, including any expenses incurred preparatory to sale, then upon the grantor's request the trustee shall execute and deliver a good and sufficient deed of release at the grantor's own proper costs and charges.

§ 55.1-325. Meaning of phrases that may be included in deed of trust.

The following provisions may be incorporated in any deed of trust to secure debts or indemnify sureties in the respective short forms indicated, namely:

1. The words "identified by trustee's signature" or similar words shall be construed as if the deed set forth: "All of which said notes (or other obligations) bear the marginal signature of the trustee for the purpose of identification but for no other purpose whatever."

2. The words "deferred purchase money," "purchase money," or similar words shall be construed as if the deed set forth: "This deed of trust is a contemporaneous purchase money deed of trust and secures the payment of deferred purchase money due by the grantor upon the property hereby conveyed." Any deed of trust securing a loan, proceeds of which are used by the borrower to acquire the secured real property, shall be deemed to be a purchase money deed of trust.

3. The words "exemptions waived" or similar words shall be construed as if the deed set forth: "The grantor hereby waives the benefit of his exemptions as to the debt hereby secured and as to all other obligations that may be imposed upon him by the provisions of this deed of trust."

4. The words "subject to call upon default" or similar words shall be construed as if the deed set forth: "Should default be made in the payment of any part of the debt hereby secured, principal or interest, at the maturity of such part, or in the event of the breach of any of the covenants entered into or imposed upon the

grantor, then the entire obligation of this deed of trust and the whole debt hereby secured shall, at the option of the beneficiaries, become forthwith due and payable."

5. The words "renewal or extension permitted" or similar words shall be construed as if the deed set forth: "The grantor hereby consents and agrees that the debt hereby secured, or any part thereof, may be renewed or extended beyond maturity as often as may be desired by agreement between the creditor and any subsequent owner of the property, and no such renewal or extension shall in any way affect the grantor's responsibility, whether as surety or otherwise."

6. The words "reinstatement permitted" or similar words shall be construed as if the deed set forth: "The grantor and any other party assuming liability hereunder hereby consent and agree that if the property conveyed hereby or a substantial portion thereof is transferred to any subsequent owner, and the creditor exercises the right to accelerate the debts secured hereby, the creditor may accept any delinquent payments or other cure of default giving rise to such acceleration from the then owner of the property or any other person and reinstate the indebtedness in accordance with the schedule of maturity as of the time of acceleration or upon such new schedule as may be agreed if renewal or extension are otherwise permitted and no such reinstatement shall in any way affect the liability of such prior parties, whether as surety or otherwise."

The words "renewal, extension, or reinstatement permitted" or similar words shall have the meaning ascribed to the individual words or phrases in this subdivision and in subdivision 5.

7. The words "right of anticipation reserved" or similar words shall be construed as if the deed set forth: "The grantor reserves the right to anticipate the payment of the debt hereby secured, or any part thereof which is represented by a separate note (or other obligation) at any interest period by the payment of principal and interest to the date of such anticipated payment only."

8. The words "priority in direct order of maturity" or similar words shall be construed as if the deed set forth: "The notes (or other obligations) hereby secured have priority amongst themselves in the direct order of their maturities, each having priority over all others falling due after its maturity." And the words "priority in inverse order of maturity" or similar words shall be construed as if the deed set forth: "The notes (or other obligations) hereby secured have priority amongst themselves in the inverse order of their maturities, each having priority over all others falling due before its maturity."

9. The words "insurance required _____ dollars" or similar words shall be construed as if the deed set forth: "The grantor covenants that he will keep the improvements on the property insured against fire in some solvent insurance company approved by the trustee for the benefit of the beneficiaries hereunder in the sum of at least _____ dollars, and will deposit with the trustee or beneficiary the policies, with standard loss payable clauses with full contribution in favor of the trustee as his interest may appear; and the grantor further covenants that in the event of his failure to keep the property so insured and the policies so deposited, then the trustee or any beneficiary may, at his option, effect such insurance and pay the premium thereon, and the money so paid, with interest thereon, shall become a part of the debt hereby secured, in the event of sale to be paid next after the expenses of executing this trust, and shall be otherwise recoverable from the grantor as a debt, but there shall be no obligation upon the trustee or beneficiary to effect such insurance."

10. The words "substitution of trustee permitted" or similar words shall be construed as if the deed set forth: "Grantor grants unto the beneficiary or beneficiaries or to a majority in amount of the holders of the obligations secured hereunder and to their assigns the right and power, under the provisions of § 55.1-320, to appoint a substitute trustee or trustees."

11. The words "any trustee may act" or similar words shall be construed as if the deed set forth: "The grantors, and all interested in the obligations hereby secured, by accepting the benefits hereof, agree that all authority, power, and discretion hereinabove granted to the trustees may be exercised by any of them, without any other, with the same effect as if exercised jointly by all of them."

12. The words "this is a credit line deed of trust" or similar words, if in capital letters or underscored and on the first page of the deed of trust and containing the name and address of the noteholder, shall have the meaning set forth in § 55.1-318.

§ 55.1-326. Evidences of indebtedness placed on equal footing.

When bonds, notes, or other evidences of indebtedness are secured by a deed of trust, mortgage, vendor's lien, or other lien, such bonds, notes, or other evidences of indebtedness shall, in the event the lien is executed or foreclosed, be secured on an equal footing and shall be paid ratably out of the proceeds of any sale of property subjected to the lien and shall have no priority, the one over the other, whether by priority of assignment or otherwise, unless the instrument creating the lien expressly provides otherwise.

§ 55.1-327. Sales under deeds of trust that contain no maturity date or provision authorizing sale.

When any property, real or personal, is conveyed by deed of trust to a trustee to secure the payment of a debt, money, notes, bonds, stocks, or other evidences of debt and there is no date fixed for the maturity thereof and such deed of trust contains no provision authorizing the trustee to make sale of such property, or any part thereof, and the reinvestment of the proceeds of sale in other property subject to the terms of such deed of trust, the circuit court, or such court having jurisdiction of the subject matter, upon a complaint filed by any one or more of the lien debtors, in which complaint all persons interested in such lien and all holders of the evidences of debt secured by the deed of trust thereon, and all other necessary or proper parties, except the plaintiffs, shall be made defendants, may order a sale of such property, or any part thereof, and may invest the proceeds of sale under order of court subject to the terms of the deed of trust, provided that (i) the complaint sets forth facts that will justify the sale of the property, to be verified by the affidavit of at least one of the plaintiffs, (ii) no order shall be made authorizing such sale unless it is shown to the satisfaction of the court that the interests of the lien debtor or debtors will be promoted and the interests of no person holding the evidences of debt secured by the deed of trust will be violated thereby, and (iii) the plaintiff or the party for whose benefit the action is brought shall bear the cost.

§ 55.1-328. Validation of conveyances of real property under trust instrument not authorizing sale.

When any real property is conveyed by deed of trust or other trust instrument to a trustee and there is no provision authorizing the trustee to convey the property that is the subject of the deed of trust, or any part of such property, and the trustee conveys such property or any part of such property, such conveyance shall be valid after a period of 30 years from the date of such conveyance, provided that (i) there have been no adverse claims against the property so conveyed in the interim, and (ii) such conveyances to and from such trustee were properly recorded and indexed at the time of the conveyance, in the appropriate clerk's office in which deeds are recorded in the county or city in which the property lies.

§ 55.1-329. Permissible form for notice of sale under deed of trust.

Notice of sale under any deed of trust regardless of whether it conforms with § 55.1-320, in the absence of provision in such deed of trust requiring other or additional matter, may be substantially in the following form:

Trustee's Sale of

_____ (brief description or identification of property)

In execution of a deed of trust (name or names of grantor or grantors unless grantor or grantors request in writing that the same be omitted), dated _____, recorded in the Clerk's Office of the _____ court of _____ in Deed Book _____, page _____, _____, the undersigned trustee will offer for sale at public auction (a brief description of the property to include street number or, if none, the general location of property and place of sale) on the _____ day of _____, 20_____ at _____ (ante meridian) (noon) (post meridian), the property described in such deed.

Terms: (Cash) (_____)

_____

Trustee(s)

FOR INFORMATION CONTACT:

_____

(A trustee or the secured party or his agent)

_____

Address

_____

Telephone number

§ 55.1-330. Construction of deeds requiring notice by advertisement in newspaper.

A. Whenever any deed of trust to secure debts or indemnify sureties contains a provision requiring the giving of notice of sale thereunder for a specified number of days by advertisement in one or more newspapers and such advertisement is published in a newspaper published daily or in a newspaper published daily except Sunday, it shall be deemed a sufficient compliance with such provision if such notice is published in consecutive issues of such newspaper for the number of days specified, counting both the day of the first publication and the day of the last publication and intervening Sundays, whether or not such newspaper is published on Sunday.

Both the first publication and the last publication may be on Sunday. The publication shall in all other respects comply with the provisions of §§ 55.1-322 and 55.1-323.

B. Whenever such deed of trust requires advertisement once a week for a specified number of weeks, sale may be had on the day after the last advertisement appears or any day thereafter, and all sales made in conformity with this section prior to January 1, 1972, and otherwise valid are hereby validated.

§ 55.1-331. Disposition of surplus from trustee's sale after death of grantor.

Whenever the grantor, or his successor in title, in any deed of trust by which any real property is conveyed in trust to secure debts or indemnify sureties dies prior to a trustee's sale held pursuant to the deed of trust and the deed of trust contains no definite provision for the distribution of any surplus in the event of the death of the grantor or his successors in title prior to the trustee's sale held pursuant to the deed of trust, or contains a provision that such surplus shall be paid to the grantor or his heirs or assigns or personal representative, then any surplus of the proceeds of the sale remaining in the possession of the trustee, after discharging the expenses of executing the trust, all tax liens upon the property sold, all debts and obligations secured by the deed of trust, and, in order of their priority, if any, the remaining subsequent debts and obligations secured by the deed, and any liens of record inferior to the deed of trust under which the sale is made, with lawful interest, shall be paid by the trustee to the personal representative of the decedent.

Any such funds possessed by the personal representative shall constitute assets for the payment by him of any debts and demands against the decedent's estate remaining unsatisfied after the personal estate has been exhausted. Any surplus of the funds so paid to the personal representative and remaining in his possession after the satisfaction of all debts and demands against the estate shall be paid over by him, if the decedent died intestate as to the real property embraced in the deed of trust, to the heirs at law of the decedent, or their successors in title, and if the decedent died testate as to the real property embraced in the deed of trust, then such surplus shall be paid to the persons entitled to the real property under the terms of the decedent's will, or to their successors in title.

§ 55.1-332. Title to real estate sold not affected by nonlisting of secured notes for taxation.

The title to real estate sold under a deed of trust shall not be drawn in question upon the ground that the holder of the notes secured by such deed of trust did not list the same for taxation.

§ 55.1-333. Validation of certain sales made under deeds of trust.

All sales that have been made prior to January 1, 1972, under deeds of trust to secure debts and indemnify sureties containing a provision requiring the giving of notice of sale thereunder for a specified number of days by advertisement in one or more newspapers and that were made after publishing the advertisement of sale in a newspaper published daily or in a newspaper published daily except Sunday for the number of days specified in the deed of trust, counting both the day of the first publication and the day of the last publication and intervening Sundays, whether or not such paper was published on Sunday and whether or not such sales were held on the day of the last publication, provided that, in cases when the sale was held on the day of the last publication, the publication was in a newspaper the principal daily edition of which was delivered or publicly sold before the time fixed for the sale, and whether or not the first publication or the last publication, or both, appeared on Sunday, shall be held, and the same are hereby declared, to be valid and effective in all respects, if otherwise valid and effective according to the law then in force, provided, however, that nothing contained in this section shall be construed as affecting any final order entered prior to March 24, 1934, by any court of competent jurisdiction or as affecting any action now pending in any court of competent jurisdiction, and provided further, that nothing in this section shall be so construed as to affect intervening vested rights.

§ 55.1-334. Validation of certain sales made under deeds of trust prior to October 1, 1977.

All sales that were made prior to October 1, 1977, under deeds of trust to secure debts and indemnify sureties when the notice, advertisement, and conduct of the sale were in accordance with the law of the Commonwealth as it existed on June 30, 1977, are declared to be valid and effective in all respects, provided that nothing in this section shall be construed as affecting any final order entered prior to March 23, 1978, by any court of competent jurisdiction, or any action now pending in a court of competent jurisdiction, or as affecting intervening vested rights, and provided further that no action to vacate or set aside any such sale may be brought after March 23, 1978.

§ 55.1-335. Validation of other sales under deeds of trust.

All sales that were made prior to January 1, 1972, under deeds of trust to secure debts and indemnify sureties when the notice was not published once a week for four successive weeks or a specified number of successive weeks are declared to be valid and effective in all respects, if other reasonable advertisement of such

sale was given and such sale was otherwise valid and effective, provided that nothing herein contained shall be construed as affecting any final order entered prior to March 1, 1944, by any court of competent jurisdiction, or any action now pending in a court of competent jurisdiction, or as affecting intervening vested rights, and provided further that no action may be brought after January 1, 1972, to vacate or set aside any such sale.

§ 55.1-336. Protection of assignees or transferees of debts secured by real estate; form of certificate of transfer.

Whenever a debt or other obligation secured by a deed of trust, mortgage, or vendor's lien on real estate has been assigned, the assignor or the assignee, at its option, may cause the instrument of assignment to be recorded in the clerk's office of the circuit court where such deed of trust, mortgage, or vendor's lien is recorded, provided that such instrument is otherwise in recordable form, or may cause a certificate of transfer signed by the assignor to be recorded in such clerk's office, and such instrument of assignment or certificate of transfer, upon recordation, shall operate as a notice of such assignment. The instrument of assignment or certificate of transfer shall be indexed in the name of the assignor and in the names of the obligor or maker, and the trustees, as applicable, all of whose names shall be set forth in such instrument or certificate. The certificate of transfer shall conform substantially to the following:

CERTIFICATE OF TRANSFER

Place of Record:

Clerk's Office of the Circuit Court of the _____ of _____, Virginia

Date of [Deed of Trust/Mortgage/Vendor's Lien]: _____,

Deed Book _____, Page _____

Name of Obligor or Maker:

_____

Names(s) of Trustee(s) [if a Deed of Trust]:

_____

_____

Name of Original Payee or Obligee:

_____

Original Amount Secured [if applicable]: $_____

The undersigned, the original payee or obligee [or the subsequent assignee] of the obligation secured by the above-mentioned [Deed of Trust/Mortgage/Vendor's Lien], hereby certifies that the obligations secured thereby have been assigned to _____

_____

[If a credit line deed of trust, the name and address to which notice may be mailed or delivered to the Noteholder as provided by § 55.1-318 is as follows:

_____

_____]

Given under (my/our) hand(s) as of the _____ day of _____, _____.

_____

(Assignor)

_____ of _____

County/City of _____, to wit:

Subscribed, sworn to, and acknowledged before me by _____ this _____ day of _____, 20_____.

My Commission Expires: _____

_____

Notary Public

Notary Registration Number: _____

For purposes of this section, the word "assigned" includes endorsed, pledged, hypothecated, or otherwise transferred. Nothing in this section shall be deemed to invalidate any other form or notice of assignment that may have been recorded prior to July 1, 1994. Nothing in this section shall imply that recordation of the instrument of assignment or a certificate of transfer is necessary in order to transfer to an assignee the benefit of the security provided by the deed of trust, mortgage, or vendor's lien.

§ 55.1-337. Required notice of foreclosure or repossession of manufactured home.

Whenever any assignee of an installment note secured by a security interest on a manufactured home determines that legal action is desirable to enforce the debt resulting in a potential foreclosure or repossession, he shall give prior notice by mail of any action to foreclose or repossess the collateral to any assignor who is liable under a recourse endorsement or by virtue of a reserve account at least 10 business days prior to the enforcement of the security interest or eviction. Assignment by way of pledge of the security interest granted by the assignor shall not be an assignment within the meaning of this section. The failure to so notify the assignor shall not affect any rights of the assignee as against the principal debtor or any party other than the assignor with recourse or a person with rights in a reserve account. Provisions of this section may not be waived by such assignor at the time of the original sale of the installment paper but only after the expiration of at least 30 days from such initial transfer. The assignee shall send such notice to the last known address of the assignor as it appears in the records of the assignee.

§ 55.1-338. Release to person dead inures to successors.

A release of a deed of trust or a conveyance of the property embraced in such deed of trust may in all cases be made to the original grantor, whether living or dead, and any release or reconveyance so made shall inure both in law and in equity to the successors in title of such grantor.

§ 55.1-339. Release of deed of trust or other lien.

A. As used in this section:

"Deed of trust" means any mortgage, deed of trust, or vendor's lien.

"Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee, or obligee of a note, bond, or other evidence of debt and shall embrace the lien creditor or his successor in interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond, or other evidence of debt.

"Payoff letter" means a written communication from the lien creditor or servicer stating, at a minimum, the amount outstanding and required to be paid to satisfy the obligation.

"RESA" means Chapter 10 (§ 55.1-1000 et seq.), Real Estate Settlement Agents.

"Satisfactory evidence of the payment of the obligation secured by the deed of trust" means (i) any one of (a) the original canceled check or a copy of the canceled check, showing all endorsements, payable to the lien creditor or servicer, as applicable, (b) confirmation in written or electronic form of a wire transfer to the bank account of the lien creditor or servicer, as applicable, or (c) a bank statement in written or electronic form reflecting completion of the wire transfer or negotiation of the check, as applicable, and (ii) a payoff letter or other reasonable documentary evidence that the payment was to effect satisfaction of the obligation secured or evidenced by the deed of trust.

"Satisfied by payment" includes obtaining written confirmation from the lien creditor that the underlying obligation has a zero balance.

"Servicer" means a person or entity that collects loan payments on behalf of a lien creditor.

"Settlement agent" has the same meaning ascribed to it in § 55.1-1000, provided that a person shall not be a settlement agent unless he is registered pursuant to § 55.1-1014 and otherwise fully in compliance with the applicable provisions of RESA.

"Title insurance company" has the same meaning ascribed to it in § 38.2-4601, provided that the title insurance company seeking to release a lien by the process described in subsection E issued a policy of title insurance, through a title insurance agency or agent as defined in § 38.2-4601.1, for a real estate transaction wherein the loan secured by the lien was satisfied by payment made by the title insurance agency or agent also acting as the settlement agent.

B. 1. Except as provided in Article 3 (§ 55.1-346 et seq.), after full or partial payment or satisfaction has been made of a debt secured by a deed of trust, vendor's lien, or other lien, or any one or more obligations representing at least 25 percent of the total amount secured by such lien, but less than the total number of the obligations so secured, or the debt secured is evidenced by two or more separate written obligations sufficiently described in the instrument creating the lien, has been fully paid, the lien creditor shall issue a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for recordation reflecting such payment and release of lien. This requirement shall apply to a credit line deed of trust prepared pursuant to § 55.1-318 only when the obligor or the settlement agent has paid the debt in full and requested that the instrument be released.

If the lien creditor receives notice from a settlement agent at the address identified in its payoff statement requesting that the certificate be sent to such settlement agent, the lien creditor shall provide the certificate

within 90 days after receipt of such notice to the settlement agent at the address specified in the notice received from the settlement agent.

If the notice is not received from a settlement agent, the lien creditor shall deliver, within 90 days after such payment, the certificate to the appropriate clerk's office with the necessary fee for recording by certified mail, return receipt requested, or when there is written proof of receipt from the clerk's office, by hand delivery, electronic delivery via the clerk's electronic filing system, or delivery by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained.

If the lien creditor has already delivered the certificate to the clerk's office by the time it receives notice from the settlement agent, the lien creditor shall deliver a copy of the certificate to the settlement agent within 90 days of the receipt of the notice at the address for notification set forth in the payoff statement.

If the lien creditor has not, within 90 days after payment, either provided the certificate of satisfaction to the settlement agent or delivered it to the clerk's office with the necessary fee for filing, the lien creditor shall forfeit $500 to the lien obligor. No settlement agent or attorney may take an assignment of the right to the $500 penalty or facilitate such an assignment to any third party designated by the settlement agent or attorney. Following the 90-day period, if the amount forfeited is not paid within 10 business days after written demand for payment is sent to the lien creditor by certified mail at the address for notification set forth in the payoff statement, the lien creditor shall pay any court costs and reasonable attorney fees incurred by the obligor in collecting the forfeiture.

2. If the note, bond, or other evidence of debt secured by such deed of trust, vendor's lien, or other lien referred to in subdivision 1 or any interest therein has been assigned or transferred to a party other than the original lien creditor, the subsequent holder shall be subject to the same requirements as a lien creditor for failure to comply with this subsection, as set forth in subdivision 1.

C. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent, attorney, or attorney-in-fact or any person to whom the instrument evidencing the indebtedness has been endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded with the certificate of satisfaction by the creditor, or his duly authorized agent, attorney, or attorney-in-fact, with such clerk, stating that the debt therein secured and intended to be released or discharged has been paid to such creditor or his agent, attorney, or attorney-in-fact, who was entitled and authorized to receive such debt when the debt was satisfied.

D. When the certificate of satisfaction has been signed and the affidavit required by subsection C has been duly filed or recorded with the certificate of satisfaction with such clerk, the certificate of satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is entered and, if the encumbrance is by deed of trust, as a reconveyance of the legal title as fully and effectually as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

E. Release of lien by settlement agent or title insurance company.

A settlement agent or title insurance company may release a deed of trust in accordance with the provisions of this subsection (i) if the obligation secured by the deed of trust has been satisfied by payment made by the settlement agent and (ii) whether or not the settlement agent or title insurance company is named as a trustee under the deed of trust or otherwise has received the authority to release the lien.

1. Notice to lienholder.

a. After or accompanying payment in full of the obligation secured by a deed of trust, a settlement agent or title insurance company intending to release a deed of trust pursuant to this subsection shall deliver to the lien creditor by certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt obtained, a notice of intent to release the deed of trust with a copy of the payoff letter and a copy of the release to be recorded as provided in this subsection.

b. The notice of intent to release shall contain (i) the name of the lien creditor, the name of the servicer if loan payments on the deed of trust are collected by a servicer, or both names; (ii) the name of the settlement agent; (iii) the name of the title insurance company if the title insurance company intends to release the lien; and (iv) the date of the notice. The notice of intent to release shall conform substantially to the following form:

NOTICE OF INTENT TO RELEASE

Notice is hereby given to you concerning the deed of trust described on the certificate of satisfaction, a copy of which is attached to this notice, as follows:

1. The settlement agent identified below has paid the obligation secured by the deed of trust described herein or obtained written confirmation from you that such obligation has a zero balance.

2. The undersigned will release the deed of trust described in this notice unless, within 90 days from the date this notice is mailed by certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt obtained, the undersigned has received by certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt obtained, a notice stating that a release of the deed of trust has been recorded in the clerk's office or that the obligation secured by the deed of trust described herein has not been paid, or the lien creditor or servicer otherwise objects to the release of the deed of trust. Notice shall be sent to the address stated on this form.

(Name of settlement agent)

(Signature of settlement agent or title insurance company)

(Address of settlement agent or title insurance company)

(Telephone number of settlement agent or title insurance company)

(Virginia RESA registration number of settlement agent at the time the obligation was paid or confirmed to have a zero balance)

2. Certificate of satisfaction and affidavit of settlement agent or title insurance company.

a. If, within 90 days following the day on which the settlement agent or title insurance company mailed or delivered the notice of intent to release in accordance with this subsection, the lien creditor or servicer does not send by certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the settlement agent or title insurance company a notice stating that a release of the deed of trust has been recorded in the clerk's office or that the obligation secured by the deed of trust has not been paid in full or that the lien creditor or servicer otherwise objects to the release of the deed of trust, the settlement agent or title insurance company may execute, acknowledge, and file with the clerk of court of the jurisdiction in which the deed of trust is recorded a certificate of satisfaction, which shall include (i) the affidavit described in subdivision 2 b and (ii) a copy of the notice of intent to release that was sent to the lender, the servicer, or both. The certificate of satisfaction shall include the settlement agent's RESA registration number, issued by the Virginia State Bar or the Virginia State Corporation Commission, that was in effect at the time the settlement agent paid the obligation secured by the deed of trust or obtained written confirmation from the lien creditor that such obligation has a zero balance. The certificate of satisfaction shall note that the individual executing the certificate of satisfaction is doing so pursuant to the authority granted by this subsection. After filing or recording the certificate of satisfaction, the settlement agent or title insurance company shall mail a copy of the certificate of satisfaction to the lien creditor or servicer. The validity of a certificate of satisfaction otherwise satisfying the requirements of this subsection shall not be affected by the inaccuracy of the RESA registration number placed thereon or the failure to mail a copy of the recorded certificate of satisfaction to the lien creditor or servicer and shall nevertheless release the deed of trust described therein as provided in this subsection.

b. The certificate of satisfaction used by the settlement agent or title insurance company shall include an affidavit certifying (i) that the settlement agent has satisfied the obligation secured by the deed of trust described in the certificate, (ii) that the settlement agent or title insurance company possesses satisfactory evidence of payment of the obligation secured by the deed of trust described in the certificate or written confirmation from the lien creditor that such obligation has a zero balance, (iii) that the lien of the deed of trust may be released, (iv) that the person executing the certificate is the settlement agent or the title insurance company or is duly authorized to act on behalf of the settlement agent or title insurance company, and (v) that the notice of intent to release was delivered to the lien creditor or servicer and the settlement agent or title insurance company received evidence of receipt of such notice by the lien creditor or servicer. The affidavit shall be substantially in the following form:

AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY

The undersigned hereby certifies that, in accordance with the provisions of § 55.1-339 of the Code of Virginia of 1950, as amended and in force on the date hereof (the Code), (a) the undersigned is a settlement agent or title insurance company as defined in subsection A of § 55.1-339 of the Code or a duly authorized officer, director, member, partner, or employee of such settlement agent or title insurance company; (b) the settlement agent has satisfied the obligation secured by the deed of trust; (c) the settlement agent or title insurance company possesses satisfactory evidence of the payment of the obligation secured by the deed of trust described in the certificate recorded herewith or written confirmation from the lien creditor that such obligation has a zero balance; (d) the settlement agent or title insurance company has delivered to the lien creditor or servicer in the manner specified in subdivision E 1 of § 55.1-339 of the Code the notice of intent to release and

possesses evidence of receipt of such notice by the lien creditor or servicer; and (e) the lien of the deed of trust is hereby released.

_____

(Authorized signer)

3. Effect of filing.

When filed or recorded with the clerk's office, a certificate of satisfaction that is executed and notarized as provided in this subsection and accompanied by (i) the affidavit described in subdivision 2 b and (ii) a copy of the notice of intent to release that was sent to the lender, lien creditor, or servicer shall operate as a release of the encumbrance described therein and, if the encumbrance is by deed of trust, as a reconveyance of the legal title as fully and effectively as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

4. Effect of wrongful or erroneous certificate; damages.

a. The execution and filing or recording of a wrongful or erroneous certificate of satisfaction by a settlement agent or title insurance agent does not relieve the party obligated to repay the debt, or anyone succeeding to or assuming the responsibility of the obligated party as to the debt, from any liability for the debt or other obligations secured by the deed of trust that is the subject of the wrongful or erroneous certificate of satisfaction.

b. A settlement agent or title insurance agent that wrongfully or erroneously executes and files or records a certificate of satisfaction is liable to the lien creditor for actual damages sustained due to the recording of a wrongful or erroneous certificate of satisfaction.

c. The procedure authorized by this subsection for the release of a deed of trust shall constitute an optional method of accomplishing a release of a deed of trust secured by property in the Commonwealth. The nonuse of the procedure authorized by this subsection for the release of a deed of trust shall not give rise to any liability or any cause of action whatsoever against a settlement agent or any title insurance company by any obligated party or anyone succeeding to or assuming the interest of the obligated party.

5. Applicability.

a. The procedure authorized by this subsection for the release of a deed of trust may be used to effect the release of a deed of trust after July 1, 2002, regardless of when the deed of trust was created, assigned, or satisfied by payment made by the settlement agent.

b. This subsection applies only to transactions involving the purchase of or lending on the security of real estate located in the Commonwealth that is either (i) unimproved real estate with a lien to be released of $1 million or less or (ii) real estate containing at least one but not more than four residential dwelling units.

c. The procedure authorized by this subsection applies only to the full and complete release of a deed of trust. Nothing in this subsection shall be construed to authorize the partial release of property from a deed of trust or otherwise permit the execution or recordation of a certificate of partial satisfaction.

§ 55.1-340. Release by financial institution upon payment of debt placed with it for collection.

In any case where a note, bond, or other evidence of indebtedness placed by a creditor for collection with a bank, trust company, savings institution, small loan company, or credit union is fully paid at such financial institution, the financial institution, through its authorized agents, may execute all certificates, releases, and affidavits required of a creditor by this chapter to effectuate a release. The financial institution may execute and deliver to the clerk an affidavit to the effect that the financial institution had been acting as collecting agent for the creditor on the debt and that the debt has been paid in full at such institution.

§ 55.1-341. Partial satisfaction.

It is lawful for any lien creditor to record a certificate of partial satisfaction of any one or more of the separate pieces or parcels of property covered by such lien. It shall also be lawful for any such creditor to record a certificate of partial satisfaction of any part of the real estate covered by such lien if a plat of such part or a deed of such part is recorded in the clerk's office and a cross-reference is made in the certificate of partial satisfaction to the book and page where the plat or deed of such part is recorded. Such certificate of partial satisfaction may be accomplished in manner and form prescribed in this chapter for making certificates of satisfaction, except that the creditor, or his duly authorized agent, shall make an affidavit to the clerk or in such certificate that such creditor is at the time of making such satisfaction the legal holder of the obligation, note, bond, or other evidence of debt, secured by such lien, and when made in conformity with the provisions of this chapter such partial satisfaction shall be as valid and binding as a proper release deed duly executed for the same purpose.

Any and all partial marginal releases made prior to July 1, 1966, in any county or city of the Commonwealth, in conformity with the provisions of this chapter, either of one or more separate pieces or parcels of real estate or any part of the real estate covered by such lien, or as to one or more of the obligations secured by any such lien, or as to all of the real estate covered by such lien instrument, are hereby validated and declared to be binding upon all parties in interest, but this provision shall not be construed as intended to disturb or impair any vested right.

§ 55.1-342. Permissible form for certificate of satisfaction or certificate of partial satisfaction.

Any release by a certificate of satisfaction or certificate of partial satisfaction shall be in conformity with §§ 55.1-339, 55.1-340, and 55.1-341 and shall conform substantially with the following Certificate of Satisfaction or Certificate of Partial Satisfaction forms:

CERTIFICATE OF SATISFACTION

Place of Record _____

Date of Note/Deed of Trust _____

Face Amount Secured/Face Amount of Note: _____

Deed Book _____ Page _____

Name(s) of Grantor(s)/Maker(s); _____

Name(s) of Trustee(s) _____

Face Amount of Note(s) $_____

I/we, holder(s) of the above-mentioned note(s) secured by the above-mentioned deed of trust, do hereby certify that the same has/have been paid in full, and the lien therein created and retained is hereby released.

GIVEN UNDER MY/OUR HAND(S) THIS _____ DAY OF _____, 20_____.

_____

_____

(NOTE HOLDERS)

Commonwealth of Virginia,

County/City of _____ to wit:

Subscribed, sworn to, and acknowledged before me by _____ this _____ day of _____, 20_____.

My Commission Expires: _____

_____

NOTARY PUBLIC

Notary Registration Number: _____

VIRGINIA;

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT

This certificate was presented, and with the Certificate annexed, admitted to record on _____ at _____ o'clock _____.m.

Clerk's fees: $_____ have been paid.

Attest: _____, Deputy Clerk

CERTIFICATE OF PARTIAL SATISFACTION

Place of Record _____

Date of Deed of Trust _____

Deed Book _____ Page _____

Name(s) of Grantor(s) _____

Name(s) of Trustee(s) _____

Maker(s) of Note(s) _____

Date of Note(s) _____

Face Amount of Note(s) $_____

The lien of the above-mentioned deed of trust securing the above-mentioned note is released insofar as the same is applicable to _____ (description of property) recorded in deed book _____ at page _____ in the clerk's office of this court. The undersigned is/are the legal holder(s) of the obligation, note, bond, or other evidence of debt secured by said deed of trust.

Given under my/our hand(s) this _____ day of _____, 20_____.

_____

_____

(NOTE HOLDERS)
Commonwealth of Virginia,
County/City of _____ to wit:
Subscribed, sworn to, and acknowledged before me by _____ this _____ day of _____, 20_____.
My Commission Expires: _____
_____
NOTARY PUBLIC
Notary Registration Number: _____
The clerk shall satisfy the requirements of § 17.1-228.
Certificates conforming to this section prior to the amendment effective July 1, 1984, shall be deemed to be in substantial conformity to this section.

§ 55.1-343. Where certificates of satisfaction are to be indexed.

The clerk shall record a certificate of partial satisfaction or a certificate of satisfaction on the grantor index, both under the name of each grantor on the underlying deed of trust and under the name of the first-named trustee under which the deed of trust was indexed, all as identified on the certificate of satisfaction. The deed book and page number or the instrument number of the released deed of trust shall also be designated in the index. Any clerk using a separate index book or data file for grantees only shall also record in such book or file the name of each grantor on the underlying deed of trust as identified on the certificate of satisfaction.

§ 55.1-344. Releases made by court; costs and attorney fees.

A. Any person who owns or has any interest in real estate or personal property on which an encumbrance as described in § 55.1-339 exists may, after 20 days' notice to the person entitled to such encumbrance, apply to the circuit court of the county or city in which such encumbrance is recorded to have the same released or discharged. Upon proof that the encumbrance has been paid or discharged or upon a finding by the court that more than 15 years have elapsed since the maturity of the lien or encumbrance, raising a presumption of payment that is not rebutted at the hearing, such court shall order the clerk to record a certificate of satisfaction or a certificate of partial satisfaction that, when so recorded, shall operate as a release of such encumbrance.

All releases made prior to June 24, 1944, by any court under this section upon such presumption of payment so arising and not rebutted shall be validated.

B. If the court finds that the person entitled to such encumbrance cannot with due diligence be located, and that notice has been given such person in the manner provided by § 8.01-319 or 55.1-348, or that tender has been made of the sum due thereon but has been refused for any reason by the party to whom due, the court may in its discretion order the sum due to be paid into court, to be there held as provided by law, and to be paid upon demand to the person entitled thereto. The court shall order the same to be recorded as provided in subsection A, and such certificate of satisfaction or certificate of partial satisfaction shall operate as a release of the encumbrance.

C. Upon a finding by the court that the holder of a mortgage or deed of trust that has been fully paid or discharged has unjustifiably and without good cause failed or refused to release such mortgage or deed of trust, the court may order that costs and reasonable attorney fees be paid to the petitioning party. This subsection shall not preclude a separate action by the petitioning party for actual damages sustained by reason of such failure or refusal to release the encumbrance.

§ 55.1-345. Recordation of certificate of satisfaction, etc., required when release of lien recorded.

Whenever a release of a deed of trust or other obligation is recorded in the office of the clerk of any circuit court, such clerk shall record a certificate of satisfaction or certificate of partial satisfaction, stating that such deed or other obligation is released. The fee charged by the clerk for recording such release shall be paid by the lien debtor. Such certificate shall be indexed in the name of the grantors and grantees of the instrument being released. If any clerk fails for 10 days to do anything required of him by this section, he shall be liable for any damage that any person may sustain by reason of such failure.

Article 3.

Satisfaction of Security Interest in Real Property.

§ 55.1-346. Applicability.

The procedure authorized by this article for the release of a security interest in real property using an automated electronic recording system may be used to effect the release of a security interest regardless of when the security interest was created, assigned, or satisfied by payment made by the settlement agent. The

procedure authorized by this section for the release of a security interest shall constitute an optional method of accomplishing a release of a security interest secured by property in the Commonwealth.

§ 55.1-347. Definitions.

As used in this article, unless the context requires otherwise:

"Day" means calendar day.

"Document" means information that is:

1. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

2. Eligible to be recorded in the land records maintained by the clerk.

"Electronic," as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

"Real property" means real property that is used for residential or nonresidential purposes.

"Recording data" means the date, and deed book and page number or instrument number, that indicates where a document is recorded in the land records of the clerk of the circuit court pursuant to Chapter 6 (§ 55.1-600 et seq.).

"Secured creditor" means a person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest in real property and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. "Secured creditor" does not include a trustee under a security instrument. "Secured creditor" also includes "lender" as used in Chapter 10 (§ 55.1-1000 et seq.) and "lien creditor" and "servicer" as defined in § 55.1-339.

"Secured obligation" means an obligation the payment or performance of which is secured by a security interest.

"Security instrument" means an agreement, however denominated, that creates or provides for a security interest, whether or not it also creates or provides for a lien on personal property.

"Security interest" means an interest in real property created by a security instrument, securing payment, or performance of an obligation and includes a mortgage or deed of trust.

"Sign" means, with present intent to authenticate, accept, or adopt a document:

1. To execute or adopt a tangible symbol; or

2. To attach to or logically associate with the document an electronic sound, symbol, or process.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Submit for recording" means to deliver, with required fees and taxes, a document sufficient to be recorded under this article to the office of the clerk of the circuit court pursuant to Chapter 6 (§ 55.1-600 et seq.).

§ 55.1-348. Document of rescission; effect; liability for wrongful recording.

A. As used in this section, "document of rescission" means a document stating that an identified satisfaction, certificate of satisfaction, or affidavit of satisfaction of a security instrument was recorded erroneously or fraudulently, the secured obligation remains unsatisfied, and the security instrument remains in force.

B. If a person records a satisfaction, certificate of satisfaction, or affidavit of satisfaction of a security instrument in error or by fraud, the person may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction, certificate, or affidavit.

C. A recorded document of rescission has no effect on the rights of a person who:

1. Acquired an interest in the real property described in a security instrument after the recording of the satisfaction, certificate of satisfaction, or affidavit of satisfaction of the security instrument and before the recording of the document of rescission; and

2. Would otherwise have priority over or take free of the lien created by the security instrument under the laws of the Commonwealth.

D. A person, other than the clerk of the circuit court or any of his employees or other governmental official in the course of the performance of his recordation duties, who erroneously, fraudulently, or wrongfully records a document of rescission is subject to liability under § 55.1-339.

§ 55.1-349. Secured creditor to submit satisfaction for recording; liability for failure.

A. A secured creditor shall submit for recording a satisfaction of a security instrument within 90 days after the creditor receives full payment or performance of the secured obligation in accordance with subsection B of § 55.1-339. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

B. A secured creditor who is required to submit a satisfaction of a security instrument for recording and fails to do so by the end of the period specified in subsection A is subject to liability under § 55.1-339.

§ 55.1-350. Form and effect of satisfaction.

A. A document is sufficient to constitute a satisfaction of a security instrument if it conforms substantially in form and content to the requirements of § 55.1-342 and it:

1. Identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded;

2. States that the person signing the satisfaction is the secured creditor;

3. Contains a legal description of the real property identified in the security instrument, but only if a legal description is necessary for a satisfaction to be properly indexed; otherwise, the deed book and page number or instrument number is sufficient;

4. Contains language terminating the effectiveness of the security instrument; and

5. Is signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

B. The clerk of the circuit court shall accept for recording a satisfaction document, unless:

1. An amount equal to or greater than the applicable recording fees and taxes is not tendered;

2. The document is submitted by a method or in a medium not authorized by the laws of the Commonwealth; or

3. The document is not signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

§ 55.1-351. Relation to Electronic Signatures in Global and National Commerce Act.

To the extent permitted by law, this article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this article modifies, limits, or supersedes §§ 7001(c) and 7004 of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

§ 55.1-352. Uniform standards.

In consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, and interested citizens and businesses, the Virginia Information Technologies Agency shall develop standards to implement electronic recording of real property documents. The Virginia Information Technologies Agency shall consider standards and practices of other jurisdictions, the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association, views of interested persons and other governmental entities, and needs of localities of varying sizes, population, and resources.

Article 4.

Effect of Certain Expressions in Deeds.

§ 55.1-353. Effect of word "covenants."

When a deed uses the words "the said _____ covenants," such covenant shall have the same effect as if it were expressed to be by the covenantor, for himself and his heirs, personal representatives, and assigns and shall be deemed to be with the covenantee and his heirs, personal representatives, and assigns.

§ 55.1-354. Effect of covenant of general warranty.

A covenant by the grantor in a deed "that he will warrant generally the property hereby conveyed" shall have the same effect as if the grantor had covenanted that he and his heirs and personal representatives will forever warrant and defend such property unto the grantee and his heirs, personal representatives, and assigns against the claims and demands of all persons.

§ 55.1-355. Covenant of special warranty.

A covenant by any such grantor "that he will warrant specially the property hereby conveyed" shall have the same effect as if the grantor has covenanted that he and his heirs and personal representatives will forever warrant and defend such property unto the grantee and his heirs, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him.

§ 55.1-356. Words "with general warranty," "with special warranty," and "with English covenants of title" construed.

The words "with general warranty" in the granting part of any deed shall be deemed to be a covenant by the grantor "that he will warrant generally the property hereby conveyed." The words "with special warranty" in the granting part of any deed shall be deemed to be a covenant by the grantor "that he will warrant specially the property hereby conveyed."

The words "with English covenants of title" or words of similar import in the granting part of any deed shall be deemed to be an expression by the grantor of those covenants set out in §§ 55.1-359 through 55.1-362, and in addition thereto the covenant that he is seized in fee simple of the property conveyed.

§ 55.1-357. Implied warranties on new homes.

A. As used in this section:

"New dwelling" means a dwelling or house that has not previously been occupied for a period of more than 60 days by anyone other than the vendor or the vendee or that has not been occupied by the original vendor or subsequent vendor for a cumulative period of more than 12 months, excluding dwellings constructed solely for lease. "New dwelling" does not include a condominium or condominium units created pursuant to the Virginia Condominium Act (§ 55.1-1900 et seq.).

"Structural defects" means a defect or defects that reduce the stability or safety of the structure below accepted standards or that restrict the normal use of the structure.

B. In every contract for the sale of a new dwelling, the vendor shall be held to warrant to the vendee that, at the time of the transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling with all of its fixtures is, to the best of the actual knowledge of the vendor or his agents, sufficiently (i) free from structural defects, so as to pass without objection in the trade, and (ii) constructed in a workmanlike manner, so as to pass without objection in the trade.

C. In addition, in every contract for the sale of a new dwelling, the vendor, if he is in the business of building or selling such dwellings, shall be held to warrant to the vendee that, at the time of transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling together with all of its fixtures is sufficiently (i) free from structural defects, so as to pass without objection in the trade; (ii) constructed in a workmanlike manner, so as to pass without objection in the trade; and (iii) fit for habitation.

D. The warranties described in subsections B and C implied in the contract for sale shall be held to survive the transfer of title. Such warranties are in addition to, and not in lieu of, any other express or implied warranties pertaining to the dwelling or its materials or fixtures. A contract for sale may waive, modify, or exclude any or all express and implied warranties and sell a new home "as is" only if the words used to waive, modify, or exclude such warranties are conspicuous, as defined by subdivision (b) (10) of § 8.1A-201, set forth on the face of such contract in capital letters that are at least two points larger than the other type in the contract and only if the words used to waive, modify, or exclude the warranties state with specificity the warranty or warranties that are being waived, modified, or excluded. If all warranties are waived or excluded, a contract shall specifically set forth in capital letters that are at least two points larger than the other type in the contract that the dwelling is being sold "as is."

E. If there is a breach of warranty under this section, the vendee, or his heirs or personal representatives in case of his death, shall have a cause of action against his vendor for damages, provided, however, for any defect discovered after July 1, 2002, such vendee shall first provide the vendor, by certified mail at his last known address, or by commercial overnight delivery service or the United States Postal Service, and a receipt obtained, a written notice stating the nature of the warranty claim. Such notice also may be hand delivered to the vendor with the vendee retaining a receipt of such hand-delivered notice to the vendor or its authorized agent. After such notice, the vendor shall have a reasonable period of time, not to exceed six months, to cure the defect that is the subject of the warranty claim.

F. The warranty shall extend for a period of one year from the date of transfer of record title or the vendee's taking possession, whichever occurs first, except that the warranty pursuant to clause (i) of subsection C for the foundation of new dwellings shall extend for a period of five years from the date of transfer of record title or the vendee's taking possession, whichever occurs first. Any action for its breach shall be brought within two years after the breach thereof. For all warranty claims arising on or after January 1, 2009, sending the notice required by subsection E shall toll the limitations period for six months.

G. In the case of new dwellings where fire-retardant treated plywood sheathing or other roof sheathing materials are used in lieu of fire-retardant treated plywood, the vendor shall be deemed to have assigned the

manufacturer's warranty, at settlement, to the vendee. The vendee shall have a direct cause of action against the manufacturer of such roof sheathing for any breach of such warranty. To the extent any such manufacturer's warranty purports to limit the right of third parties or prohibit assignment, such provision shall be unenforceable and of no effect.

§ 55.1-358. Effect of certain transfer fee covenants.

A. As used in this section, unless the context requires a different meaning:

"Transfer" means assignment, conveyance, gift, inheritance, sale, or other transfer of ownership interest in real property located in the Commonwealth.

"Transfer fee" means a fee or charge payable to a nongovernmental person or entity upon transfer or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price of the property, or other consideration given for the transfer. "Transfer fee" does not include:

1. Any consideration that is payable by a grantee to a grantor for the interest in real property being transferred;

2. Any commission that is payable to a licensed real estate broker for a transfer under an agreement between the broker and the grantor or grantee;

3. Any amount, charge, fee, or interest that is payable by a borrower to a lender under a loan secured by a deed of trust or mortgage on real property, including (i) any fee that is payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the deed of trust or mortgage and (ii) any consideration allowed by law that is payable to the lender in connection with the loan;

4. Any amount, charge, fee, reimbursement, or rent that is payable by a lessee to a lessor under a lease, including any fee that is payable to the lessor for consenting to an assignment, sublease, encumbrance, or transfer of the lease;

5. Any consideration that is payable to the holder of an option to purchase an interest in real property, the holder of a right of first refusal, or the holder of a right of first offer to purchase an interest in real property for releasing, waiving, or not exercising the option or right upon the transfer of the property to a person other than the holder;

6. Any assessment, charge, or fee authorized by statute, the recorded condominium instrument, or the recorded declaration to be charged by, or payable to, a common interest community as defined in § 54.1-2345 or a cooperative as defined in § 55.1-2100; or

7. Any amount, assessment, charge, fee, fine, or tax that is payable to or imposed by a governmental authority.

"Transfer fee covenant" means a covenant or declaration that purports to affect real property and that requires or purports to require, upon a subsequent transfer of such property, the payment of a transfer fee to the declarant or other nongovernmental person or entity specified in the covenant or declaration or to the assigns or successors of such declarant or nongovernmental person or entity.

B. A transfer fee covenant recorded in the Commonwealth on or after July 1, 2011, shall not run with the title to real property and is not binding on, or enforceable at law or in equity against, any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Any lien purporting to secure the payment of a transfer fee under a transfer fee covenant recorded in the Commonwealth on or after July 1, 2011, is void and unenforceable.

§ 55.1-359. Covenant of "right to convey."

A covenant by the grantor in a deed for land "that he has the right to convey the said land to the grantee" shall have the same effect as if the grantor had covenanted that he has good right, full power, and absolute authority to convey the land, with all the buildings thereon and the privileges and appurtenances thereto belonging, unto the grantee, in the manner in which the same is conveyed or intended so to be by the deed, and according to its true intent.

§ 55.1-360. Covenant for "quiet possession" and "free from all encumbrances."

A covenant by any such grantor "that the grantee shall have quiet possession of the said land" shall have as much effect as if he covenanted that the grantee and his heirs and assigns might, at any and all times thereafter, peaceably and quietly enter upon and have, hold, and enjoy the land conveyed by the deed, or intended so to be, with all the buildings thereon and the privileges and appurtenances thereto belonging, and receive and take the rents and profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit, claim, or demand whatever. If to such covenant there be added "free from all encumbrances,"

these words shall have as much effect as the words "and that freely and absolutely acquitted, exonerated, and forever discharged, or otherwise by the said grantor or his heirs saved harmless and indemnified of, from, and against any and every charge and encumbrance whatever."

§ 55.1-361. Covenant for "further assurances."

A covenant by any such grantor "that he will execute such further assurances of the said lands as may be requisite" shall have the same effect as if he covenanted that he, the grantor, and his heirs or personal representative will at any time, upon any reasonable request, at the charge of the grantee and his heirs or assigns, do, execute, or cause to be done or executed all such further acts, deeds, and things for the better, more perfectly and absolutely conveying and assuring the said lands and premises thereby conveyed or intended so to be unto the grantee and his heirs and assigns in manner aforesaid, as by the grantee and his heirs or assigns and his or their attorney, shall be reasonably devised, advised, or required.

§ 55.1-362. Covenant of "no act to encumber."

A covenant by any such grantor "that he has done no act to encumber the said lands" shall have the same effect as if he covenanted that he had not done or executed, or knowingly suffered, any act, deed, or thing whereby the lands and premises conveyed, or intended so to be, or any part thereof, are or will be charged, affected, or encumbered in title, estate, or otherwise.

§ 55.1-363. Effect of certain words of release in a deed.

Whenever any deed uses the words: "The said grantor (or the said _____) releases to the said grantee (or the said _____) all his claims upon the said lands," such deed shall be construed as if it set forth that the grantor (or releasor) has remised, released, and forever quitted claim and by these presents does remise, release, and forever quitclaim to the grantee (or releasee) and his heirs and assigns all right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises granted (or released) or intended to be granted (or released), so that neither he nor his personal representative, heirs, or assigns shall at any time thereafter have any type of claim, challenge, or demand on the lands and premises or any part thereof.

CHAPTER 4.

FRAUDULENT AND VOLUNTARY CONVEYANCES; WRITINGS NECESSARY TO BE RECORDED.

§ 55.1-400. Void fraudulent acts; bona fide purchasers not affected.

Every (i) gift, conveyance, assignment, or transfer of, or charge upon, any estate, real or personal, (ii) action commenced or order, judgment, or execution suffered or obtained, and (iii) bond or other writing given with intent to delay, hinder, or defraud creditors, purchasers, or other persons of or from what they are or may be lawfully entitled to shall, as to such creditors, purchasers, or other persons or their representatives or assigns, be void. This section shall not affect the title of a purchaser for valuable consideration, unless it appears that he had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

§ 55.1-401. Voluntary gifts, conveyances, assignments, transfers, or charges; void as to prior creditors.

Every gift, conveyance, assignment, transfer, or charge that is not upon consideration deemed valuable in law, or that is upon consideration of marriage by an insolvent transferor or by a transferor who is thereby rendered insolvent, shall be void as to creditors whose debts were contracted at the time such gift, conveyance, assignment, transfer, or charge was made but shall not, on that account merely, be void as to creditors whose debts have been contracted, or as to purchasers who have purchased, after such gift, conveyance, assignment, transfer, or charge was made. Even though it is decreed to be void as to a prior creditor, because voluntary or upon consideration of marriage, it shall not, for that cause, be decreed to be void as to subsequent creditors or purchasers.

§ 55.1-402. Creditor's action to avoid such gifts, conveyances, assignments, transfers, or charges.

Before obtaining a judgment for his claim, a creditor may, whether such claim is due and payable or not, institute any action that he may institute after obtaining such judgment to avoid a gift, conveyance, assignment, or transfer of, or charge upon, the estate of his debtor declared void by either § 55.1-400 or 55.1-401. Such creditor may, in such action, have all the relief with respect to such estate to which he would be entitled after obtaining a judgment for the claim for which he may be entitled to recover. A creditor availing himself of this section shall have a lien from the time of bringing his action on all the estate, real and personal, and a petitioning creditor shall also be entitled to a lien from the time of filing his petition in the court in which the action is brought. If the proceeds of sale are insufficient to satisfy the claims of all the creditors whose liens were acquired at the same time, they shall be applied proportionately to such claims, and the court may issue an order against the debtor for any deficiency remaining on the claim of any creditor after applying his share

of the proceeds of sale, or, if any creditor is not entitled to share in such proceeds, may issue an order against the debtor for the full amount of the creditor's claim. This section is subject to the provisions of §§ 8.01-268 and 8.01-269.

§ 55.1-403. Creditor's action; attorney fees.

In any action brought by a creditor pursuant to § 55.1-400, 55.1-401, or 55.1-402, where a (i) gift; (ii) deed; (iii) conveyance, assignment, or transfer of or charge upon the estate of a debtor; (iv) action commenced or judgment or execution suffered or obtained; or (v) bond or other writing is declared void, the court shall award counsel for the creditor reasonable attorney fees against the debtor. Upon a finding of fraudulent conveyance pursuant to § 55.1-400, the court may assess sanctions, including such attorney fees, against all parties over which it has jurisdiction who, with the intent to defraud and having knowledge of the judgment, participated in the conveyance. Should there be a resulting judicial sale, any award of attorney fees shall be paid out of the proceeds of the sale, as other costs are paid, provided that the award of attorney fees does not affect a prior lien creditor not represented by the attorney.

§ 55.1-404. Authority of court to set aside.

The court may set aside a fraudulent conveyance or voluntary transfer pursuant to § 55.1-400 or 55.1-401 during an action brought by a creditor to execute on a judgment, either on motion of the creditor or on its own motion, provided that all parties who have an interest in the property subject to the conveyance or transfer are given notice of the proceeding. The court, by order, may direct the clerk to issue the proper process against such parties and, upon the maturing of the case, proceed to make such orders as would have been proper if the new parties had been made parties at the commencement of the action.

§ 55.1-405. Loans and reservations of a use or property to be recorded.

When any loan of personal property is pretended to have been made to any person with whom, or with those claiming under him, possession has remained five years without demand made and pursued by due process of law on the part of the pretended lender, or when any reservation or limitation is pretended to have been made of a use or property by way of condition, reversion, remainder, or otherwise in personal property, the possession of which has so remained in another as aforesaid, the absolute property shall be taken to be with the possession and such loan, reservation, or limitation void as to creditors of, and purchasers from, the person so remaining in possession, unless such loan, reservation, or limitation is declared by will which, or a copy of which, or by deed or other writing which, is duly recorded within a period of five years in the circuit court of the county or city in which the personal property is located.

§ 55.1-406. Certain recorded contracts as valid as deeds.

Any such contract or bill of sale as is mentioned in § 11-1, if in writing and signed by the owner of the property, shall, from the time it is duly recorded, be, as against creditors and purchasers, as valid, so far as it affects real estate, as if the contract were a deed conveying the estate or interest embraced in the contract and, so far as it affects goods and chattels, as if possession had completely passed at the time of such recording, provided that, as to goods whose possession is retained by a merchant-seller, the provisions of subsection (2) of § 8.2-402 of the Uniform Commercial Code shall be controlling and provided further that, if any such contract or bill of sale as is mentioned in § 11-1 creates a security interest as defined in the Uniform Commercial Code, its validity and enforceability shall be governed by the provisions of that Code.

§ 55.1-407. Contracts, etc., void as to creditors and purchasers until recorded; priority of credit line deed of trust.

A. 1. Every (i) contract in writing; (ii) deed conveying any estate or term; (iii) deed of gift, or deed of trust, or mortgage conveying real estate or personal property; and (iv) bill of sale, or contract for the sale of personal property, when the possession is allowed to remain with the grantor, shall be void as to all purchasers for valuable consideration without notice not parties thereto and lien creditors, until and except from the time it is recorded in the county or city in which the property subject to such contract, deed, or bill of sale is located. The fact that any such instrument is in the form of or contains the terms of a quit-claim or release shall not prevent the grantee from being a purchaser for valuable consideration without notice, nor be of itself notice to such grantee of any unrecorded conveyance of or encumbrance upon such real estate or personal property. The mere possession of real estate shall not, of itself, be notice to purchasers for value of any interest or estate therein of the person in possession. As to personal property whose possession is retained by a merchant-seller, the provisions of subsection (2) of § 8.2-402 of the Uniform Commercial Code shall control. This section shall not apply to any security interest in personal property under the Uniform Commercial Code. Any bill of sale or contract for the sale of personal property when possession is allowed to remain with the grantor shall be

deemed to be duly recorded when it is filed in the same manner as Uniform Commercial Code financing statements are filed under the criteria and in the places established by § 8.9A-501 as if the grantor were a debtor and the grantee a secured party. A recordation under the provisions of this section shall, when any real estate subject to the lien of any such contract has been annexed to or merged with an adjoining city subsequent to such docketing, be deemed to have been recorded in the proper clerk's office of such city.

2. The clerk of each court in which any such instrument is by law required to be recorded shall keep a daily index of all such instruments admitted to record in his office, and, immediately upon recording such instrument, the clerk shall index the same either in the daily index or the appropriate general index of his office. All instruments indexed in the daily index shall be indexed by the clerk in the appropriate general index within 90 days after recording. During the period permitted for transfer from the daily index to the general index, indexing in the daily index shall be a sufficient compliance with the requirements of this section as to indexing.

3. a. In any circuit court in which any such instrument required to be recorded is not recorded on the same day as delivered, the clerk shall install a time stamp machine. The time stamp machine shall affix the current date and time of each delivery of any instrument delivered to the clerk for recording that is not immediately recorded and entered into the general or daily index.

b. In the event that a time stamp machine has not been installed or is not functioning, the clerk shall designate an employee to affix the current date and time of each delivery of any instrument delivered to the clerk for recording.

c. In any circuit court in which instruments required to be recorded are not recorded on the same day as delivered, for purposes of subdivision 1, the term "from the time it is recorded" shall be presumed to be the date and time affixed upon the instrument by the time stamp machine or affixed by the clerk in accordance with subdivision b unless the clerk determines that the applicable requirements for recordation of the instrument have not been satisfied.

d. The provisions of subdivision 3 shall not apply to certificates of satisfaction or partial satisfaction or assignments of deeds of trust delivered to the clerk's office other than by hand.

B. A credit line deed of trust, recorded pursuant to § 55.1-318, is valid and has priority over any (i) contract in writing, deed, conveyance, or other instrument conveying any such estate or term subsequently recorded or (ii) judgment subsequently docketed as to all advances made under such credit line deed of trust from the date of recordation of such credit line deed of trust, whether or not the particular advance or extension of credit has been made or unconditionally committed at the time of delivery or recordation of such contract in writing, deed, or other instrument or the docketing of such judgment. Any judgment creditor shall have the right to give the notice contemplated by § 55.1-318 and, from the day following receipt of such notice, the judgment as docketed shall have priority over all subsequent advances made pursuant to the credit line deed of trust except those that have been unconditionally and irrevocably committed prior to such date. Mechanics' liens created under Title 43 shall continue to have the same priority as created by that title. Purchase money security interests in goods and fixtures shall have the same priority as provided in Part 3 of Title 8.9A (§ 8.9A-317 et seq.).

§ 55.1-408. Where to be recorded.

Notwithstanding that any writing is recorded in one county or city in which there is real estate or personal property, it nevertheless is void as to such creditors and purchasers in respect to other real estate or personal property without such recording until it is duly recorded in the county or city in which such other real estate or personal property may be located, but it shall be sufficient to record a deed releasing the lien of a deed of trust, in whole or in part, either in the county or city in which the property thereby released is located or in the county or city in which the property so released was situated at the time of the recordation of the deed of trust, and any recordation thereof so made of any such release is hereby validated.

§ 55.1-409. Recordation of instruments affecting civil aircraft of United States.

No instrument that affects the title to or interest in any civil aircraft of the United States, as defined by federal law, or any portion of such aircraft, shall be valid in respect of such aircraft or portion of such aircraft against any person other than the person by whom the instrument is made or to whom the instrument is given, his heir or devisee, and any person having actual notice of such instrument, until such instrument is recorded in the office of the Administrator of the Federal Aviation Administration of the United States, or such other office as is designated by the laws of the United States as the one in which such instruments should be filed. Every such instrument so recorded in such office shall be valid as to all persons without further recordation in any office in the Commonwealth, the provisions of any other recordation statute to the contrary

notwithstanding. Any instrument for which recordation is required by the provisions of this section shall take effect from the date of its recordation and not from the date of its execution.

§ 55.1-410. Priority of writings when admitted to record same day.

Unless otherwise provided for in this chapter, when two or more writings pertaining to the same property are recorded in the same county or city on the same day and stamped with the identical time, the instrument number shall determine the writing that was first recorded. The instrument that was first recorded shall have priority with respect to the property in such county or city.

§ 55.1-411. When writings to be recorded in county, and when in city.

The provisions of this and any other chapter of the Code or of any subsequent statute, by virtue of which a writing is to be or may be recorded in the county or city in which the property embraced in such writing is located, shall be construed, in respect to the county, as relating only to property within the county and outside the corporate limits of the city having a court in which writings may be lawfully recorded, and, in respect to the city, as relating only to property within the corporate limits of such city having such a court.

§ 55.1-412. Words "creditors" and "purchasers," how construed.

The words "creditors" and "purchasers," when used in any previous section of this chapter, shall not be restricted to the protection of creditors of and purchasers from the grantor, but shall also extend to and embrace all creditors and purchasers who, but for the deed or writing, would have had title to the property conveyed or a right to subject it to their debts.

§ 55.1-413. Lien of subsequent purchaser for purchase money paid before notice.

As against any person claiming under the deed or other writing that has not been recorded before payment by a subsequent purchaser for valuable consideration of the whole or a part of his purchase money, such subsequent purchaser, notwithstanding such deed or other writing recorded before he becomes a complete purchaser, shall have a lien on the property purchased by him for so much of his purchase money as he may have paid before notice of such lien.

§ 55.1-414. When purchaser not affected by record of deed or contract.

A purchaser shall not, under this chapter, be affected by the record of a deed or contract made by a person under whom his title is not derived, nor by the record of a deed or contract made by any person under whom the title of such purchaser is derived, if it was made by such person before he acquired the legal title of record.

CHAPTER 5.

COMMUTATION AND VALUATION OF CERTAIN ESTATES AND INTERESTS.

§ 55.1-500. Annuity table.

When a party as tenant for life is entitled to the annual interests on a sum of money, or is entitled to the use of any estate, or a part thereof, and is willing to accept a gross sum in lieu thereof, or the party liable for such interest, or affected by such claim, has the right to pay a gross sum in lieu thereof, or if the court in any legal proceeding orders a gross sum to be paid in lieu thereof, the sum shall be estimated according to the then value of an annuity of eight percent on the principal sum during the probable life of such person, according to the following table, showing in Column I the present value, on the basis of eight percent interest, of an annuity of $1, payable at the end of every year that a person of a given age may be living, for the ages therein stated:

	PRESENT VALUE	
Age last birthday	*I life*	*II lives*
Less than one year	*12.060*	*11.670*
1	*12.291*	*12.124*
2	*12.291*	*12.127*
3	*12.286*	*12.120*
4	*12.278*	*12.107*
5	*12.267*	*12.091*
6	*12.256*	*12.071*
7	*12.242*	*12.049*
8	*12.227*	*12.024*
9	*12.211*	*11.996*

10	*12.192*	*11.965*
11	*12.171*	*11.930*
12	*12.149*	*11.892*
13	*12.125*	*11.852*
14	*12.102*	*11.812*
15	*12.078*	*11.773*
16	*12.055*	*11.736*
17	*12.032*	*11.701*
18	*12.010*	*11.666*
19	*11.988*	*11.632*
20	*11.964*	*11.596*
21	*11.939*	*11.559*
22	*11.913*	*11.521*
23	*11.886*	*11.480*
24	*11.857*	*11.437*
25	*11.824*	*11.389*
26	*11.789*	*11.336*
27	*11.751*	*11.278*
28	*11.709*	*11.215*
29	*11.664*	*11.148*
30	*11.615*	*11.075*
31	*11.564*	*10.998*
32	*11.510*	*10.917*
33	*11.452*	*10.831*
34	*11.391*	*10.741*
35	*11.326*	*10.645*
36	*11.258*	*10.545*
37	*11.186*	*10.440*
38	*11.110*	*10.331*
39	*11.031*	*10.217*
40	*10.948*	*10.098*
41	*10.861*	*9.975*
42	*10.770*	*9.847*
43	*10.675*	*9.714*
44	*10.576*	*9.576*
45	*10.473*	*9.434*
46	*10.365*	*9.288*
47	*10.254*	*9.138*
48	*10.138*	*8.983*
49	*10.018*	*8.824*
50	*9.893*	*8.661*
51	*9.764*	*8.493*
52	*9.631*	*8.322*
53	*9.493*	*8.147*
54	*9.352*	*7.970*
55	*9.207*	*7.790*
56	*9.057*	*7.608*
57	*8.904*	*7.423*

58	*8.747*	*7.237*
59	*8.586*	*7.048*
60	*8.421*	*6.856*
61	*8.252*	*6.662*
62	*8.078*	*6.466*
63	*7.900*	*6.267*
64	*7.718*	*6.067*
65	*7.532*	*5.865*
66	*7.343*	*5.663*
67	*7.150*	*5.460*
68	*6.954*	*5.256*
69	*6.755*	*5.052*
70	*6.552*	*4.847*
71	*6.345*	*4.640*
72	*6.134*	*4.431*
73	*5.920*	*4.222*
74	*5.705*	*4.015*
75	*5.491*	*3.812*
76	*5.279*	*3.615*
77	*5.069*	*3.424*
78	*4.861*	*3.239*
79	*4.654*	*3.057*
80	*4.448*	*2.879*
81	*4.244*	*2.706*
82	*4.044*	*2.538*
83	*3.846*	*2.376*
84	*3.652*	*2.217*
85	*3.459*	*2.061*
86	*3.272*	*1.911*
87	*3.097*	*1.774*
88	*2.934*	*1.651*
89	*2.780*	*1.537*
90	*2.630*	*1.426*
91	*2.485*	*1.319*
92	*2.350*	*1.220*
93	*2.227*	*1.131*
94	*2.118*	*1.053*
95	*2.024*	*0.986*
96	*1.943*	*0.931*
97	*1.873*	*0.885*
98	*1.811*	*0.845*
99	*1.754*	*0.810*
100	*1.701*	*0.779*
101	*1.651*	*0.751*
102	*1.602*	*0.726*
103	*1.550*	*0.703*
104	*1.492*	*0.682*
105	*1.420*	*0.661*

106	*1.322*	*0.637*
107	*1.178*	*0.602*
108	*0.955*	*0.535*
109	*0.595*	*0.383*

§ 55.1-501. Rule of calculation under § 55.1-500.

A. Calculate the interest at eight percent upon the sum to the income of which, or upon the value of the property to the use of which, the person is entitled. Multiply this interest by the present value of an annuity of $1, as set opposite the person's age in the table, and the product is the gross value of the life estate of such person.

B. Example: Suppose a person whose age is 42 is a tenant for life in the whole of an estate worth $10,500. The annual interest on that sum at eight percent is $840. The present value of an annuity of $1 at the age of 42, as shown by the table, is $10.77, which, multiplied by $840, gives $9,046.80 as the gross value of such life estate in the premises, or the proceeds of such life estate.

§ 55.1-502. Table of uniform seniority.

When any two parties, as joint tenants for life, are entitled to the annual interest on a sum of money, or are entitled to the use of any estate or a part thereof, and are willing to accept a gross sum in lieu thereof, or the party liable for such interest, or affected by such claim, has the right to pay a gross sum in lieu thereof, or if the court in any legal proceeding orders a gross sum to be paid in lieu thereof, the sum shall be estimated according to the then value of an annuity of eight percent on the principal sum during the probable joint lives of such persons (which probable joint lives shall be computed from the table in this section for computing uniform seniority) as set forth in Column II in the table in § 55.1-500, showing the present value, on the basis of eight percent interest, of an annuity of $1 payable at the end of every year that two persons of given ages may both be living for the ages therein stated:

TABLE OF UNIFORM SENIORITY

Difference of age	*Addition to younger age*
1	*1*
2	*1*
3	*2*
4	*2*
5	*3*
6	*4*
7	*4*
8	*5*
9	*6*
10	*7*
11	*7*
12	*8*
13	*9*
14	*10*
15	*11*
16	*12*
17	*13*
18	*14*
19	*14*
20	*15*
21	*16*
22	*17*
23	*18*
24	*19*

25	*20*
26	*21*
27	*22*
28	*23*
29	*24*
30	*25*
31	*26*
32	*27*
33	*28*
34	*29*
35	*30*
36	*31*
37	*32*
38	*33*
39	*34*
40	*35*
41	*36*
42	*37*
43	*38*
44	*39*
45	*40*
46	*41*
47	*42*
48	*43*
49	*44*
50	*45*
51	*46*
52	*47*
53	*48*
54	*49*
55	*50*
56	*51*
57	*52*
58	*53*
59	*54*
60	*55*
61	*56*
62	*57*
63	*58*
64	*59*
65	*60*
66	*61*
67	*62*
68	*63*
69	*64*
70	*65*
71	*66*
72	*67*

73	*68*
74	*69*
75	*70*

§ 55.1-503. Rules of calculation under § 55.1-502.

A. Calculate the interest at eight percent upon the sum to the income of which, or upon the value of the property to the use of which, the joint life tenants are entitled. Multiply this interest by the present value of an annuity of $1, as shown in Column II of § 55.1-500, for the joint equal age of such joint life tenants. The joint equal age of such tenants shall be obtained as follows: Take the difference in age in years between such tenants and refer to the table in § 55.1-502 and add to the younger age the value opposite such difference, and the sum is the joint equal age; take this joint equal age and refer to the table in § 55.1-500 and find in Column II the value of an annuity of $1 a year payable for life during such joint equal age. The product of the interest and the value of an annuity for a given joint equal age is the gross value of the joint life estate of such person therein.

B. Example: Doe, age 30, and Roe, age 40, are joint tenants for life in the whole of an estate worth $10,500: The difference in ages is 10 and, as shown by the table in § 55.1-502, the value opposite age difference 10 is seven. Seven added to 30, Doe's age, gives 37; as shown by the table in § 55.1-500, the value in Column II for an annuity of $1 for two joint lives at joint equal age 37 is $10.44 and no mills, and this, multiplied by $840 (the interest at eight percent on $10,000), gives $8,769.60 as the gross value of the joint life estate of such persons.

§ 55.1-504. Makehamized mortality table.

When more than two parties as joint tenants for life, or three or more parties as tenants in successive estates, are entitled to the annual interest on a sum of money, or are entitled to the use of any estate, or a part thereof, and are willing to accept a gross sum in lieu thereof, or the party liable for such interest, or affected by such claim, has the right to pay a gross sum in lieu thereof, or if the court in any legal proceeding orders a gross sum to be paid in lieu thereof, the sum shall be estimated according to the then value of an annuity of eight percent on the principal sum during the probable lives of such persons. Probable lives shall be computed from the Makehamized mortality table for total population in the United States, 1969-1971, published by the Bureau of the Census of the Department of Commerce.

X	*Ax*	*Axx*	*Axxx*	*Axxxx*	*Cx*
0	*12.060*	*11.670*	*11.305*	*10.958*	*1.000*
1	*12.291*	*12.124*	*11.973*	*11.832*	*1.147*
2	*12.291*	*12.127*	*11.979*	*11.843*	*1.315*
3	*12.286*	*12.120*	*11.971*	*11.834*	*1.508*
4	*12.278*	*12.107*	*11.956*	*11.816*	*1.730*
5	*12.267*	*12.091*	*11.934*	*11.791*	*1.984*
6	*12.256*	*12.071*	*11.909*	*11.760*	*2.275*
7	*12.242*	*12.049*	*11.879*	*11.724*	*2.609*
8	*12.227*	*12.024*	*11.846*	*11.684*	*2.992*
9	*12.211*	*11.996*	*11.809*	*11.638*	*3.431*
10	*12.192*	*11.965*	*11.766*	*11.587*	*3.935*
11	*12.171*	*11.930*	*11.720*	*11.529*	*4.512*
12	*12.149*	*11.892*	*11.668*	*11.466*	*5.175*
13	*12.125*	*11.852*	*11.615*	*11.401*	*5.935*
14	*12.102*	*11.812*	*11.562*	*11.336*	*6.806*
15	*12.078*	*11.773*	*11.510*	*11.274*	*7.805*
16	*12.055*	*11.736*	*11.462*	*11.215*	*8.951*
17	*12.032*	*11.701*	*11.416*	*11.162*	*10.265*
18	*12.010*	*11.666*	*11.373*	*11.111*	*11.772*
19	*11.988*	*11.632*	*11.330*	*11.062*	*13.501*
20	*11.964*	*11.596*	*11.286*	*11.011*	*15.483*

21	*11.939*	*11.559*	*11.240*	*10.959*	*17.756*
22	*11.913*	*11.521*	*11.193*	*10.905*	*20.362*
23	*11.886*	*11.480*	*11.144*	*10.850*	*23.352*
24	*11.857*	*11.437*	*11.091*	*10.789*	*26.780*
25	*11.824*	*11.389*	*11.032*	*10.723*	*30.712*
26	*11.789*	*11.336*	*10.968*	*10.649*	*35.221*
27	*11.751*	*11.278*	*10.896*	*10.567*	*40.392*
28	*11.709*	*11.215*	*10.818*	*10.478*	*46.321*
29	*11.664*	*11.148*	*10.734*	*10.382*	*53.122*
30	*11.615*	*11.075*	*10.645*	*10.279*	*60.921*
31	*11.564*	*10.998*	*10.550*	*10.171*	*69.865*
32	*11.510*	*10.917*	*10.450*	*10.056*	*80.122*
33	*11.452*	*10.831*	*10.344*	*9.936*	*91.885*
34	*11.391*	*10.741*	*10.233*	*9.809*	*105.375*
35	*11.326*	*10.645*	*10.117*	*9.677*	*120.845*
36	*11.258*	*10.545*	*9.995*	*9.539*	*138.586*
37	*11.186*	*10.440*	*9.868*	*9.396*	*158.932*
38	*11.110*	*10.331*	*9.735*	*9.247*	*182.266*
39	*11.031*	*10.217*	*9.599*	*9.094*	*209.024*
40	*10.948*	*10.098*	*9.457*	*8.936*	*239.712*
41	*10.861*	*9.975*	*9.311*	*8.773*	*274.904*
42	*10.770*	*9.847*	*9.159*	*8.605*	*315.263*
43	*10.675*	*9.714*	*9.002*	*8.432*	*361.548*
44	*10.576*	*9.576*	*8.841*	*8.256*	*414.627*
45	*10.473*	*9.434*	*8.677*	*8.076*	*475.500*
46	*10.365*	*9.288*	*8.508*	*7.893*	*545.309*
47	*10.254*	*9.138*	*8.336*	*7.707*	*625.367*
48	*10.138*	*8.983*	*8.160*	*7.517*	*717.178*
49	*10.018*	*8.824*	*7.979*	*7.234*	*822.468*
50	*9.893*	*8.661*	*7.796*	*7.129*	*943.217*
51	*9.764*	*8.493*	*7.608*	*6.930*	*1081.692*
52	*9.631*	*8.322*	*7.418*	*6.730*	*1240.497*
53	*9.493*	*8.147*	*7.226*	*6.529*	*1422.617*
54	*9.352*	*7.970*	*7.033*	*6.328*	*1631.475*
55	*9.207*	*7.790*	*6.838*	*6.127*	*1870.995*
56	*9.057*	*7.608*	*6.643*	*5.927*	*2145.679*
57	*8.904*	*7.423*	*6.447*	*5.727*	*2460.691*
58	*8.747*	*7.237*	*6.250*	*5.529*	*2821.950*
59	*8.586*	*7.048*	*6.053*	*5.331*	*3236.246*
60	*8.421*	*6.856*	*5.855*	*5.133*	*3711.365*
61	*8.252*	*6.662*	*5.656*	*4.936*	*4256.238*
62	*8.078*	*6.466*	*5.457*	*4.740*	*4881.105*
63	*7.900*	*6.267*	*5.257*	*4.544*	*5597.710*
64	*7.718*	*6.067*	*5.056*	*4.349*	*6419.521*
65	*7.532*	*5.865*	*4.857*	*4.157*	*7361.984*
66	*7.343*	*5.663*	*4.659*	*3.967*	*8442.811*
67	*7.150*	*5.460*	*4.462*	*3.780*	*9682.318*
68	*6.954*	*5.256*	*4.266*	*3.596*	*11103.798*

69	*6.755*	*5.052*	*4.072*	*3.414*	*12733.969*
70	*6.552*	*4.847*	*3.879*	*3.234*	*14603.468*
71	*6.345*	*4.640*	*3.685*	*3.055*	*16747.432*
72	*6.134*	*4.431*	*3.490*	*2.875*	*19206.157*
73	*5.920*	*4.222*	*3.296*	*2.697*	*22025.851*
74	*5.705*	*4.015*	*3.106*	*2.523*	*25259.510*
75	*5.491*	*3.812*	*2.922*	*2.356*	*28967.909*
76	*5.279*	*3.615*	*2.745*	*2.197*	*33220.746*
77	*5.069*	*3.424*	*2.577*	*2.047*	*38097.950*
78	*4.861*	*3.239*	*2.415*	*1.905*	*43691.186*
79	*4.654*	*3.057*	*2.258*	*1.768*	*50105.577*
80	*4.448*	*2.879*	*2.106*	*1.636*	*57461.677*
81	*4.244*	*2.706*	*1.959*	*1.509*	*65897.740*
82	*4.044*	*2.538*	*1.818*	*1.389*	*75572.319*
83	*3.846*	*2.376*	*1.684*	*1.276*	*86667.243*
84	*3.652*	*2.217*	*1.554*	*1.166*	*99391.034*
85	*3.459*	*2.061*	*1.425*	*1.058*	*113982.830*
86	*3.272*	*1.911*	*1.302*	*0.955*	*130716.878*
87	*3.097*	*1.774*	*1.192*	*0.863*	*149907.684*
88	*2.934*	*1.651*	*1.095*	*0.784*	*171915.931*
89	*2.780*	*1.537*	*1.007*	*0.713*	*197155.252*
90	*2.630*	*1.426*	*0.922*	*0.645*	*226100.009*
91	*2.485*	*1.319*	*0.839*	*0.579*	*259294.204*
92	*2.350*	*1.220*	*0.763*	*0.519*	*297361.704*
93	*2.227*	*1.131*	*0.695*	*0.465*	*341017.971*
94	*2.118*	*1.053*	*0.636*	*0.419*	*391083.501*
95	*2.024*	*0.986*	*0.586*	*0.380*	*448499.252*
96	*1.943*	*0.931*	*0.546*	*0.349*	*514344.324*
97	*1.873*	*0.885*	*0.512*	*0.324*	*589856.243*
98	*1.811*	*0.845*	*0.484*	*0.302*	*676454.218*
99	*1.754*	*0.810*	*0.459*	*0.284*	*775765.815*
100	*1.701*	*0.779*	*0.437*	*0.268*	*889657.545*
101	*1.651*	*0.751*	*0.417*	*0.254*	*1020269.949*
102	*1.602*	*0.726*	*0.400*	*0.241*	*1170057.821*
103	*1.550*	*0.703*	*0.385*	*0.230*	*1341836.349*
104	*1.492*	*0.682*	*0.372*	*0.221*	*1538834.028*
105	*1.420*	*0.661*	*0.359*	*0.212*	*1764753.329*
106	*1.322*	*0.637*	*0.348*	*0.205*	*2023840.295*
107	*1.178*	*0.602*	*0.335*	*0.197*	*2320964.336*
108	*0.955*	*0.535*	*0.312*	*0.188*	*2661709.752*
109	*0.595*	*0.383*	*0.246*	*0.158*	*3052480.684*

Example: Three persons, ages 30, 40, and 45, are joint tenants for life in the whole of an estate worth $10,500: the equivalent equal age, w, of these three persons is given by the following formula:

$$C^{w} = \frac{C^{30} + C^{40} + C^{45}}{3} = 258.711 \text{ where}$$

C^{30}, C^{40}, and C^{45} are found in column 6 of the above table.

A linear interpolation between x = 40 and x = 41 in the above table would yield the value of x = 40.540, which would be the equivalent equal age of the persons involved.

Finally, a linear interpolation between x = 40 and x = 41 would yield the value of A = 9.378 40.540:40.540:40.540.

This figure multiplied by $840 (the interest at eight percent on $10,500) gives $7,877.52 as the gross value of the joint life estate of such persons.

§ 55.1-505. Commutation in case of persons under disability.

In any case in which, under the laws of the Commonwealth, a provision is made for commutation in money of a life estate when all the parties interested are under no disability, such provision shall also apply when any of the parties interested are under disability. Where any of the parties interested are under disability, the court may, upon application of the guardian, conservator, committee, or trustee, if any, and, if not, by a guardian ad litem appointed by the clerk or judge of said court, of any such person, on behalf of his ward, and upon hearing evidence satisfactory to such court or judge, enter an order authorizing such guardian, conservator, committee, trustee, or guardian ad litem to consent on behalf of such person under disability to such commutation. Such consent shall be as valid and effective as if the person on whose behalf it was given were sui juris and had given such consent. All judicial orders and decrees entered prior to July 1, 1960, authorizing any such commutation where persons under disability were interested, are hereby validated and confirmed, provided that nothing in this section shall be construed as intended to impair any vested right.

§ 55.1-506. Commutation of certain life estates.

Whenever a party as tenant for life, or in any other manner, has a life interest in an estate that has been sold under an action for partition or has been reduced to money, stocks, bonds, or notes, susceptible of division and when the total cost of holding such money, stocks, bonds, or notes intact amounts to more than eight percent of the gross annual income, and when the party owning such life estate is willing to accept a lump sum in lieu of such annual income, upon the application of such person entitled to such annual income to any court of record having jurisdiction over the subject matter, the court may order that such party or parties having charge of such money, stocks, bonds, or notes shall pay to the party having the right to receive such annual income a lump sum in accordance with § 55.1-500. This section shall not affect any spendthrift trust.

SUBTITLE II.

REAL ESTATE SETTLEMENTS AND RECORDATION.

CHAPTER 6.

RECORDATION OF DOCUMENTS.

Article 1.

General Provisions.

§ 55.1-600. When and where writings recorded.

Except when it is otherwise provided, the circuit court of any county or city, or the clerk of any such court, or his duly qualified deputy, in his office, shall record any such writing as to any person whose name is signed thereto with an original signature, when it shall have been acknowledged by him, or proved by two witnesses as to him in such court, or before such clerk, or his duly qualified deputy, in his office, or the manner prescribed in Articles 2 (§ 55.1-612 et seq.), 3 (§ 55.1-616 et seq.), and 4 (§ 55.1-624 et seq.). When such writing is signed by a person acting on behalf of another, or in any representative capacity, the signature of such representative may be acknowledged or proved in the same manner.

§ 55.1-601. Recording and indexing of certain documents showing changes of names.

A duly authenticated copy of a marriage license with the certificate of the person celebrating the marriage or a duly authenticated copy of a final order of divorce showing a change of name of a woman shall be entitled to be recorded in the clerk's office in which deeds are recorded of the county or city in which any land, or an interest in any land, that is owned by such woman lies and shall be indexed by such clerk in the grantor and grantee indices in his office.

§ 55.1-602. Presumption that recorded writings are in proper form.

A writing that is not properly notarized in accordance with the laws of the Commonwealth shall not invalidate the underlying document; however, any such writing shall not be in proper form for recordation. All recorded writings shall be presumed to be in proper form for recording after having been recorded, and conclusively presumed to be in proper form for recording after having been recorded for a period of three years, except in cases of fraud.

§ 55.1-603. Deed of real estate investment trust.

Every deed that is to be recorded conveying property to or from a trust qualifying as a real estate investment trust shall include the complete address of the principal office of the trust. Failure to comply with the provisions of this section shall not invalidate any such deed.

§ 55.1-604. When clerk may refuse document to be recorded.

A clerk may refuse any document for recording in which the name of the person under which the document is to be indexed does not legibly appear or is not otherwise furnished.

§ 55.1-605. Power of attorney; where recorded.

A power of attorney may be recorded in any county or city.

§ 55.1-606. Standards for writings to be docketed or recorded.

Except as provided in Article 4.1 (§ 17.1-258.2 et seq.) of Title 17.1, all writings that are to be recorded or docketed in the clerk's office of courts of record shall be an original or first generation printed form, or legible copy thereof, pen and ink or typed ribbon copy, and shall meet the standards for instruments as adopted under §§ 17.1-227 and 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.).

If a writing that does not conform to the requirements of this section or the standards for instruments adopted under § 17.1-227 and under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.) is accepted for recordation, it shall be deemed validly recorded and the clerk shall have no liability for accepting such a writing that does not meet the enumerated criteria in all the particulars.

§ 55.1-607. When original of writing once recorded is lost, how copy recorded elsewhere.

If it is proper for any writing that has been recorded in a court of any county or city to be recorded in the court of another county or city and such writing, before being so recorded in such other court, is lost or mislaid, on affidavit of this fact, such court or the clerk of such court may record a copy of such writing from the records of another court, certified by its clerk, and the copy so recorded shall have the same effect as if the original had been recorded at the time the copy was recorded.

§ 55.1-608. Certifications of recordation upon copies of certain instruments and subsequent recordation in other county or city.

Whenever a mortgage or deed of trust instrument upon real or personal property located in more than one county or city is recorded in one such county or city, the party by whom it is so presented may deliver to the clerk of such court any number of executed and acknowledged copies of such instrument. The clerk shall fix to each such copy his certificate of recordation, certifying thereby the payment of the recordation tax levied by the Commonwealth, and shall return to the party presenting all such instruments all such copies except one, which shall be retained by the clerk for recordation in his office. Such certificate shall be conclusive evidence of the payment of the recordation tax indicated thereby, and the clerk in any other recording office in any other county or city shall accept for recordation in his office any such copy so certified.

§ 55.1-609. Correcting errors in deeds, deeds of trust, and mortgages; affidavit.

A. As used in this section, unless the context requires a different meaning:

"Attorney" means any person licensed as an attorney in Virginia by the Virginia State Bar.

"Corrective affidavit" means an affidavit of an attorney correcting an obvious description error.

"Obvious description error" means an error in a real property parcel description contained in a recorded deed, deed of trust, or mortgage where (i) such parcel is identified and shown as a separate parcel on a recorded subdivision plat; (ii) such error is apparent by reference to other information on the face of such deed, deed of trust, or mortgage or on an attachment to such deed, deed of trust, or mortgage or by reference to other instruments in the chain of title for the property conveyed thereby; and (iii) such deed, deed of trust, or mortgage recites elsewhere the parcel's correct address or tax map identification number. An "obvious description error" includes (a) an error transcribing courses and distances, including the omission of one or more lines of courses and distances or the omission of angles and compass directions; (b) an error incorporating an incorrect recorded plat or a deed reference; (c) an error in a lot number or designation; or (d) an omitted exhibit supplying the legal description of the real property thereby conveyed. An "obvious description error" does not include (1) missing or improper signatures or acknowledgments or (2) any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists.

"Recorded subdivision plat" means a plat that has been prepared by a land surveyor licensed pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 and recorded in the clerk's office of the circuit court for the jurisdiction where the property is located.

"Title insurance company" has the same meaning as set forth in § 38.2-4601, provided that the title insurance company issued a policy of title insurance for the transaction in which the deed, deed of trust, or mortgage needing correction was recorded.

B. Obvious description errors in a recorded deed, deed of trust, or mortgage purporting to convey or transfer an interest in real property may be corrected by recording an affidavit in the land records of the circuit court for the jurisdiction where the property is located or where the deed, deed of trust, or mortgage needing correction was recorded. No correction of an obvious description error shall be inconsistent with the description of the property in any recorded subdivision plat.

C. Prior to recording a corrective affidavit, the attorney seeking to record the affidavit shall deliver a copy of the affidavit to all parties to the deed, deed of trust, or mortgage, including the current owner of the property; to the attorney who prepared the deed, deed of trust, or mortgage, if known and if possible; and to the title insurance company, if known, and give notice of the intent to record the affidavit and of each party's right to object to the affidavit. For an affidavit to correct an obvious description error in a deed as described in clause (a) of the definition of "obvious description error" in subsection A, notice and a copy of the affidavit shall also be provided to any owner of property adjoining a line to be corrected. The notice and a copy of the affidavit shall be delivered by personal service, sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust, or mortgage to be corrected that (i) is contained in the land book maintained pursuant to § 58.1-3301 by the jurisdiction where the property is located and where the deed, deed of trust, or mortgage needing correction was recorded; (ii) is contained in the deed, deed of trust, or mortgage needing correction; (iii) has been provided to the attorney as a forwarding address; or (iv) has been established with reasonable certainty by other means, and to all other persons and entities to whom notice is required to be given. The notice and a copy of the affidavit shall be sent to the property address for the real property conveyed by the deed, deed of trust, or mortgage needing correction. If a locality is a party to the deed, deed of trust, or mortgage, the notice and a copy of the affidavit required by this subsection shall be sent to the county, city, or town attorney for the locality, if any, and if there is no such attorney, then to the chief executive for the locality. For the purposes of this section, the term "party" includes any locality that is a signatory. If the Commonwealth is a party to the deed, deed of trust, or mortgage, the notice and a copy of the affidavit required by this subsection shall be sent to the Attorney General and to the director, chief executive officer, or head of the state agency or chairman of the board of the state entity in possession or that had possession of the property.

D. If, within 30 days after personal service or receiving confirmation of delivery of the notice and a copy of the affidavit (i) to all parties to the deed, deed of trust, or mortgage, including the current owner of the property; (ii) to the attorney who prepared the deed, deed of trust, or mortgage, if known and if possible; (iii) to the title insurance company, if known; and (iv) to the adjoining property owners, if necessary, pursuant to subsection C, no written objection is received from any party disputing the facts recited in the affidavit or objecting to its recordation, the corrective affidavit may be recorded by the attorney, and all parties to the deed, deed of trust, or mortgage shall be bound by the terms of the affidavit. The corrective affidavit shall contain (a) a statement that no objection was received from any party within the period and (b) a copy of the notice sent to the parties. The notice shall contain the attorney's Virginia State Bar number. The corrective affidavit shall be notarized.

E. A corrective affidavit that is recorded pursuant to this section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the original recordation of the deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first recorded. A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy who can be found.

F. The clerk shall record the corrective affidavit in the deed book and, notwithstanding their designation in the deed, deed of trust, or mortgage needing correction, index the affidavit in the names of the parties to the deed, deed of trust, or mortgage as grantors and grantees as set forth in the affidavit. The costs associated with the recording of a corrective affidavit pursuant to this section shall be paid by the party that records the corrective affidavit. An affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated in such affidavit. Any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to such recordation, including reasonable attorney fees and costs.

G. The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of the Commonwealth other than this section.

H. An affidavit under this section may be made in the following form, or to the same effect:

Corrective Affidavit

This Affidavit, prepared pursuant to Virginia Code § 55.1-609, shall be indexed in the names of _____ (grantor) and _____ (grantee), whose addresses are _____. The undersigned affiant, being first duly sworn, deposes and states as follows:

1. That the affiant is a Virginia attorney.

2. That the deed, deed of trust, or mortgage needing correction was made in connection with a real estate transaction in which _____ purchased real estate from _____, as shown in a deed recorded in the Clerk's Office of the Circuit Court of _____, in Deed Book _____, Page _____, or as Instrument Number _____; or in which real estate was encumbered, as shown in a deed recorded in the Clerk's Office of the Circuit Court of _____, in Deed Book _____, Page _____, or as Instrument Number _____.

3. That the property description in the aforementioned deed, deed of trust, or mortgage contains an obvious description error.

4. That the property description containing the obvious description error reads:

_____

_____.

5. That the correct property description should read:

_____

_____.

6. That this affidavit is given pursuant to § 55.1-609 of the Code of Virginia to correct the property description in the aforementioned deed, deed of trust, or mortgage and such description shall be as stated in paragraph 5 above upon recordation of this affidavit in the Circuit Court of _____.

7. That notice of the intent to record this corrective affidavit and a copy of this affidavit was delivered to all parties to the deed, deed of trust, or mortgage being corrected pursuant to § 55.1-609 of the Code of Virginia and that no objection to the recordation of this affidavit was received within the applicable period of time as set forth in § 55.1-609 of the Code of Virginia.

_____

(Name of attorney)

_____

(Signature of attorney)

_____

(Address of attorney)

_____

(Telephone number of attorney)

_____

(Bar number of attorney)

The foregoing affidavit was acknowledged before me

This _____ day of _____, 20_____, by

_____

Notary Public

My Commission expires _____.

Notary Registration Number: _____.

I. Notice under this section may be made in the following form, or to the same effect:

Notice of Intent to Correct an Obvious Description Error

Notice is hereby given to you concerning the deed, deed of trust, or mortgage described in the corrective affidavit, a copy of which is attached to this notice, as follows:

1. The attorney identified below has discovered or has been advised of an obvious description error in the deed, deed of trust, or mortgage recorded as part of your real estate settlement. The error is described in the attached affidavit.

2. The undersigned will record an affidavit to correct such error unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice to the following address:

_____

(Address)

_____

(Name of attorney)

_____

(Signature of attorney)

_____

(Address of attorney)

_____

(Telephone number of attorney)

_____

(Bar number of attorney)

§ 55.1-610. Recordation of copy of lost deed previously recorded in what is now West Virginia.

In any case when any deed was duly recorded before the formation of the state of West Virginia in any county or city now within the limits of West Virginia and such deed, after diligent search, cannot be found, upon affidavit of that fact by any party in interest, his agent, or his attorney, any court of the Commonwealth in which, or the clerk's office of which, the original might be recorded, or the clerk of any such court, may record a copy of such deed from the records of the court of West Virginia, or the clerk's office of such court in which such deed is recorded, duly certified by the clerk of such court, under the seal of the court, and the recordation of such copy shall have the same effect as the recordation of the original.

§ 55.1-611. Continuing in force acts establishing Torrens system.

The act entitled "An act to provide for the settlement, registration, transfer, and assurance of titles to land, and to establish courts of land registration, with jurisdiction for such purposes, and to make uniform the laws of the State enacting the same," approved February 24, 1916, as amended by an act approved March 20, 1916, and last amended by Chapter 227 of the Acts of 1948, approved March 13, 1948, is continued in force.

Article 2.

Acknowledgments Generally.

§ 55.1-612. Acknowledgment within the United States or its dependencies.

A circuit court of any county or city, or the clerk of any such court, shall record any writing as is described in § 55.1-600 as to any person whose name is signed to such writing, except that acknowledgment of contracts for the sale of real property shall require the seller or grantor of such real property to acknowledge his signature as provided in this section, except for contracts recorded after the death of the seller pursuant to § 64.2-523.

1. Upon the certificate of such clerk or his deputy, a notary public, a commissioner in chancery, or a clerk of any court of record within the United States or in Puerto Rico or any territory or other dependency or possession of the United States that such writing had been acknowledged before him by such person. Such certificate shall be written upon or attached to such writing and shall be substantially to the following effect:

I, _____, clerk (or deputy clerk or a commissioner in chancery) of the _____ court, (or a notary public) for the county (or city) aforesaid, in the state (or territory or district) of _____, do certify that E.F., or E.F. and G.H., and so forth, whose name (or names) is (or are) signed to the writing above (or hereto attached) bearing date on the _____ day of _____, has (or have) acknowledged the same before me in my county (or city) aforesaid.

Given under my hand this _____ day of _____.

2. Upon the certificate of acknowledgment of such person before any commissioner appointed by the Governor, within the United States, so written or attached, substantially to the following effect:

State (or territory or district) of _____:

I, _____, a commissioner appointed by the Governor of the Commonwealth of Virginia, for such state (or territory or district) of _____, do certify that E.F. (or E.F. and G.H., and so forth) whose name (or names) is (or are) signed to the writing above (or hereto attached) bearing date on the _____ day of _____ has (or have) acknowledged the same before me in my state (or territory or district) aforesaid.

Given under my hand this _____ day of _____.

3. Or upon the certificate of such clerk or his deputy, a notary public, a commissioner in chancery, or a clerk of any court of record within the United States or in Puerto Rico or any territory or other possession or dependency of the United States, or of a commissioner appointed by the Governor, within the United States, that such writing was proved as to such person, before him, by two subscribing witnesses thereto. Such certificate shall be written upon or attached to such writing and shall be substantially to the following effect:

State (or territory or district) of _____; county (or city) of _____: I, _____, clerk (or deputy clerk or a commissioner in chancery) of the _____ court, (or a notary public) for the county (or city) aforesaid, in the state (or territory or district) of _____ (or a commissioner appointed by the Governor of the Commonwealth of Virginia for such state (or territory or district) of _____), do certify that the execution of the writing above (or hereto attached) bearing date on the _____ day of _____, by A.B. (or A.B. and C.D., and so forth), whose name (or names) is (or are) signed thereto, was proved before me in my county (or city or state, territory, or district) aforesaid, by the evidence on oath of E.F. and G.H., subscribing witnesses to such writing.

Given under my hand this _____ day of _____.

When authority is given in § 55.1-600 or in this section to the clerk of a court in or outside of the Commonwealth, but within the United States, such authority may be exercised by his duly qualified deputy.

§ 55.1-613. Acknowledgments outside of the United States and its dependencies.

A circuit court of any county or city, or the clerk of such court, shall also record any writing as is described in § 55.1-600 as to any person whose name is signed thereto upon the certificate under the official seal of any ambassador, minister plenipotentiary, minister resident, charge d'affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of record of such country or of the mayor or other chief magistrate of any city, town, or corporation therein, that such writing was acknowledged by such person or proved as to him by two witnesses before any person having such appointment or before such court, mayor, or chief magistrate.

§ 55.1-614. Acknowledgments by persons subject to Uniform Code of Military Justice; validation of certain acknowledgments.

A circuit court of any county or city, or the clerk of such court, shall also record any writing as is described in § 55.1-600 as to any person whose name is signed thereto and who at the time of such acknowledgment:

1. Was a member of any of the Armed Forces of the United States, wherever they may have been;

2. Was employed by, or accompanying such armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands; or

3. Was subject to the Uniform Code of Military Justice of the United States outside of the United States, upon the certificate of any person authorized to take acknowledgments under 10 U.S.C. § 936(a), as amended.

Such certification shall be in substantially the same form as required by § 55.1-615.

Any acknowledgment taken before July 1, 1995, that is in substantial conformity with this section is hereby ratified, validated, and confirmed.

§ 55.1-615. Acknowledgments taken before commissioned officers in military service.

A circuit court of any county or city, or clerk of such court, shall also record any writing as is described in § 55.1-600 as to any person whose name is signed thereto who at the time of such acknowledgment was in active service in the Armed Forces of the United States, or as to the consort of such person, upon the certificate of any commissioned officer of the army, navy, marine corps, air force, coast guard, any state national guard that is federally recognized, or other branch of the service of which such person is a member, that such writing had been acknowledged before him by such person. Such certificate shall be written upon or attached to such writing and shall be substantially to the following effect:

In the army (or navy, etc.) of the United States.

I, _____, a commissioned officer of the army (or navy, marine corps, air force, coast guard, or other branch of service) of the United States with the rank of lieutenant (or ensign or other appropriate rank) whose home address is _____, do certify that E.F. (or E.F. and G.H., and so forth), whose name (or names) is (or are) signed to the writing above (or hereto attached), bearing date on the _____ day of _____, and who, or whose consort, is a private (corporal, seaman, captain, or other grade or rank) in the army (or navy, etc.) of the United States, and whose home address is _____, has (or have) acknowledged the same before me.

Given under my hand this _____ day of _____.

Such acknowledgment may be taken at any place where the officer taking the acknowledgment and the person whose name is signed to the writing may be. Such commissioned officer may take the acknowledgment of any person in any branch of the Armed Forces of the United States or the consort of such person.

Every acknowledgment executed prior to July 1, 1995, in substantial compliance with the provisions of this section is hereby validated, ratified, and confirmed, notwithstanding any error or omission with respect to any address, grade, or rank.

Article 3.

Uniform Recognition of Acknowledgments Act.

§ 55.1-616. "Notarial acts" defined; who may perform notarial acts outside the Commonwealth for use in the Commonwealth.

A. For the purposes of this article, "notarial acts" means acts that the laws and regulations of the Commonwealth authorize notaries public of the Commonwealth to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

B. Notarial acts may be performed outside the Commonwealth for use in the Commonwealth with the same effect as if performed by a notary public of the Commonwealth by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of the Commonwealth:

1. A notary public authorized to perform notarial acts in the place in which the notarial act is performed;

2. A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

3. An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the U.S. Department of State to perform notarial acts in the place in which the notarial act is performed;

4. A commissioned officer in active service with the Armed Forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the Armed Forces of the United States, or any other person serving with or accompanying a member of the Armed Forces of the United States; or

5. Any other person authorized to perform notarial acts in the place in which the notarial act is performed.

§ 55.1-617. Proof of authority of person performing notarial act.

A. If the notarial act is performed by any of the persons described in subdivisions B 1 through 4 of § 55.1-616 other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the notarial act. Further proof of his authority is not required.

B. If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the notarial act, there is sufficient proof of the authority of that person to act if:

1. Either a foreign service officer of the United States resident in the country in which the notarial act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the notarial act;

2. The official seal of the person performing the notarial act is affixed to the document; or

3. The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

C. If the notarial act is performed by a person other than one described in subsections A and B, there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

D. The signature and title of the person performing the notarial act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

§ 55.1-618. What person taking acknowledgment shall certify.

The person taking an acknowledgment shall certify that:

1. The person acknowledging appeared before him and acknowledged he executed the instrument; and

2. The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

§ 55.1-619. When form of certificate of acknowledgment accepted.

The form of a certificate of acknowledgment used by a person whose authority is recognized under § 55.1-616 shall be accepted in the Commonwealth if:

1. The certificate is in a form prescribed by the laws or regulations of the Commonwealth;

2. The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

3. The certificate contains the words "acknowledged before me" or their substantial equivalent.

§ 55.1-620. Meaning of "acknowledged before me."

For the purposes of this article, "acknowledged before me" means:

1. That the person acknowledging appeared before the person taking the acknowledgment;

2. That the person acknowledging acknowledged he executed the instrument;

3. That, in the case of:

a. A natural person acknowledging, he executed the instrument for the purposes stated in the instrument;

b. A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose stated in the instrument;

c. A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes stated in the instrument;

d. A person acknowledging as principal by an attorney-in-fact, he executed the instrument by proper authority as the act of the principal for the purposes stated in the instrument; or

e. A person acknowledging as a public officer, trustee, administrator, guardian, conservator, or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes stated in the instrument; and

4. That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

§ 55.1-621. Statutory short forms of acknowledgment.

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of the Commonwealth. The following forms shall be known as "Statutory Short Forms of Acknowledgment" and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

1. For an individual acting in his own right:

State of _____

County or city of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

2. For a corporation:

State of _____

County or city of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

3. For a partnership:

State of _____

County or city of _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

4. For an individual acting as principal by an attorney-in-fact:

State of _____

County or city of _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

5. By any public officer, trustee, or personal representative:

State of _____

County or city of _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

§ 55.1-622. Application of article; article cumulative.

A notarial act performed prior to June 26, 1970, is not affected by this article. This article provides an additional method of proving notarial acts. Nothing in this article diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of the Commonwealth.

§ 55.1-623. Uniform interpretation.

This article shall be so interpreted as to make uniform the laws of those states that enact it.

Article 4.

Deeds and Acknowledgments of Corporations.

§ 55.1-624. Deeds of corporations; how to be executed and acknowledged.

All deeds made by corporations shall be signed in the name of the corporation by the president or acting president, or any vice-president, or by such other person as may be authorized to do so by the board of directors of such corporation, and, if such deed is to be recorded, the person signing the name of the corporation shall acknowledge such authority in the manner provided by § 55.1-625.

§ 55.1-625. Acknowledgments on behalf of corporations and others.

When any writing purports to have been signed on behalf or by authority of any person or corporation, or in any representative capacity whatsoever, the certificate of the acknowledgment by the person so signing the writing shall be sufficient for the purposes of this and §§ 55.1-600, 55.1-612, 55.1-613, and 55.1-615, and for the recordation of such writing as to the person or corporation on whose behalf it is signed, or as to the representative character of the person so signing the writing, as the case may be, without expressing that such acknowledgment was on behalf or by authority of such other person or corporation or was in a representative capacity. In the case of a writing signed on behalf or by authority of any person or corporation or in any representative capacity, a certificate to the following effect shall be sufficient:

State (or territory or district) of _____, county (or city) of _____,: I, _____, a _____ (here insert the official title of the person certifying the acknowledgment) in and for the state (or territory or district) and county (or city) aforesaid, do certify that _____ (here insert the name or names of the persons signing the writing on behalf of the person or corporation, or the name of the person signing the writing in a representative capacity), whose name (or names) is (or are) signed to the writing above, bearing date on the _____ day of _____, has (or have) acknowledged the same before me in my county (or city) aforesaid. Given under my hand this _____ day of _____.

§ 55.1-626. Corporate acknowledgment taken before officer or stockholder.

Any notary or other officer duly authorized to take acknowledgments may take the acknowledgment to any deed or other writing executed by a company or to a company or for the benefit of a company, although he may be a stockholder, an officer, or both, in such company, provided that he is not otherwise interested in the property conveyed or disposed of by such deed or other writing, and nothing herein shall be construed to authorize any officer to take an acknowledgment to any deed or other writing executed by such company by and through him as an officer or stockholder of such company, or to him for the benefit of such company.

Article 5.

Validating Certain Acts, Deeds, and Acknowledgments.

§ 55.1-627. Acts of notaries public, etc., who have held certain other offices.

All certificates of acknowledgment to deeds and other writings, taken and certified by notaries public and commissioners in chancery, and all depositions taken, accounts and reports made, and decrees executed by any notary public, commissioner in chancery, or commissioner of accounts, who, since January 1, 1989, may have held the office of county treasurer, sheriff, attorney for the Commonwealth, county clerk, commissioner of the revenue, superintendent of the poor, county surveyor, or supervisor shall be held and are hereby declared valid and effective in all respects if otherwise valid and effective according to the law then in force.

§ 55.1-628. Validation of acknowledgments when seal not affixed.

When a certificate of acknowledgment was made prior to July 1, 1995, to any instrument in writing required by this chapter to be acknowledged and the notary or other official whether of this or some other state taking such acknowledgment failed to affix his official seal to such certificate of acknowledgment when a seal was necessary, the certificate of acknowledgment shall be as valid for all purposes as if such seal had been affixed, and the deed shall be, and shall since such date have been, notice to all persons as effectually as if such seal had been affixed, provided that such acknowledgment was in other respects sufficient.

§ 55.1-629. Acknowledgment taken by trustee in deed of trust.

All certificates of acknowledgment to deeds of trust made and certified prior to March 23, 1936, by persons being trustees in such deeds shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force, and each such deed of trust that has been recorded in any clerk's office in the Commonwealth upon such a certificate shall be held to be duly and regularly recorded if such recordation is otherwise valid according to the law then in force.

Nothing in this section shall affect or diminish the rights or remedies of any person who intervened after the recordation of any such deed of trust but prior to March 23, 1936.

§ 55.1-630. Acknowledgment taken by trustee in deed of trust; later date.

Any certificate of acknowledgment of any deed of trust, taken and certified prior to July 1, 1995, by a person named as trustee therein who was, at the time of taking the acknowledgment, an officer authorized by law to take acknowledgments of deeds, is declared to be as valid and of the same force and effect as if such person had not been a trustee in the deed of trust. Subject to the provisions of § 55.1-602, however, this section shall not affect any right or remedy of any third party that accrued after the recordation of the deed of trust and before July 1, 1995.

§ 55.1-631. Certain acknowledgments taken and certified before July 1, 1995.

All certificates of acknowledgments to deeds and other writings taken and certified prior to July 1, 1995, by commissioners of deeds of states other than the Commonwealth, appointed or commissioned by the governor of such state, and by notaries public appointed or commissioned by the Governor of the Commonwealth, or appointed or commissioned under the laws of any state other than the Commonwealth, or any other officer authorized under this chapter to take and certify acknowledgments of deeds and other writings, that omit the citation of the date of the deed or certificate where it is clear from the content of the entire certificate and the instrument that has been acknowledged that the identity of the instrument or the certificate is the same, or if it can reasonably be inferred from the certificate of the person recording the instrument or other writing that the certificate refers to the same instrument, shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force, or otherwise appear valid upon their face, and all such deeds and other writings that have been recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation is otherwise valid according to the law then in force.

§ 55.1-632. Acknowledgments taken by certain justices of the peace, mayors, etc.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by justices of the peace, mayors of cities or towns, police justices, and civil and police justices who by virtue of their offices had the powers and authority of justices of the peace, when such justices of the peace, mayors, police justices, or civil and police justices are designated in the certificates of acknowledgments as mayors, police justices, or civil and police justices shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force.

§ 55.1-633. Acknowledgments taken by officers after expiration of terms.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by commissioners of deeds of states other than the Commonwealth, appointed or commissioned by the governor

of such state, and by notaries public appointed or commissioned by the Governor of the Commonwealth, or appointed or commissioned under the laws of any state other than the Commonwealth, or any other officer authorized under this chapter to take and certify acknowledgments to deeds and other writings who took and certified such acknowledgments after their term of office had expired, shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force or appear to be valid upon their face, and all such deeds and other writings that have been recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation is otherwise valid according to the law then in force.

§ 55.1-634. Acknowledgments taken by notaries in service during World War I.

All certificates of acknowledgment to deeds and other writings taken and certified in the Commonwealth prior to June 18, 1920, by notaries public who served in the army, navy, or marine corps of the United States during World War I shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force.

§ 55.1-635. Acknowledgments before foreign officials who failed to affix seals.

All certificates of acknowledgment to deeds and other writings made and certified prior to July 1, 1995, before officials in any foreign country authorized by law to take and certify such acknowledgments, to which such officials failed to affix their official seals, shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force.

§ 55.1-636. Acknowledgments taken by notaries in foreign countries.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by notaries public residing in foreign countries shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force.

§ 55.1-637. Acknowledgments taken by officer who was spouse of grantee.

Any certificate of acknowledgment to a deed or other writings taken prior to July 1, 1995, by a notary public or other officer duly authorized to take acknowledgments who at the time of taking such acknowledgment was the spouse of the grantee in the deed or other instrument shall be held and is hereby declared valid and effective in all respects if otherwise valid according to the law then in force. All acknowledgments of conveyances to a fiduciary taken before an officer who is the husband or wife of such officer and who has no beneficial or monetary interest other than possible commissions or legal fees shall be conclusively presumed valid.

§ 55.1-638. Acknowledgment when notary certifies erroneously as to expiration of commission.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by a notary public appointed or commissioned by the Governor, or appointed or commissioned under the laws of any state other than the Commonwealth, who mistakenly or by error certified that his commission had expired at the time he made such certificate, when in fact his commission had not at that time expired, shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law of the Commonwealth then in force, and the date and life of the notary's commission may be proved aliunde his certificate in any proceeding in which the capacity or authority of such notary is or shall be questioned, and all such deeds and other writings that have been recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation is otherwise valid according to the law then in force.

§ 55.1-639. Acknowledgments before officer of city or county consolidating, etc., prior to expiration date of commission.

All certificates of acknowledgment to deeds and other writings taken and certified by a notary public or other officer originally duly authorized to take acknowledgments in any city or county that consolidated with other political subdivisions or became a city, as the case may be, prior to the normal expiration date of the commission of such notary public or other officer are hereby declared to be valid to the same extent they would have been valid as if such notary public or other officer had been commissioned for such consolidated political subdivision or city to which any such county was transformed.

§ 55.1-640. Acknowledgments taken before notary whose commission has expired.

All certificates of acknowledgment to deeds and other writings taken and certified prior to March 22, 1930, by notaries public appointed or commissioned by the Governor who took and certified such acknowledgments after their term of office had expired shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force, and all such deeds and other writings that have been

recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation is otherwise valid according to the law then in force.

§ 55.1-641. Acknowledgments taken before notary whose commission has expired; later date; intervening vested rights saved.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by notaries public appointed or commissioned by the Governor who took and certified such acknowledgments after their term of office had expired shall be held and are hereby declared valid and effective in all respects if otherwise valid according to the law then in force, and all such deeds and other writings that have been recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation is otherwise valid according to the law then in force; however, nothing in this section shall be so construed as to affect any intervening vested rights.

§ 55.1-642. Acknowledgments taken before notary who was appointed but failed to qualify; vested rights saved.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by a person who was appointed as a notary public by the Governor but who failed to qualify as provided by law shall be held and are hereby declared valid and effective in all respects if otherwise valid, and all such deeds and other writings that have been recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation is otherwise valid according to law; however, nothing in this section shall be so construed as to affect any intervening vested rights.

§ 55.1-643. Acknowledgments taken before a notary at large who failed to cite the jurisdiction in which the acknowledgment was taken; vested rights saved.

All certificates of acknowledgment to deeds and other writings taken and certified prior to July 1, 1995, by a person who was appointed a notary public for the Commonwealth at large by the Governor but who failed to include in such certificates of acknowledgment the county or city in which the notarial act was performed shall be held and are hereby declared valid and effective in all respects if otherwise valid, and all such deeds and other writings that have been recorded in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation is otherwise valid according to law; however, nothing in this section shall be so construed as to affect any intervening vested rights.

§ 55.1-644. Deeds defectively executed by corporation.

Any deed of conveyance of real estate executed in the Commonwealth prior to July 1, 1995, by a corporation of the Commonwealth, when the certificate of acknowledgment of such deed fails to state the representative capacity of the party signing such deed for the corporation, shall be held and is hereby declared a valid and effective conveyance in every respect if otherwise valid according to the law in force at the time the deed was executed if such corporation, since making such conveyance, has been dissolved or otherwise gone out of existence.

§ 55.1-645. Deeds to which corporate seal not affixed or not attested.

Any deed of conveyance of real estate executed within or outside of the Commonwealth by a corporation of the Commonwealth or any other state to which deed the seal of the corporation was not affixed, or to which the seal was affixed but was not attested to by the secretary or by some other authorized officer of the corporation, shall be held to be valid and is hereby declared a valid and effective conveyance in every respect if otherwise valid according to the law then in force.

§ 55.1-646. Acknowledgments of corporations taken by officers or stockholders.

No acknowledgment heretofore taken to any deed or any writing executed by a company, or for the benefit of a company, shall be held to be invalid by reason of the acknowledgment having been taken by a notary or other officer duly authorized to take acknowledgments who, at the time of taking the acknowledgment, was a stockholder, an officer, or both, in the company that executed the deed or writing, or for the benefit of which the deed or writing was executed, but who was not otherwise interested in the property conveyed or disposed of by such deed or writing, and such deed or other writing, and the recordation of such deed or other writing, shall be valid in all respects as if this section had been in force when it was executed.

§ 55.1-647. Recordation certificate not signed by clerk.

A. All deeds, orders of probate, fiduciary accounts, and all other papers and writings received prior to July 1, 1995, by any clerk of any court of the Commonwealth and transcribed, or purported to be transcribed, in the proper book in such clerk's office provided by law for the transcribing and recordation of such deeds, orders of probate, fiduciary accounts, or other papers and writings, the certificate of receipt and of recordation of

which had not received the attesting signature of such clerk on the date aforesaid, and which had not on such date been verified as required by law, shall prima facie be, and be deemed to be, as truly received, recorded, and verified as if the same had been so attested by the signature of such clerk.

B. Every clerk of any court of the Commonwealth in whose office any such deed, order of probate, fiduciary account, or other paper or writing as is mentioned in subsection A has been transcribed upon the proper book in such office, provided by law therefor, and which transcription has not received the attesting signature of the clerk who recorded the same, upon production before such clerk of the original of such deed, order of probate, fiduciary account, or paper or writing shall verify the accuracy of such transcription by a careful examination and comparison of such transcription with the original paper so recorded, and thereupon the clerk shall attest such transcription by signing thereto the name of the clerk who received the original paper for record and his own name as follows:

"Teste _____, former clerk per

_____, his successor."

C. For such service the clerk shall receive a fee of 25 cents ($0.25), to be paid by the person for whose benefit the service was performed, and the record, so certified and verified, shall have the same effect as if it had been properly certified and verified by the clerk who received the same and who should have so certified and verified the same.

D. This section shall have a retroactive effect.

§ 55.1-648. Recordation certificate not signed by clerk; when clerk has died.

Any deed or other instrument or writing recorded before July 1, 1995, upon the proper deed book in the clerk's office of the circuit court of any county or any court of record of any city, when the clerk of such court failed to sign the certificate of recordation thereof and afterwards died, and any will or other instrument or writing recorded before July 1, 1995, upon the proper will book in any such clerk's office, when such clerk failed to sign the certificate of probate and recordation thereof and afterwards died, shall be as valid and of the same force and effect as if such certificate of recordation or certificate of probate and recordation had been signed by such clerk at the time such deed, will, or other instrument or writing was so recorded.

Article 6.

United States Judgments; Bankruptcy.

§ 55.1-649. Recordation of judgments affecting title to land.

The clerk of the court of any county or city in which there is any partition of land under any order, or any recovery of land under judgment, shall transmit to the clerk of the court of each county or city in whose office deeds to such land or any part thereof are recorded a copy of such order or judgment, and of such partition or assignment, and of the order confirming the same, along with such description of the land as may appear in the papers of the cause. The clerk of the court of such county or city shall record the same in his deed book and index it in the name of the person who had the land before and also in the name of the person who became entitled under such partition, assignment, or recovery.

§ 55.1-650. Judgments of United States courts affecting realty.

A copy of any judgment or order of any United States court affecting the title to, boundary or possession of, or any interest in and to any real estate lying wholly or partly within the Commonwealth, when duly certified by the proper officer of any such court, may be filed with the clerk of the court in whose office deeds are recorded of the county or city in which the real estate so affected, or any part of such real estate, is situated, and when so filed shall be recorded by such clerk in the current deed book in his office and indexed in the names of the persons whose interests appear to be affected thereby, upon the payment of the same fee prescribed by law to be paid for the recordation of similar judgments or orders of state courts.

§ 55.1-651. Orders in bankruptcy.

Certified copies of orders of adjudication of bankruptcy made pursuant to the acts of Congress relating to bankruptcy, certified copies of orders of sale, orders confirming sales, and such other orders entered in bankruptcy proceedings as any party in interest may wish to have recorded in the appropriate clerk's office, or such orders as the referee or the judge having jurisdiction directs to be recorded, may be filed with the clerk of the court authorized to record deeds for the county or city in which any real estate owned by the bankrupt is situated. Such orders shall be recorded in the deed books and indexed in the name of the bankrupt. For each such recordation, the clerk shall be paid a fee as prescribed in subdivision A 2 of § 17.1-275.

§ 55.1-652. Certificates of commencement of case in bankruptcy.

Certificates of commencement of case signed by clerks of bankruptcy courts or clerks of United States district courts, issued pursuant to the acts of Congress relating to bankruptcy, may be filed with the clerk of the court authorized to record deeds for the county or city in which the property of the debtor, for which such certificate has been issued, is located. Such certificate shall be recorded in the deed books and properly indexed in the name of the trustee in bankruptcy in the grantee index and the debtor in the grantor index. For such recordation, the clerk shall receive a fee as prescribed in subdivision A 2 of § 17.1-275.

Article 7.

Uniform Federal Lien Registration Act.

§ 55.1-653. Where notices and certificates affecting liens to be filed.

A. Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens shall be filed in accordance with this article.

B. Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens, including certificates of redemption, shall be filed in the office of the clerk of the circuit court of the county or city in which the real property subject to the lien is situated.

C. Notices of liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

1. If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in the Commonwealth, as these entities are defined in the internal revenue laws of the United States, in the office of the clerk of the State Corporation Commission.

2. In all other cases, in the office of the clerk of the circuit court of the county or city (i) where the person against whose interest the lien applies resides or (ii) in the case of a trust or a decedent's estate, having jurisdiction over the qualification of the trustee or probate of the will, at the time of filing of the notice of lien.

§ 55.1-654. Certification of notices and certificates.

Certification of notices of tax liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate or by any official or entity of the United States responsible for filing or certifying notice of any lien other than a tax lien entitles them to be filed, and no other attestation, certification, or acknowledgment is necessary.

§ 55.1-655. Duties of filing officers.

A. If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection B is presented to the filing officer and:

1. He is the clerk of the State Corporation Commission, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of § 8.9A-519 as if the notice were a financing statement as defined in § 8.9A-102; or

2. He is any other officer described in § 55.1-653, he shall endorse thereon his identification and the date and time of receipt and file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director in the case of tax liens, and the total amount appearing on the notice of lien, and he shall index and record the same where judgments are indexed and recorded.

B. If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the clerk of the State Corporation Commission for filing, he shall:

1. Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of § 8.9A-513, except that the notice of lien to which the certificate relates shall not be removed from the files; and

2. Cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of § 8.9A-512.

C. If a refiled notice of federal lien referred to in subsection A or any of the certificates or notices referred to in subsection B is presented for filing to any other filing officer specified in § 55.1-653, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

D. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this article, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is $1. Upon request, the filing officer shall furnish a copy of

any notice of federal tax lien or notice or certificate affecting a federal lien for a fee of 50 cents ($0.50) per page.

§ 55.1-656. Fees of filing officers other than clerk of State Corporation Commission.

The fee to be paid to any officer other than the clerk of the State Corporation Commission for filing and indexing each notice of lien or certificate or notice affecting the lien or providing a copy of such notice or certificate of such notice is $5.

The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

§ 55.1-657. Fees of clerk of State Corporation Commission.

Notwithstanding any other provisions of this article, the fees for filing, indexing, searching, or amending or for certificates of discharge or subordination or any other fee that may be chargeable by the clerk of the State Corporation Commission shall be the same as those permitted to be charged according to the schedule of fees maintained by the clerk of the State Corporation Commission.

§ 55.1-658. Construction of article.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

§ 55.1-659. Certificates and notices affecting liens filed on or before July 1, 1970.

If a notice of lien was filed on or before July 1, 1970, any certificate or notice affecting the lien shall be filed in the same office.

§ 55.1-660. No action to be brought against the State Corporation Commission or its staff.

No action shall be brought against the State Corporation Commission or any member of the staff of the State Corporation Commission claiming damage for alleged errors or omissions in the performance of the duties imposed by this article on the State Corporation Commission.

Article 8.

Uniform Real Property Electronic Recording Act.

§ 55.1-661. Definitions.

As used in this article, unless the context requires a different meaning:

"Clerk" means a clerk of the circuit court.

"Document" means information that is:

1. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

2. Eligible to be recorded in the land records maintained by the clerk.

"Electronic," as defined in Uniform Electronic Transactions Act (§ 59.1-479 et seq.), means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic document" means a document received by the clerk in electronic form.

"Electronic notarization" means an official act by a notary public in accordance with the Virginia Notary Act (§ 47.1-1 et seq.) and § 55.1-618 with respect to an electronic document.

"Electronic signature," as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"eRecording System" is the automated electronic recording system implemented by the clerk for the recordation of electronic documents among the land records maintained by the clerk.

"Filer" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity that files an electronic document among the land records maintained by the clerk.

"Land records document" means any writing authorized by law to be recorded, whether made on paper or in electronic format, that the clerk records affecting title to real property.

§ 55.1-662. Validity of electronically filed and recorded land records.

A. If a law requires, as a condition for recording, that a land records document be an original, be on paper or another tangible medium, or be in writing, an electronic land records document satisfying this article satisfies the law.

B. If a law requires, as a condition for recording, that a land records document be signed, an electronic signature satisfies the law.

C. A requirement that a land records document or a signature associated with a land records document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic notarization of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the land records document or signature. A physical or electronic image of a stamp, impression, or seal of the notary is not required to accompany an electronic signature.

§ 55.1-663. Recording of electronic documents among the land records.

A. A clerk of a circuit court who implements an eRecording System shall do so in compliance with standards established by the Virginia Information Technologies Agency.

B. A clerk of a circuit court may receive, index, store, archive, and transmit electronic land records.

C. A clerk of a circuit court may provide for access to, and for search and retrieval of, land records by electronic means.

D. A clerk of a circuit court who accepts electronic documents for recording among the land records shall continue to accept paper land records and shall place entries for both types of land records in the same indices.

E. A clerk of a circuit court may convert paper records accepted for recording into electronic form. The clerk of circuit court may convert into electronic form land records documents recorded before the clerk of circuit court began to record electronic records.

F. Any fee or tax that a clerk of circuit court is authorized to collect may be collected electronically.

§ 55.1-664. Uniform standards.

In consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, and interested citizens and businesses, the Virginia Information Technologies Agency shall develop standards to implement electronic recording of real property documents. The Virginia Information Technologies Agency shall consider standards and practices of other jurisdictions, the most recent standards promulgated by national standard-setting bodies, such as the Real Property Records Industry Association, the views of interested persons and other governmental entities, and the needs of localities of varying sizes, population, and resources.

§ 55.1-665. Uniformity of application and construction.

In applying and construing this article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 55.1-666. Relation to Electronic Signatures in Global and National Commerce Act.

To the extent allowed by law, this article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede § 101(c) of that Act (15 U.S.C. § 7001(c)) or § 104 of that Act (15 U.S.C. § 7004), or authorize electronic delivery of any of the notices described in § 103(b) of that Act (15 U.S.C. § 7003(b)).

CHAPTER 7.

VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT.

§ 55.1-700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Electronic delivery," for purposes of delivery of the disclosures required by this chapter, means sending the required disclosures via the Internet, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

"Notification" means a statement of the availability of any disclosures required by this chapter on the Real Estate Board's website or delivery of any such disclosures to the purchaser.

"Ratification" means the full execution of a real estate purchase contract by all parties.

"Real estate contract" means a contract for the sale, exchange, or lease with the option to buy of residential real estate subject to this chapter.

§ 55.1-701. Applicability.

The provisions of this chapter apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy of residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson.

§ 55.1-702. Exemptions.

A. The following are specifically excluded from the provisions of this chapter:

1. Transfers pursuant to court order including transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale or by a deed in lieu of a foreclosure,

transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a judgment for specific performance. Also, transfers by an assignment for the benefit of creditors pursuant to Chapter 18.1 (§ 8.01-525.1 et seq.) of Title 8.01 and transfers pursuant to escheats pursuant to Chapter 24 (§ 55.1-2400 et seq.).

2. Transfers to a beneficiary of a deed of trust pursuant to a foreclosure sale or by a deed in lieu of foreclosure, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.

3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

4. Transfers from one or more co-owners solely to one or more other co-owners.

5. Transfers made solely to any combination of a spouse or one or more persons in the lineal line of consanguinity of one or more of the transferors.

6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.

7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.

8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.

9. Transfers involving the first sale of a dwelling, provided that this exemption shall not apply to the disclosures required by § 55.1-704.

B. Notwithstanding the provisions of subdivision A 9, the builder of a new dwelling shall disclose in writing to the purchaser all known material defects that would constitute a violation of any applicable building code. In addition, for property that is located wholly or partially in any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether mining operations have previously been conducted on the property or (ii) the presence of abandoned mines, shafts, or pits, if any. The disclosures required by this subsection shall be made by a builder or owner (a) when selling a completed dwelling, before ratification of the real estate purchase contract or (b) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder or owner may have to the purchaser. The disclosure required by this subsection may be made on the disclosure form described in § 55.1-703. If no defects are known by the builder to exist, no written disclosure is required by this subsection.

§ 55.1-703. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, or with regard to any covenants and restrictions as may be recorded among the land records affecting the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary, including obtaining a home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel, including zoning classification or permitted uses of adjacent parcels, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of (i) any local ordinance creating such district, (ii) any official map adopted by the locality depicting historic districts, and (iii) any materials available from the locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish buildings or signs in the local historic

district and (b) the necessity of any local review board or governing body approvals prior to doing any work on a property located in a local historic district, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

4. The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

5. The owner makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

6. The owner makes no representations with respect to whether the property is within a dam break inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence they deem necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones;

7. The owner makes no representations with respect to the presence of any stormwater detention facilities located on the property, or any maintenance agreement for such facilities, and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any stormwater detention facilities on the property, or any maintenance agreement for such facilities, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

8. The owner makes no representations with respect to the presence of any wastewater system, including the type or size of the wastewater system or associated maintenance responsibilities related to the wastewater system, located on the property, and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any wastewater system on the property and the costs associated with maintaining, repairing, or inspecting any wastewater system, including any costs or requirements related to the pump-out of septic tanks, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

9. The owner makes no representations with respect to any right to install or use solar energy collection devices on the property;

10. The owner makes no representations with respect to whether the property is located in one or more special flood hazard areas, and purchasers are advised to exercise whatever due diligence they deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether the property is located in one or more special flood hazard areas, (ii) reviewing any map depicting special flood hazard areas, and (iii) determining whether flood insurance is required, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract;

11. The owner makes no representations with respect to whether the property is subject to one or more conservation or other easements, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event prior to settlement pursuant to such contract; and

12. The owner makes no representations with respect to whether the property is subject to a community development authority approved by a local governing body pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, including determining whether a copy of the resolution or ordinance has been recorded in the land records of the circuit court for the locality in which the community development authority district is located for each tax parcel included in the district pursuant to § 15.2-5157, but in any event prior to settlement pursuant to such contract.

C. The residential property disclosure statement shall be delivered in accordance with § 55.1-709.

§ 55.1-704. Required disclosures pertaining to a military air installation.

The owner of residential real property located in any locality in which a military air installation is located shall disclose to the purchaser whether the subject parcel is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map by the locality in which the property is located. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website. Such disclosure shall state the specific noise zone or accident potential zone, or both, in which the property is located according to the official zoning map.

§ 55.1-705. Required disclosures; defective drywall.

Notwithstanding the exemptions in § 55.1-702, if the owner of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit, the owner shall provide to a prospective purchaser a written disclosure that the property has defective drywall. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

§ 55.1-706. Required disclosures; pending building or zoning violations.

Notwithstanding the exemptions in § 55.1-702, if the owner of a residential dwelling unit has actual knowledge of any pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, sanitary living conditions of the property of which the owner has been notified in writing by the locality, or any pending violation of the local zoning ordinance that the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, the owner shall provide to a prospective purchaser a written disclosure that so states. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter.

§ 55.1-707. Permissive disclosure; tourism activity zone.

An owner of residential property located partially or wholly within a designated tourism activity zone established pursuant to § 15.2-982 may disclose in writing to any prospective purchaser or lessee of the property that the subject property is located within a tourism activity zone, with a description of potential impacts associated with the parcel's location in a tourism activity zone, including impacts caused by special events, parades, temporary street closures, and indoor and outdoor entertainment activities.

§ 55.1-708. Required disclosures; property previously used to manufacture methamphetamine.

Notwithstanding the exemptions in § 55.1-702, if the owner of a residential dwelling unit has actual knowledge that such residential property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, the owner shall provide to a prospective purchaser a written disclosure that so states. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website and otherwise in accordance with this chapter.

§ 55.1-709. Time for disclosure; termination of contract.

A. The owner of residential real property subject to this chapter shall provide notification to the purchaser of any disclosures required by this chapter prior to the ratification of a real estate purchase contract or otherwise be subject to the provisions of subsection B. The disclosures required by this chapter shall be provided by the Real Estate Board on its website.

B. If the disclosures required by this chapter are delivered to the purchaser after ratification of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract upon or prior to the earliest of (i) three days after delivery of the disclosure statement in person or by electronic delivery; (ii) five days after the postmark if the disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the purchaser's making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be a certificate of service prepared by the sender confirming such mailing;

3. Electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.

C. Notwithstanding the provisions of subsection B of § 55.1-713, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have the right to terminate a real estate purchase contract pursuant to this section for failure of the property owner to timely provide any disclosure required by this chapter.

§ 55.1-710. Owner liability.

A. Except with respect to the disclosures required by § 55.1-704, the owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this chapter if (i) the error, inaccuracy, or omission was not within the actual knowledge of the owner or was based on information provided by public agencies or by other persons providing information that is required to be disclosed pursuant to this chapter, or the owner reasonably believed the information to be correct, and (ii) the owner was not grossly negligent in obtaining the information from a third party and transmitting it. The owner shall not be liable for any error, inaccuracy, or omission of any information required to be disclosed by § 55.1-704 if the error, inaccuracy, or omission was the result of information provided by an officer or employee of the locality in which the property is located.

B. The delivery by a public agency or other person, as described in subsection C, of any information required to be disclosed by this chapter to a prospective purchaser shall be deemed to comply with the requirements of this chapter and shall relieve the owner of any further duty under this chapter with respect to that item of information.

C. The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood-destroying insect control expert, contractor, or home inspection expert, dealing with matters within the scope of the professional's license or expertise, shall satisfy the requirements of this chapter if the information is provided to the prospective purchaser pursuant to a request for such information, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this chapter and, if so, shall indicate the required disclosures, or portions of such required disclosures, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or portions of items of information, other than those expressly set forth in the statement.

§ 55.1-711. Change in circumstances.

If information disclosed in accordance with this chapter is subsequently rendered or discovered to be inaccurate as a result of any act, occurrence, information received, circumstance, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter. However, at or before settlement, the owner shall be required to disclose any material change in the disclosures made relative to the property. If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information, provided that the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner, and is not used for the purpose of circumventing or evading this chapter.

§ 55.1-712. Duties of real estate licensees.

A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations under this chapter. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations under this chapter. Provided that a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this chapter and shall not be liable to any party to a residential real estate transaction for a violation of this chapter or for any failure to disclose any information regarding any real property subject to this chapter.

§ 55.1-713. Actions under this chapter.

A. Notwithstanding any other provision of this chapter or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that the real property was the site of:

1. An act or occurrence that had no effect on the physical structure of the real property, its physical environment, or the improvements located thereon; or

2. A homicide, felony, or suicide.

B. The purchaser's remedies for failure of an owner to comply with the provisions of this chapter are as follows:

1. If the owner fails to provide any of the applicable disclosures required by this chapter, the contract may be terminated subject to the provisions of subsection B of § 55.1-709.

2. In the event that the owner fails to provide any of the applicable disclosures required by this chapter, or the owner misrepresents, willfully or otherwise, the information required in such disclosure, except as result of information provided by an officer or employee of the locality in which the property is located, the purchaser may maintain an action to recover his actual damages suffered as the result of such violation. Notwithstanding the provisions of this subdivision, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have a right to maintain an action for damages pursuant to this section.

C. Any action brought under this section shall be commenced within one year of the date the purchaser received the applicable disclosures required by this chapter. If the disclosures required by this chapter were not delivered to the purchaser, an action shall be commenced within one year of the date of settlement, if by sale, or occupancy, if by lease with an option to purchase.

Nothing contained in this chapter shall prevent a purchaser from pursuing any remedies at law or equity otherwise available against an owner in the event of an owner's intentional or willful misrepresentation of the condition of the subject property.

§ 55.1-714. Real Estate Board to develop form; when effective.

An owner shall be required to make disclosures required by this chapter for real property subject to a real estate purchase contract that is fully executed by all parties. The Real Estate Board shall develop the form for signature by the parties advising the purchaser to review the residential property disclosure statement on the Board's website in accordance with § 54.1-2105.1. The Board may at any time amend the residential property disclosure statement and the form for signature by the parties as the Board deems necessary and appropriate.

CHAPTER 8.

EXCHANGE FACILITATORS ACT.

§ 55.1-800. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affiliated with" means that a person directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the other specified person.

"Change in control" means any transfer within 12 months of more than 50 percent of the assets or ownership interests, direct or indirect, of the exchange facilitator.

"Commingle" means to mix together exchange funds with operating and other nonexchange funds belonging to or under control of the exchange facilitator in such a manner that a client's exchange funds cannot be distinguished from operating or other nonexchange funds belonging to or under control of the exchange facilitator.

"Deposit account" means a demand, time, savings, passbook, money market, certificate of deposit, or similar account maintained with a financial institution.

"Exchange Accommodation Titleholder" or "EAT" has the same meaning ascribed thereto in IRS Revenue Procedure 2000-37.

"Exchange client" means the taxpayer with whom the exchange facilitator enters into an agreement described in subdivision 1 of the definition of "exchange facilitator."

"Exchange facilitator" means a person that:

1. For a fee facilitates an exchange of like-kind property by entering into an agreement with a taxpayer:

a. By which the exchange facilitator acquires from such taxpayer the contractual rights to sell such taxpayer's relinquished property located in the Commonwealth and transfer a replacement property to such taxpayer as a qualified intermediary as that term is defined under Treasury Regulation § 1.1031(k)-1(g)(4);

b. To take title to a property located in the Commonwealth as an Exchange Accommodation Titleholder; or

c. To act as a qualified trustee or qualified escrow holder as those terms are defined under Treasury Regulation § 1.1031(k)-1(g)(3), except as otherwise provided in this definition; or

2. Maintains an office in the Commonwealth for the purpose of soliciting business as an exchange facilitator.

"Exchange facilitator" does not include (i) the taxpayer or disqualified person as that term is defined under Treasury Regulation § 1.1031(k)-1(k) seeking to qualify for the nonrecognition provisions of Internal Revenue Code § 1031; (ii) any financial institution or any title insurance company, underwritten title company, or escrow company that is merely acting as a depository for exchange funds or that is acting solely as a qualified escrow holder or qualified trustee as those terms are defined under Treasury Regulation § 1.1031(k)-1(g)(3), and is not otherwise facilitating exchanges; (iii) a person who advertises for and teaches seminars or classes or otherwise gives presentations to attorneys, accountants, real estate professionals, tax professionals, or other professionals where the primary purpose is to teach the professionals about tax deferred exchanges or train them to act as exchange facilitators; or (iv) an entity that is wholly owned by an exchange facilitator or that is wholly owned by the same person as the exchange facilitator and is used by such entity to facilitate exchanges or to take title to property in the Commonwealth as an EAT.

"Exchange funds" means the funds received by the exchange facilitator from or on behalf of the exchange client for the purpose of facilitating an exchange of like-kind property.

"Fee" means, for purposes of subdivision 1 of the definition of "exchange facilitator," compensation of any nature, direct or indirect, monetary or in-kind, that is received by a person or a related person as described in Internal Revenue Code § 267(b) or 707(b) for any services relating to or incidental to the exchange of like-kind property under Internal Revenue Code § 1031.

"Financial institution" means any bank, credit union, savings and loan association, savings bank, or trust company chartered under the laws of the Commonwealth or the United States whose accounts are insured by the full faith and credit of the United States of America, the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or other similar or successor programs and any direct or indirect subsidiary of such bank, credit union, savings and loan association, savings bank, or trust company.

"Person" means, in addition to the singular, persons, groups of persons, cooperative associations, limited liability companies, firms, partnerships, corporations, or other legal entities and includes the agents and employees of any such person.

"Transferee" means the party or parties to whom the ownership or control of the exchange facilitator has been transferred.

§ 55.1-801. Change in control.

An exchange facilitator shall notify all existing exchange clients whose relinquished property is located in the Commonwealth, or whose replacement property held under a Qualified Exchange Accommodation Agreement is located in the Commonwealth, of any change in control of the exchange facilitator. Such notification shall be made to the exchange facilitator's clients within 10 business days following the effective date of such change in control either by facsimile or email transmission, or by first-class mail, and by posting such notice of change in control on the exchange facilitator's website, if any, for a period ending not sooner than 90 days after the change in control. Such notification shall set forth the name, address, and other contact information of the transferees. Notwithstanding the above, if the exchange facilitator is a publicly traded company and remains a publicly traded company after a change in control, the publicly traded company shall not be required to notify its existing clients of such change in control.

§ 55.1-802. Separately identified accounts, or qualified escrows or qualified trusts.

A. An exchange facilitator at all times shall:

1. Deposit the exchange funds in a deposit account that is a separately identified account, as defined in Treasury Regulation § 1.468B-6(c)(ii), and provide that any withdrawals from such separately identified account require the written authorization of the exchange client and written acknowledgment of the exchange facilitator. Authorization for withdrawals may be delivered by any commercially reasonable means, including (i) the exchange client's delivery to the exchange facilitator of the exchange client's authorization to disburse exchange funds and the exchange facilitator's delivery to the financial institution of the exchange facilitator's authorization to disburse exchange funds or (ii) delivery to the financial institution of both the exchange client's and the exchange facilitator's authorizations to disburse exchange funds; or

2. Deposit the exchange funds in a deposit account that is a qualified escrow or qualified trust as those terms are defined under Treasury Regulation § 1.1031(k)-1(g)(3).

B. The deposit account shall be with a financial institution, and the interest earned on such account shall accrue to the parties as provided in a written agreement between the exchange facilitator and the exchange client. However, the exchange client may expressly direct the exchange facilitator in writing to invest the exchange proceeds in an investment of the exchange client's choice, provided that the exchange facilitator provides written acknowledgment back to the exchange client that includes a confirmation of how the exchange proceeds will be invested.

§ 55.1-803. Errors and omissions insurance; cash or letters of credit.

A. An exchange facilitator at all times shall:

1. Maintain a policy of errors and omissions insurance in an amount not less than $250,000 executed by an insurer authorized to do business in the Commonwealth; or

2. Deposit an amount of cash or provide irrevocable letters of credit equivalent to the sum of not less than $250,000.

B. The exchange facilitator may maintain errors and omissions insurance, cash, or irrevocable letters of credit in excess of the amounts required in this section.

§ 55.1-804. Accounting for moneys and property.

A. Every exchange facilitator shall hold all property related to the exchange client, including the exchange funds, other property, and other consideration or instruments received by the exchange facilitator, on behalf of the client, except funds received as the exchange facilitator's compensation. Exchange funds shall be held in accordance with the requirements of § 55.1-802.

B. An exchange facilitator shall not:

1. Commingle exchange funds with the operating accounts of the exchange facilitator; or

2. Lend or otherwise transfer exchange funds to any person or entity affiliated with or related (as described in Internal Revenue Code § 267(b) or 707(b)) to the exchange facilitator, except that this subsection shall not apply to a transfer or loan made to a financial institution that is the parent of or related to the exchange facilitator or to a transfer from an exchange facilitator to an EAT as required under the exchange contract.

C. Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator. An exchange facilitator shall not keep or cause to be kept any money in any financial institution under any name designating the money as belonging to an exchange client of the exchange facilitator unless the money equitably belongs to the exchange client and was actually entrusted to the exchange facilitator by the exchange client.

§ 55.1-805. Prohibited acts.

A. A person who engages in the business of an exchange facilitator is prohibited from:

1. Making any material misrepresentations concerning any exchange facilitator transaction that are intended to mislead another;

2. Pursuing a continued course of misrepresentation or making false statements through advertising or otherwise;

3. Failing, within a reasonable time, to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;

4. Engaging in any conduct constituting fraudulent or dishonest dealings;

5. Committing any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;

6. Materially failing to fulfill its contractual duties to the exchange client to deliver property or funds to the exchange client unless such failure is due to circumstances beyond the control of the exchange facilitator; or

7. Materially violating any of the provisions of this chapter.

B. A person who is an owner, officer, director, or employee of an exchange facilitator is prohibited from committing any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property; however, the commission of such crime by an officer, director, or employee of an exchange facilitator shall not be considered a violation of this chapter if the employment or appointment of such officer, director, or employee has been terminated and no clients of the exchange facilitator were harmed or full restitution has been made to all harmed clients within a reasonable period of time.

§ 55.1-806. Penalty; attorney fees.

A. In any action brought under this chapter, if a court finds that a person has willfully engaged in an act or practice in violation of this chapter, the Attorney General, the attorney for the Commonwealth, or the attorney for the locality may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than $2,500 per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the locality notifies the alleged violator by certified mail that an act or practice is a violation of this chapter and the alleged violator, after receipt of the notice, continues to engage in the act or practice.

B. In any action brought under this chapter, the Attorney General, the attorney for the Commonwealth, or the attorney for the locality may recover costs and reasonable expenses incurred by the state or local agency in investigating and preparing the case, and attorney fees.

CHAPTER 9.

REAL ESTATE SETTLEMENTS.

§ 55.1-900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Disbursement of loan funds" means the delivery of the loan funds by the lender to the settlement agent in one or more of the following forms:

1. Cash;

2. Wired funds;

3. Certified check;

4. Checks issued by the Commonwealth or a political subdivision of the Commonwealth;

5. Cashier's check, or teller's check with equivalent funds availability in conformity with the federal Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.);

6. Checks issued by a financial institution, the accounts of which are insured by an agency of the federal or state government, which checks are drawn on a financial institution located within the Fifth Federal Reserve District, the accounts of which are insured by an agency of the federal or state government;

7. Drafts issued by a state chartered or federally chartered credit union;

8. Checks issued by an insurance company licensed and regulated by the State Corporation Commission, which checks are drawn on a financial institution located within the Fifth Federal Reserve District, the accounts of which are insured by an agency of the federal government; or

9. Checks issued by a state or federal savings and loan association or savings bank operating in the Commonwealth, which checks are drawn on the Federal Home Loan Bank of Atlanta.

"Disbursement of settlement proceeds" means the payment of all proceeds of the transaction by the settlement agent to the persons entitled to such proceeds.

"Lender" means any person regularly engaged in making loans secured by mortgages or deeds of trust on real estate.

"Loan closing" means the time agreed upon by the borrower and lender, when the execution of the loan documents by the borrower occurs.

"Loan documents" means the note evidencing the debt due the lender, the deed of trust, or the mortgage securing the debt due the lender and any other documents required by the lender to be executed by the borrower as a part of the transaction.

"Loan funds" means the gross or net proceeds of the loan to be disbursed by the lender at loan closing.

"Settlement" means the time when the settlement agent has received the duly executed deed, loan funds, loan documents, and other documents and funds required to carry out the terms of the contract between the parties and the settlement agent reasonably determines that prerecordation conditions of such contracts have been satisfied. A determination by a settlement agent that prerecordation conditions have been satisfied shall not control the rights and obligations of the parties under the contract, including whether settlement has occurred under the terms and conditions of the contract. "Parties," as used in this definition, means the seller, purchaser, borrower, lender, and settlement agent.

"Settlement agent" means the person responsible for conducting the settlement and disbursement of the settlement proceeds and includes any individual, corporation, partnership, or other entity conducting the settlement and disbursement of loan proceeds.

"Settlement service provider" means any person providing settlement services, as that term is defined under the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.).

"Thing of value" means any payment, advance, funds, loan, service, or other consideration.

§ 55.1-901. Applicability; effect of noncompliance.

A. This chapter applies only to transactions involving loans that (i) are made by lenders and (ii) will be secured by first deeds of trust or mortgages on real estate containing not more than four residential dwelling units.

B. Failure to comply with the provisions of this chapter shall not affect the validity or enforceability of any loan documents.

§ 55.1-902. Duty of lender.

The lender shall, at or before loan closing, cause disbursement of loan funds to the settlement agent. In the case of a refinancing or any other loan where a right of rescission applies, the lender shall, within one business day after the expiration of the rescission period required under the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.), cause disbursement of loan funds to the settlement agent. The lender shall not be entitled to receive or charge any interest on the loan until disbursement of loan funds and loan closing has occurred.

§ 55.1-903. Duty of settlement agent.

The settlement agent shall cause recordation of the deed, the deed of trust, or the mortgage or other documents required to be recorded and shall cause disbursement of settlement proceeds within two business days of settlement. A settlement agent may not disburse any or all loan funds or other funds coming into its possession prior to the recordation of any instrument except (i) funds received that are overpayments to be returned to the provider of such funds, (ii) funds necessary to effect the recordation of instruments, or (iii) funds that the provider has by separate written instrument directed to be disbursed prior to recordation of any instrument. Additionally, in any transaction involving the purchase or sale of an interest in residential real property, the settlement agent shall provide notification to the purchaser of the availability of owner's title insurance as required under § 38.2-4616.

§ 55.1-904. Prohibition against payment or receipt of settlement services kickbacks, rebates, commissions, and other payments; penalty.

A. No person selling real property, or performing services as a real estate agent, attorney, lay settlement agent, or lender incident to any real estate settlement or sale, shall pay or receive, directly or indirectly, any kickback, rebate, commission, thing of value, or other payment pursuant to any agreement or understanding, oral or otherwise, that business incident to services required to complete a settlement be referred to any person.

B. Nothing in this section shall be construed to prohibit:

1. Expenditures for bona fide advertising and marketing promotions otherwise permissible under the provisions of the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.);

2. The provision of educational materials or classes, if such materials or classes are provided to a group of persons or entities pursuant to a bona fide marketing or educational effort;

3. The payment to any person of a bona fide salary or compensation or other payment for services actually performed for the business of the settlement service provider; or

4. An employer's payment to its own bona fide employees for referrals of mortgage loan or insurance business. An employer's payment to its own employees for the referral of insurance business shall be subject to the requirements of subdivision B 8 of § 38.2-1821.1.

C. No person shall be in violation of this section solely by reason of ownership in a settlement service provider, where such person receives returns on investments arising from the ownership interest, provided that such person discloses in writing to the consumer an ownership interest in those settlement services, including such person's ownership percentage in the settlement service provider pursuant to the requirements of § 55.1-905.

D. Any person who knowingly and willfully violates this section is guilty of a Class 3 misdemeanor. Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14 (§ 19.2-216 et seq.) of Title 19.2.

§ 55.1-905. Disclosure of affiliated business by settlement service providers.

Any person making a referral to an affiliated settlement service provider shall disclose the affiliation in accordance with the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.). Such disclosure shall be provided regardless of the amount of the person's actual ownership interest in the affiliated provider. However, if the person's ownership interest is one percent or less of the capital stock of a corporation or entity with a class of securities registered under the federal Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), the disclosure shall not be required. If the person's ownership interest is greater than one percent, then the disclosure shall include the percentage of ownership, or, if the person making the referral owns more than 50

percent of the affiliated business, the disclosure shall state that the settlement service provider is a subsidiary of the person making the referral.

§ 55.1-906. Disclosure of charges for appraisal or valuation using automated or other valuation mechanism.

Any lender providing a loan secured by a first deed of trust or mortgage on real estate containing not more than four residential dwelling units shall disclose on the settlement statement or closing disclosure, as those terms are defined in § 55.1-1000, any fee charged to the borrower for an appraisal, as that term is defined in § 54.1-2009, and any fee charged to the borrower for a valuation or opinion of value of the property prepared using an automated or other mechanism prepared by a person who is not licensed as an appraiser under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

§ 55.1-907. Penalty.

Any persons suffering losses due to the failure of the lender or the settlement agent to cause disbursement as required by this chapter shall be entitled to recover, in addition to other actual damages, double the amount of any interest collected in violation of § 55.1-902 plus reasonable attorney fees incurred in the collection of such damages and interest.

CHAPTER 10.

REAL ESTATE SETTLEMENT AGENTS.

§ 55.1-1000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Association" means the National Association of Insurance Commissioners.

"Closing disclosure" means the combined mortgage loan disclosure statement of final loan terms and closing costs prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601 et seq.) and Consumer Financial Protection Bureau Regulation X (12 C.F.R. Part 1024) and Regulation Z (12 C.F.R. Part 1026).

"Commission" means the State Corporation Commission.

"Escrow" means written instruments, money, or other items deposited by a party with a settlement agent for delivery to other persons upon the performance of specified conditions or the happening of a certain event.

"Escrow, closing, or settlement services" means the administrative and clerical services required to carry out the terms of contracts affecting real estate. These services include placing orders for title insurance, receiving and issuing receipts for money received from the parties, ordering loan checks and payoffs, ordering surveys and inspections, preparing settlement statements or closing disclosures, determining that all closing documents conform to the parties' contract requirements, setting the closing appointment, following up with the parties to ensure that the transaction progresses to closing, ascertaining that the lenders' instructions have been satisfied, conducting a closing conference at which the documents are executed, receiving and disbursing funds, completing form documents and instruments selected by and in accordance with instructions of the parties to the transaction, handling or arranging for the recording of documents, sending recorded documents to the lender, sending the recorded deed and the title policy to the buyer, and reporting federal income tax information for the real estate sale to the Internal Revenue Service.

"Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1; (ii) is not a party to the real estate transaction; (iii) provides escrow, closing, or settlement services in connection with a transaction related to any real estate in the Commonwealth; and (iv) is listed as the settlement agent on the settlement statement or closing disclosure for such transaction.

"Licensing authority" means the (i) Commission acting pursuant to this chapter, Title 6.2, Title 12.1, or Title 38.2; (ii) the Virginia State Bar acting pursuant to this chapter or Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1; or (iii) the Virginia Real Estate Board acting pursuant to this chapter or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

"Party to the real estate transaction" means, with respect to that real estate transaction, a lender, seller, purchaser, or borrower and, with respect to a corporate purchaser, any entity that is a subsidiary of or under common ownership with that corporate purchaser.

"Settlement agent" means a person, other than a party to the real estate transaction, that provides escrow, closing, or settlement services in connection with a transaction related to real estate in the Commonwealth and that is listed as the settlement agent on the settlement statement or closing disclosure for such transaction. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money shall be deemed a "settlement agent" subject to the applicable requirements of this chapter.

"Settlement statement" means the statement of receipts and disbursements for a transaction related to real estate, including a statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601 et seq.), as amended, and the regulations thereunder.

§ 55.1-1001. Limitation on applicability of chapter.

Nothing in this chapter shall be construed to prevent a person licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or such licensee's employees or independent contractors, from performing escrow, closing, or settlement services to facilitate the settlement of a transaction in which the licensee is involved without complying with the provisions of this chapter, so long as the licensee, the licensee's employees, or independent contractors are not named as the settlement agent on the settlement statement or closing disclosure and the licensee is otherwise not prohibited from performing such services by law or regulation.

§ 55.1-1002. Scope of chapter; lay real estate settlement agents.

A. Except as provided in subsection B, this chapter applies only to transactions involving the purchase of or lending on the security of real estate located in the Commonwealth containing not more than four residential dwelling units.

B. Notwithstanding any rule of court or other provision of this chapter to the contrary:

1. A lay real estate settlement agent may provide escrow, closing, and settlement services for any real property located within the Commonwealth, and receive compensation for such services, provided that he is registered pursuant to and is in compliance with the provisions of this chapter with the exception of subsection A; and

2. A party to a real estate transaction involving the purchase of or lending on the security of real estate located in the Commonwealth containing more than four residential dwelling units shall have the same authority as a party to a real estate transaction as is provided pursuant to subsection B of § 55.1-1003.

§ 55.1-1003. Persons who may act as a settlement agent.

A. A person shall not act in the capacity of a settlement agent, and a lender, seller, purchaser or borrower may not contract with any person to act in the capacity of a settlement agent, with respect to real estate settlements in the Commonwealth unless the person has not been convicted of a felony, unless such person has had his civil rights restored by the Governor or been granted a writ of actual innocence, and is either:

1. Licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1;

2. Licensed as a title insurance company under Title 38.2;

3. Licensed as a title insurance agent under Title 38.2 and is appointed by a title insurance company licensed in the Commonwealth pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

4. Licensed as a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;

5. A financial institution authorized to do business in the Commonwealth under any of the provisions of Title 6.2 or under federal law; or

6. A subsidiary or affiliate of a financial institution described in subdivision 5.

Any person described in subdivisions 1 through 6 not acting in the capacity of a settlement agent shall not be subject to the provisions of this chapter.

B. Notwithstanding any rule of court to the contrary, a settlement agent operating in compliance with the requirements of this chapter or a party to the real estate transaction may provide escrow, closing, or settlement services and receive compensation for such services.

§ 55.1-1004. Duties of settlement agents.

A. A settlement agent shall exercise reasonable care and comply with all applicable requirements of this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow account analyses, and record retention.

B. A settlement agent who is not (i) a person described in subdivision A 5 of § 55.1-1003 or (ii) a title insurance company as defined in § 38.2-4601 shall maintain the following to the satisfaction of the appropriate licensing authority:

1. An errors and omissions or malpractice insurance policy providing a minimum of $250,000 in coverage;

2. A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the settlement agent providing a minimum of $100,000 in coverage. When the settlement agent has no employees except the owners, partners, shareholders, or members, the settlement agent may apply to the appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement; and

3. A surety bond of not less than $200,000.

C. A settlement agent, other than an attorney or a title insurance company if such company's financial statements are audited annually by an independent certified public accountant, shall, at its expense, have an audit of its escrow accounts conducted by an independent certified public accountant at least once each consecutive 12-month period. The appropriate licensing authority shall require the settlement agent to provide a copy of its audit report to the licensing authority no later than 60 days after the date on which the audit is completed. A settlement agent that is a licensed title insurance agent under Title 38.2 shall also provide a copy of the audit report to each title insurance company that it represents. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent under Title 38.2 shall allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts in accordance with regulations adopted by the Commission or guidelines issued by the Bureau of Insurance of the Commission, as appropriate, at least once each consecutive 12-month period, and each title insurance company conducting such analysis shall submit a copy of its analysis report to the appropriate licensing authority no later than 60 days after the date on which the analysis is completed. With the consent of the title insurance agent, a title insurance company may share the results of its analysis with other title insurance companies that will accept the same in lieu of conducting a separate analysis. A title insurance company shall retain a copy of the analysis or audit report, as applicable, for each title insurance agent it has appointed and such reports and other records of the insurance company's activities as a settlement agent shall be made available to the appropriate licensing authority when examinations are conducted pursuant to provisions in Title 38.2.

§ 55.1-1005. Persons prohibited from assisting or being employed by settlement agents.

A. A person who has been convicted of a felony involving fraud, deceit, or misrepresentation shall not assist a settlement agent in the performance of escrow, closing, or settlement services involving the receipt or disbursement of funds from real estate settlements in the Commonwealth.

B. A settlement agent shall not employ a person who has been convicted of a felony involving fraud, deceit, or misrepresentation in an administrative or clerical capacity that involves the receipt or disbursement of funds from real estate settlements in the Commonwealth.

§ 55.1-1006. Choice of settlement agent.

A purchaser or borrower in a transaction related to real estate in the Commonwealth shall have the right to select the settlement agent to provide escrow, closing, or settlement services in connection with the transaction. The seller in such a transaction may not require the use of a particular settlement agent as a condition of the sale of the property.

§ 55.1-1007. Disclosure.

All contracts involving the purchase of real estate containing not more than four residential dwelling units shall include in at least 10-point boldface type the following language:

"Choice of Settlement Agent: Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia provides that the purchaser or borrower has the right to select the settlement agent to handle the closing of this transaction. The settlement agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, the lender for the purchaser will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

"Variation by agreement: The provisions of Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia may not be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not require the use of a particular settlement agent as a condition of the sale of the property.

"Escrow, closing, and settlement services guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement, or closing services. As a party to a real estate transaction, the purchaser or borrower is entitled to receive a copy of these guidelines from his settlement agent, upon request, in accordance with the provisions of Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia."

§ 55.1-1008. Conditions for providing escrow, closing, or settlement services and for maintaining escrow accounts.

A. All funds deposited with the settlement agent in connection with an escrow, settlement, or closing shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate fiduciary trust account or accounts in a financial institution authorized to do business in the Commonwealth no later than the close of the second business day, in accordance with the following requirements:

1. The funds shall be the property of the person entitled to them under the provisions of the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow, settlement, or closing in the records of the settlement agent in a manner that permits the funds to be identified on an individual basis; and

2. The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § 55.1-903, except:

1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title insurance agents. Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent's settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § 38.2-1813; and

2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement statement or closing disclosure that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.

C. A settlement agent may not retain any interest received on funds deposited in connection with any escrow, settlement, or closing. An attorney settlement agent shall maintain escrow accounts in accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction, provided that all parties consent to such recordation.

E. All settlement statements or closing disclosures for transactions related to real estate governed by this chapter shall be in writing and identify, by name and business address, the settlement agent.

F. Nothing in this section is intended to amend, alter, or supersede other sections of this chapter, or the laws of the Commonwealth or the United States, regarding the duties and obligations of the settlement agent in maintaining escrow accounts.

§ 55.1-1009. Falsifying settlement statements prohibited.

No settlement agent shall intentionally make any materially false or misleading statement or entry on a settlement statement or closing disclosure. An estimate of charges made in good faith by a settlement agent, and indicated as such on the settlement statement or closing disclosure, shall not be deemed to be a violation of this section.

§ 55.1-1010. Separate charge for reporting transactions limited.

No settlement agent shall charge any party to a real estate transaction, as a separate item on a settlement statement or closing disclosure, a sum exceeding $10 for complying with any requirement imposed on the settlement agent by § 58.1-316 or 58.1-317.

§ 55.1-1011. Record retention requirements.

The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing authority may adequately ensure that the settlement agent is in compliance with all provisions of this chapter. The settlement agent shall retain records pertaining to each settlement handled for a minimum of five years after the settlement is completed. The appropriate licensing authority may prescribe the specific record entries and documents to be kept.

§ 55.1-1012. Regulations and orders.

Except as provided in § 55.1-1014, the appropriate licensing authority may issue summonses, subpoenas, rules, regulations, and orders, including educational requirements, consistent with and necessary to carry out the provisions of this chapter.

§ 55.1-1013. Accounting by title insurance companies.

A title insurance company domiciled in the Commonwealth or acting in the capacity of a settlement agent pursuant to this chapter shall account for funds held and income derived from escrow, closing, or settlement services in accordance with the applicable instructions of, and the accounting practices and procedures manuals adopted by, the Association when filing the annual statements and reports required under Chapter 13 (§ 38.2-1300 et seq.) of Title 38.2.

§ 55.1-1014. Settlement agent registration requirements and compliance with unauthorized practice of law guidelines; civil penalty.

A. Every settlement agent subject to the provisions of this chapter shall be registered as such with the appropriate licensing authority. In conjunction therewith, settlement agents shall furnish (i) their names, business addresses, and telephone numbers and (ii) such other information as may be required. Each such registration (a) shall be accompanied by a nonrefundable fee not to exceed $100 and (b) shall be renewed at least biennially thereafter. When the registration of a settlement agent is renewed, the appropriate licensing authority shall notify the registrant of the provisions of § 17.1-223.

B. The Virginia State Bar, in consultation with the Commission and the Virginia Real Estate Board, shall adopt regulations establishing guidelines for settlement agents designed to assist them in avoiding and preventing the unauthorized practice of law in conjunction with providing escrow, closing, and settlement services. Such guidelines shall be furnished by the appropriate licensing authority to (i) each settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that regulate financial institutions, and (iii) members of the general public upon request. Such guidelines shall also be furnished by settlement agents to any party to a real estate transaction in which such agents are providing escrow, closing, or settlement services, upon request.

C. The Virginia State Bar shall receive complaints concerning settlement agent or financial institution noncompliance with the guidelines established pursuant to subsection B and shall (i) investigate such complaints to the extent they concern the unauthorized practice of law or any other matter within its jurisdiction and (ii) refer all other matters or allegations to the appropriate licensing authority. The willful failure of any settlement agent to comply with the guidelines shall be considered a violation of this chapter, and such agent shall be subject to a civil penalty not exceeding $5,000 for each such failure as the Virginia State Bar may determine.

§ 55.1-1015. Penalties and liabilities.

A. If the appropriate licensing authority determines that the settlement agent licensed by it or any of its other licensees has violated this chapter, or any regulation or order adopted thereunder, after notice and opportunity to be heard, the appropriate licensing authority may do one or more of the following:

1. Impose a civil penalty not exceeding $5,000 for each violation;

2. Revoke or suspend the applicable licenses;

3. Issue a restraining order requiring such person to cease and desist from engaging in such act or practice; or

4. Require restitution to be made by the person violating this chapter in the amount of any actual, direct financial loss.

B. The appropriate licensing authority may terminate administratively the registration of any settlement agent if the settlement agent (i) no longer holds a license, (ii) fails to renew its registration, or (iii) fails to comply with the financial responsibility requirements set forth in § 55.1-1004.

C. In addition to the authority given in subsection A, and pursuant to § 12.1-13, the Commission, after determining that any person who does not hold a license from the appropriate licensing authority has violated this chapter or any regulation or order adopted thereunder, may do one or more of the following:

1. Impose a civil penalty not exceeding $5,000 for each violation;

2. Issue a temporary or permanent injunction, or restraining order requiring such person to cease and desist from engaging in such act or practice; or

3. Require restitution to be made by the person violating this chapter in the amount of any actual, direct financial loss.

D. Nothing in this section shall affect the right of the appropriate licensing authority to impose any other penalties provided by law or regulation. Notwithstanding any provision contained in this section to the contrary, as to that portion of any complaint by a party to the real estate transaction arising under this chapter or any regulation or order adopted thereunder relating to the unauthorized practice of law, the Virginia State Bar, after complying with applicable law and regulation relating to unauthorized practice of law complaints and concluding the activity was not authorized by statute or regulation, may refer that portion of such complaint to the Attorney General or an attorney for the Commonwealth. The Attorney General or attorney for the Commonwealth may, in addition to any other powers conferred on him by law, seek the issuance of a temporary or permanent injunction or restraining order against any person so violating this chapter or any regulation or order adopted thereunder.

E. A final order of the licensing authority imposing a civil penalty or ordering restitution may be recorded, enforced, and satisfied as orders of a circuit court upon certification of such order by the licensing authority.

§ 55.1-1016. Confidentiality of information obtained by the Commission.

A. Any documents, materials, or other information in the control or possession of the Commission that are furnished by a title insurance company or title insurance agent or an employee thereof acting on behalf of the title insurance company or title insurance agent, or obtained by the Commission in an investigation pursuant to this chapter, shall be confidential by law and privileged, shall not be subject to inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The Commission is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commission's duties.

B. Neither the Commission nor any person who received documents, materials, or other information while acting under the authority of the Commission shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection A.

C. In order to assist in the performance of the Commission's duties under this chapter, the Commission:

1. May share documents, material, or other information, including the confidential and privileged documents, materials, or information subject to subsection A, with other state, federal, and international regulatory agencies, with the Association and its affiliates and subsidiaries, and with local, state, federal, and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information; and

2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the Association or its affiliates or subsidiaries and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subsection C.

E. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated actions, including for-cause terminations that are open to public inspection pursuant to Chapter 4 (§ 12.1-18 et seq.) of Title 12.1, to a database or other clearinghouse service maintained by the Association or its affiliates or subsidiaries.

CHAPTER 11.

COMMERCIAL REAL ESTATE BROKER'S LIEN ACT.

§ 55.1-1100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under the provisions of Article 4 (§ 58.1-3230 et seq.) of Chapter 32 of Title 58.1. Commercial real estate does not include single-family residential units, including condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit-by-unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"Principal broker" means the same as that term is defined in regulations promulgated by the Real Estate Board.

§ 55.1-1101. Broker's lien.

A. Any principal broker who, either himself or through the principal broker's or associated broker's employees or independent contractors, has provided licensed services that result in the procuring of a tenant of commercial real estate upon the terms provided for in a written agreement signed by the owner of such commercial real estate, or that are otherwise acceptable to the owner as evidenced by a written agreement signed by the owner, shall have a lien, in the amount of the compensation agreed upon by and between the principal broker and the owner, upon rent paid by the tenant of the commercial real estate or by the successors or assigns of such tenant. The amount of the lien shall not exceed the lesser of (i) the amount of the rent to be paid during the term of the lease or (ii) the amount of the rent to be paid during the first 20 years of such lease.

B. The lien provided by this chapter shall not attach or be perfected until a memorandum of such lien signed under oath by the broker and meeting the requirements of this subsection has been recorded in the clerk's office of the circuit court of the county or city where the commercial real estate is located, from which date the lien shall have priority over all liens recorded subsequent thereto. The memorandum of lien shall state the name of the claimant, the name of the owner of the commercial real estate, a description of the commercial real estate, the name and address of the person against whom the broker's claim for compensation is made, the name and address of the tenant paying the rent against which the lien is being claimed, the amount for which the lien is being claimed, and the real estate license number of the principal broker claiming the lien. The lien provided by this chapter and the right to rents secured by such lien shall be subordinate to all liens, deeds of trust, mortgages, or assignments of the leases, rents, or profits recorded prior to the time the memorandum of lien is recorded and shall not affect a purchaser for valuable consideration without constructive or actual notice of the recorded lien.

However, a purchaser acquiring fee simple title to commercial real estate and having actual knowledge of terms of a lease agreement that provide for the payment of brokerage fees due and payable to a real estate broker shall be liable for payment of such brokerage fees, unless otherwise agreed to in writing by the parties at or before the time of sale regardless of whether the real estate broker has perfected the lien in accordance with this chapter. The term "purchaser" does not include a trustee under or a beneficiary of a deed of trust, a mortgagee under a mortgage, a secured party or any other assignee under an assignment as security, or successors, assigns, transferees, or purchasers from such persons or entities.

C. Nothing in this section shall be construed to prevent a subsequent purchaser of commercial real estate subject to a lien under this chapter from establishing an escrow fund at settlement sufficient to satisfy the lien that may otherwise affect transferability of title.

SUBTITLE III.

RENTAL CONVEYANCES.

CHAPTER 12.

VIRGINIA RESIDENTIAL LANDLORD AND TENANT ACT.

Article 1.

General Provisions.

§ 55.1-1200. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Action" means any recoupment, counterclaim, setoff, or other civil action and any other proceeding in which rights are determined, including actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, that is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Application fee" means any nonrefundable fee that is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance, or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use, or appearance of any structure or that

part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Commencement date of rental agreement" means the date upon which the tenant is entitled to occupy the dwelling unit as a tenant.

"Community land trust" means a community housing development organization whose (i) corporate membership is open to any adult resident or organization of a particular geographic area specified in the bylaws of the organization and (ii) board of directors includes a majority of members who are elected by the corporate membership and are composed of tenants, corporate members who are not tenants, and any other category of persons specified in the bylaws of the organization and that:

1. Is not sponsored by a for-profit organization;

2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

3. Transfers ownership of any structural improvements located on such leased parcels to the tenant; and

4. Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low-income and moderate-income families in perpetuity.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including a manufactured home, as defined in § 55.1-1300.

"Effective date of rental agreement" means the date on which the rental agreement is signed by the landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

"Essential service" includes heat, running water, hot water, electricity, and gas.

"Facility" means something that is built, constructed, installed, or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or an authorized occupant, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03. "Landlord" does not include a community land trust.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, or the American Conference of Governmental Industrial Hygienists (Bioaerosols: Assessment and Control); Standard and Reference Guides of the Institute of Inspection, Cleaning and Restoration Certification (IICRC) for Professional Water Damage Restoration and Professional Mold Remediation; or any protocol for mold remediation prepared by an industrial hygienist consistent with such guidance documents.

"Multifamily dwelling unit" means more than one single-family dwelling unit located in a building. However, nothing in this definition shall be construed to apply to any nonresidential space in such building.

"Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any other lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice in the form of a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or, from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person, whether or not the other person actually comes

to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, or association; two or more persons having a joint or common interest; any combination thereof; and any other legal or commercial entity.

"Owner" means one or more persons or entities, jointly or severally, including a mortgagee in possession, in whom is vested:

1. All or part of the legal title to the property; or

2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

"Person" means any individual, group of individuals, corporation, partnership, business trust, association, or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances contained therein, and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Processing fee for payment of rent with bad check" means the processing fee specified in the rental agreement, not to exceed $50, assessed by a landlord against a tenant for payment of rent with a check drawn by the tenant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent paid more than one month in advance of the rent due date.

"Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 55.1-1228 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit.

"Residential tenancy" means a tenancy that is based on a rental agreement between a landlord and a tenant for a dwelling unit.

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. "Major facility" in the case of a bathroom means a toilet and either a bath or shower and in the case of a kitchen means a refrigerator, stove, or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. "Security deposit" does not include a damage insurance policy or renter's insurance policy, as those terms are defined in § 55.1-1206, purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multifamily residential structure, maintained and used as a single dwelling unit, condominium unit, or any other dwelling unit that has direct access to a street or thoroughfare and does not share heating facilities, hot water equipment, or any other essential facility or essential service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others and includes a roomer. "Tenant" does not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or any other medium.

"Utility" means electricity, natural gas, or water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a

landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2 or a ratio utility billing system as defined in § 55.1-1212.

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with § 55.1-1202, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or any other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) is affixed.

§ 55.1-1201. Applicability of chapter; local authority.

A. This chapter shall apply to all jurisdictions in the Commonwealth and may not be waived or otherwise modified, in whole or in part, by the governing body of any locality or its boards or commissions or other instrumentalities or by the courts of the Commonwealth. Occupancy in a public housing unit or other housing unit that is a dwelling unit is subject to this chapter; however, if the provisions of this chapter are inconsistent with the regulations of the U.S. Department of Housing and Urban Development, such regulations shall control.

B. The provisions of this chapter shall apply to occupancy in all single-family and multifamily dwelling units and multifamily dwelling units located in the Commonwealth.

C. The following tenancies and occupancies are not residential tenancies under this chapter:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

4. Occupancy in a campground as defined in § 35.1-1;

5. Occupancy by a tenant who pays no rent pursuant to a rental agreement;

6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or a former employee whose occupancy continues less than 60 days; or

7. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

D. The following provisions apply to occupancy in a hotel, motel, extended stay facility, etc.:

1. A guest who is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter, and the innkeeper or property owner, or his agent, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant to such action, which would otherwise be required under this chapter.

2. A hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

3. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging as his primary residence for 90 consecutive days or less, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

4. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.

5. Nothing herein shall be construed to preclude the owner of a lodging establishment that uses self-help eviction pursuant to this section from pursuing any civil or criminal remedies under the laws of the Commonwealth.

E. Nothing in this chapter shall prohibit a locality from establishing a commission, reconciliatory in nature only, or designating an existing agency, which upon mutual agreement of the parties may mediate conflicts that may arise out of the application of this chapter, nor shall anything in this chapter be deemed to prohibit an ordinance designed to effect compliance with local property maintenance codes. This chapter shall supersede all other local ordinances or regulations concerning landlord and tenant relations and the leasing of residential property.

§ 55.1-1202. Notice.

A. If the rental agreement so provides, the landlord and tenant may send notices in electronic form; however, any tenant who so requests may elect to send and receive notices in paper form. If electronic delivery is used, the sender shall retain sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

B. In the case of the landlord, notice is served on the landlord at his place of business where the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication.

In the case of the tenant, notice is served at the tenant's last known place of residence, which may be the dwelling unit.

C. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the person conducting that transaction, or from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

D. No notice of termination of tenancy served upon a tenant by a public housing authority organized under the Housing Authorities Law (§ 36-1 et seq.) shall be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the name, address, and telephone number of the legal services program, if any, serving the jurisdiction in which the premises is located.

E. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice under this chapter. The landlord may also engage an attorney at law to prepare or provide any written notice under this chapter or legal process under Title 8.01. Nothing herein shall be construed to preclude use of an electronic signature as defined in § 59.1-480, or an electronic notarization as defined in § 47.1-2, in any written notice under this chapter or legal process under Title 8.01.

§ 55.1-1203. Application deposit and application fee.

A. Any landlord may require a refundable application deposit in addition to a nonrefundable application fee. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of such expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

B. A landlord may request that a prospective tenant provide information that will enable the landlord to determine whether each applicant may become a tenant. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit, that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service.

C. An application fee shall not exceed $50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit that is a public housing unit or other housing

unit subject to regulation by the U.S. Department of Housing and Urban Development, an application fee shall not exceed $32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

§ 55.1-1204. Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant.

A. A landlord and tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, charges for late payment of rent, the term of the agreement, automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the rental agreement, and other provisions governing the rights and obligations of the parties.

B. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

C. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the place designated by the landlord, and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for a written statement of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

D. Unless the rental agreement fixes a definite term, the tenancy shall be week-to-week in the case of a tenant who pays weekly rent and month-to-month in all other cases. Terminations of tenancies shall be governed by § 55.1-1253 unless the rental agreement provides for a different notice period.

E. If the rental agreement contains any provision allowing the landlord to approve or disapprove a sublessee or assignee of the tenant, the landlord shall, within 10 business days of receipt of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days is evidence of his approval.

F. The landlord shall provide a copy of any written rental agreement signed by both the tenant and the landlord to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

G. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

H. The landlord shall provide the tenant with a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or money order.

§ 55.1-1205. Prepaid rent; maintenance of escrow account.

A landlord and a tenant may agree in a rental agreement that the tenant pay prepaid rent. If a landlord receives prepaid rent, it shall be placed in an escrow account in a federally insured depository authorized to do business in Virginia by the end of the fifth business day following receipt and shall remain in the account until such time as the prepaid rent becomes due. Unless the landlord has otherwise become entitled to receive any portion of the prepaid rent, it shall not be removed from the escrow account required by this section without the written consent of the tenant.

§ 55.1-1206. Landlord may obtain certain insurance for tenant.

A. A landlord may require as a condition of tenancy that a tenant have commercial insurance coverage as specified in the rental agreement to secure the performance by the tenant of the terms and conditions of the rental agreement and pay for the cost of premiums for such insurance coverage obtained by the landlord, generally known as "damage insurance." As provided in § 55.1-1200, such payments shall not be deemed a security deposit, but shall be rent. However, as provided in § 55.1-1208, the landlord shall not require a tenant to pay both a security deposit and the cost of damage insurance premiums, if the total amount of any security deposit and damage insurance premiums exceeds the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement. Where a landlord obtains damage insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such

insurance coverage and may recover administrative or other fees associated with administration of a damage insurance policy, including a tenant opting out of the insurance coverage provided by the landlord pursuant to this subsection. If a landlord obtains damage insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

B. A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal property located in dwelling units not occupied by the owner. A landlord may require a tenant to pay for the cost of premiums for such insurance obtained by the landlord, in order to provide such coverage for the tenant as part of rent or as otherwise provided in this section. As provided in § 55.1-1200, such payments shall not be deemed a security deposit but shall be rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement. If a tenant allows his renter's insurance policy required by the rental agreement to lapse for any reason, the landlord may provide any landlord's renter's insurance coverage to such tenant. The tenant shall be obligated to pay for the cost of premiums for such insurance as rent or as otherwise provided herein until the tenant has provided written documentation to the landlord showing that the tenant has reinstated his own renter's insurance coverage.

C. If the landlord requires that such premiums be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for damage insurance and renter's insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage.

D. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with the administration of a renter's insurance program, including a tenant opting out of the insurance coverage provided to the tenant pursuant to this subsection. If a landlord obtains renter's insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy prepared by the insurer or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

E. Nothing in this section shall be construed to prohibit the landlord from recovering from the tenant, as part of the rent, the tenant's prorated share of the actual costs of other insurance coverages provided by the landlord relative to the premises, or the tenant's prorated share of a self-insurance program held in an escrow account by the landlord, including the landlord's administrative or other fees associated with the administration of such coverages. The landlord may apply such funds held in escrow to pay claims pursuant to the landlord's self-insurance plan.

§ 55.1-1207. Effect of unsigned or undelivered rental agreement.

If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord. If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession or payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant. If a rental agreement given effect pursuant to this section provides for a term longer than one year, it is effective for only one year.

§ 55.1-1208. Prohibited provisions in rental agreements.

A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or forgo rights or remedies under this chapter;

2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.) or under § 55.1-1410;

3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;

4. Agrees to pay the landlord's attorney fees except as provided in this chapter;

5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or any associated costs;

6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation; or

7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent.

B. Any provision prohibited by subsection A that is included in a rental agreement is unenforceable. If a landlord brings an action to enforce any such provision, the tenant may recover actual damages sustained by him and reasonable attorney fees.

§ 55.1-1209. Confidentiality of tenant records.

A. No landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord or managing agent to a third party unless:

1. The tenant or prospective tenant has given prior written consent;

2. The information is a matter of public record as defined in § 2.2-3701;

3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;

4. The information is a copy of a material noncompliance notice that has not been remedied or a termination notice given to the tenant under § 55.1-1245 and the tenant did not remain in the premises after such notice was given;

5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;

6. The information is requested pursuant to a subpoena in a civil case;

7. The information is requested by a local commissioner of the revenue in accordance with § 58.1-3901;

8. The information is requested by a contract purchaser of the landlord's property, provided that the contract purchaser agrees in writing to maintain the confidentiality of such information;

9. The information is requested by a lender of the landlord for financing or refinancing of the property;

10. The information is requested by the commanding officer, military housing officer, or military attorney of the tenant;

11. The third party is the landlord's attorney or the landlord's collection agency;

12. The information is otherwise provided in the case of an emergency;

13. The information is requested by the landlord to be provided to the managing agent or a successor to the managing agent; or

14. The information is requested by an employee or independent contractor of the United States to obtain census information pursuant to federal law.

B. A tenant may designate a third party to receive duplicate copies of a summons that has been issued pursuant to § 8.01-126 and of written notices from the landlord relating to the tenancy. Where such a third party has been designated by the tenant, the landlord shall mail the duplicate copy of any summons issued pursuant to § 8.01-126 or notice to the designated third party at the same time the summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed to grant standing to any third party designated by the tenant to challenge actions of the landlord in which notice was mailed pursuant to this subsection. The failure of the landlord to give notice to a third party designated by the tenant shall not affect the validity of any judgment entered against the tenant.

C. A landlord or managing agent may enter into an agreement with a third-party service provider to maintain tenant records in electronic form or other medium. In such case, the landlord and managing agent shall not be liable under this section in the event of a breach of the electronic data of such third-party service provider, except in the case of gross negligence or intentional act. Nothing in this section shall be construed to require a landlord or managing agent to indemnify such third-party service provider.

D. A tenant may request a copy of his tenant records in paper or electronic form. If the rental agreement so provides, a landlord may charge a tenant requesting more than one copy of his records the actual costs of preparing copies of such records. However, if the landlord makes available tenant records to each tenant by electronic portal, the tenant shall not be required to pay for access to such portal.

§ 55.1-1210. Landlord and tenant remedies for abuse of access.

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney fees. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise lawful but that have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable attorney fees.

§ 55.1-1211. Appointment of resident agent by nonresident property owner; service of process, etc., on such agent or on Secretary of the Commonwealth.

Any nonresident person of the Commonwealth who owns and leases residential real property consisting of four or more units within the Commonwealth shall have and continuously maintain an agent who is a resident and maintains a business office within the Commonwealth. Every lease executed by or on behalf of nonresident property owners regarding any such real property shall specifically designate such agent and the agent's office address for the purpose of service of any process, notice, order, or demand required or permitted by law to be served upon such nonresident property owner.

Whenever any nonresident property owner fails to appoint or maintain an agent, as required in this section, or whenever his agent cannot with reasonable diligence be found, then the Secretary of the Commonwealth shall be an agent of the nonresident property owner upon whom may be served any process, notice, order, or demand. Service may be made on the Secretary of the Commonwealth or any of his staff at his office who shall forthwith cause it to be sent by registered or certified mail addressed to the nonresident property owner at his address as shown on the official tax records maintained by the locality where the property is located.

The name and office address of the agent appointed as provided in this section shall be filed in the office of the clerk of the court in which deeds are recorded in the county or city in which the property lies. Recordation shall be in the same book as certificates of fictitious names are recorded as provided by § 59.1-74, for which the clerk shall be entitled to a fee of $10.

No nonresident property owner shall maintain an action in the courts of the Commonwealth concerning property for which a designation is required by this section until such designation has been filed.

§ 55.1-1212. Energy submetering, energy allocation equipment, sewer and water submetering equipment, and ratio utility billing systems; local government fees.

A. As used in this section:

"Energy allocation equipment" means the same as that term is defined in § 56-245.2.

"Energy submetering equipment" has the same meaning ascribed to "submetering equipment" in § 56-245.2.

"Local government fees" means any local government charges or fees assessed against a residential building, including charges or fees for stormwater, recycling, trash collection, elevator testing, fire or life safety testing, or residential rental inspection programs.

"Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among the tenants in a residential building, the actual or anticipated water, sewer, electrical, oil, or natural gas billings billed to the residential building owner from a third-party provider of the utility service. Permitted allocation methods may include formulas based on square footage, occupancy, number of bedrooms, or some other specific method agreed to by the residential building owner and the tenant in the rental agreement or lease.

"Residential building" means all of the individual units served through the same utility-owned meter within a residential building that is defined in § 56-245.2 as an apartment building or house or all of the individual dwelling units served through the same utility-owned meter within a manufactured home park as defined in § 55.1-1300.

"Water and sewer submetering equipment" means equipment used to measure actual water or sewer usage in any residential building when such equipment is not owned or controlled by the utility or other provider of water or sewer service that provides service to the residential building.

B. Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system may be used in a residential building if clearly stated in the rental agreement or lease for the residential building. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission pursuant to § 56-245.3.

C. If energy submetering equipment, energy allocation equipment, or water and sewer submetering equipment is used in any residential building, the owner, manager, or operator of such residential building shall bill the tenant for electricity, oil, natural gas, or water and sewer for the same billing period as the utility serving the residential building, unless the rental agreement or lease expressly provides otherwise. The owner, manager, or operator of such residential building may charge and collect from the tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the residential building owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the residential building owner and the tenant in the rental agreement or lease. The residential building owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.

D. If a ratio utility billing system is used in any residential building, in lieu of increasing the rent, the owner, manager, or operator of such residential building may employ such a program that utilizes a mathematical formula for allocating, among the tenants in a residential building, the actual or anticipated water, sewer, electrical, oil, or natural gas billings billed to the residential building owner from a third-party provider of the utility service. The owner, manager, or operator of the residential building may charge and collect from the tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billings charged to the residential building owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the residential building owner and the tenant in the rental agreement or lease. The residential building owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section. The late charge shall be deemed rent (i) as defined in § 55.1-1200 if a ratio utility billing system is used in a residential multifamily dwelling unit subject to this chapter or (ii) as defined in § 55.1-1300 if a ratio utility billing system is used in a manufactured home park subject to the Manufactured Home Lot Rental Act (§ 55.1-1300 et seq.).

E. Energy allocation equipment shall be tested periodically by the owner, manager, or operator of the residential building. Upon the request by a tenant, the owner shall test the energy allocation equipment without charge. The test conducted without charge to the tenant shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 working days after the completion of the test.

F. The owner of any residential building shall maintain adequate records regarding energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system. A tenant may inspect and copy the records for the leased premises during reasonable business hours at a convenient location within or serving the residential building. The owner of the residential building may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

G. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 56-245.3, if applicable, to the same extent as such actions may be maintained for breach of other terms of the rental agreement or lease under this chapter, if applicable. The use of energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system is not within the jurisdiction of the Department of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2.

H. In lieu of increasing the rent, the owner, manager, or operator of a residential building may employ a program that utilizes a mathematical formula for allocating the actual or anticipated local government fees billed to the residential building owner among the tenants in such residential building if clearly stated in the rental agreement or lease. Permitted allocation methods may include formulas based upon square footage, occupancy, number of bedrooms, or some other specific method agreed to by the residential building owner and the tenant in the rental agreement or lease. Such owner, manager, or operator of a residential building may also charge and collect from each tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses for administration of such a program. If the building is residential and is subject to (i) this chapter, such local

government fees and administrative expenses shall be deemed to be rent as defined in § 55.1-1200 or (ii) the Manufactured Home Lot Rental Act (§ 55.1-1300 et seq.), such local government fees and administrative expenses shall be deemed to be rent as defined in § 55.1-1300.

I. Nothing in this section shall be construed to prohibit an owner, manager, or operator of a residential building from including water, sewer, electrical, natural gas, oil, or other utilities in the amount of rent as specified in the rental agreement or lease.

§ 55.1-1213. Transfer of deposits upon purchase.

The current owner of rental property shall transfer any security deposits and any accrued interest on the deposits in his possession to the new owner at the time of the transfer of the rental property. If the current owner has entered into a written property management agreement with a managing agent in accordance with the provisions of subsection E of § 54.1-2135, the current owner shall give written notice to the managing agent requesting payment of such security deposits to the current owner prior to settlement with the new owner. Upon receipt of the written notice, the managing agent shall transfer the security deposits to the current owner and provide written notice to each tenant that his security deposit has been transferred to the new owner in accordance with this section.

Article 2.

Landlord Obligations.

§ 55.1-1214. Inspection of dwelling unit; report.

A. The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant itemizing damages to the dwelling unit existing at the time of occupancy, and the report shall be deemed correct unless the tenant objects to it in writing within five days after receipt of the report.

B. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, and the report shall be deemed correct unless the landlord objects thereto in writing within five days after receipt of the report. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy of the report, at which time the inspection report shall be deemed correct.

C. If any damages are reflected on the written report, a landlord is not required to make repairs to address such damages unless required to do so under § 55.1-1215 or 55.1-1220.

§ 55.1-1215. Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection required by § 55.1-1214, the landlord shall disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects to it in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days after the tenant's request to take possession or decision to remain in possession, reinspect the dwelling unit to confirm that there is no visible evidence of mold in the dwelling unit, and prepare a new report stating that there is no visible evidence of mold in the dwelling unit upon reinspection.

§ 55.1-1216. Disclosure of sale of premises.

A. For the purpose of service of process and receiving and issuing receipts for notices and demands, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the beginning of the tenancy the name and address of:

1. The person authorized to manage the premises; and

2. An owner of the premises or any other person authorized to act for and on behalf of the owner.

B. In the event of the sale of the premises, the landlord shall notify the tenant of such sale and disclose to the tenant the name and address of the purchaser and a telephone number at which such purchaser can be located.

C. With respect to a multifamily dwelling unit, if an application for registration of the rental property as a condominium or cooperative has been filed with the Real Estate Board, or if there is within six months an existing plan for tenant displacement resulting from (i) demolition or substantial rehabilitation of the property

or (ii) conversion of the rental property to office, hotel, or motel use or planned unit development, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose that information in writing to any prospective tenant.

D. The information required to be furnished by this section shall be kept current, and the provisions of this section extend to and are enforceable against any successor landlord or owner. A person who fails to comply with this section becomes an agent of each person who is a landlord for the purposes of service of process and receiving and issuing receipts for notices and demands.

§ 55.1-1217. Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.

A. The landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, shall provide to a prospective tenant a written disclosure that the property is located in a noise zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure shall specify the noise zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the noise zone or accident potential zone shall be deemed as nondisclosure unless the inaccurate information is provided by an officer or employee of the locality in which the property is located.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time during the first 30 days of the lease period by sending to the landlord by certified or registered mail, return receipt requested, a written notice of termination. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

§ 55.1-1218. Required disclosures for properties with defective drywall; remedy for nondisclosure.

A. If the landlord of a dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery of the existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

§ 55.1-1219. Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure.

A. If the landlord of a dwelling unit has actual knowledge that the dwelling unit was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, the landlord shall provide to a prospective tenant a written disclosure that states such information. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery that the property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through

which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions required by this section and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

§ 55.1-1220. Landlord to maintain fit premises.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;

2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

3. Keep all common areas shared by two or more dwelling units of a multifamily premises in a clean and structurally safe condition;

4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold and promptly respond to any notices from a tenant as provided in subdivision A 10 of § 55.1-1227. Where there is visible evidence of mold, the landlord shall promptly remediate the mold conditions in accordance with the requirements of subsection E of § 8.01-226.12 and reinspect the dwelling unit to confirm that there is no longer visible evidence of mold in the dwelling unit. The landlord shall provide a tenant with a copy of a summary of information related to mold remediation occurring during that tenancy and, upon request of the tenant, make available the full package of such information and reports not protected by attorney-client privilege. Once the mold has been remediated in accordance with professional standards, the landlord shall not be required to make disclosures of a past incidence of mold to subsequent tenants;

6. Provide and maintain appropriate receptacles and conveniences for the collection, storage, and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of dwelling units and arrange for the removal of same;

7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning, or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and

8. Provide a certificate to the tenant stating that all smoke alarms are present, have been inspected, and are in good working order no more than once every 12 months. The landlord, his employee, or an independent contractor may perform the inspection to determine that the smoke alarm is in good working order.

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.

D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 3, 6, and 7 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

§ 55.1-1221. Landlord to provide locks and peepholes.

The governing body of any locality may require by ordinance that any landlord who rents five or more dwelling units in any one multifamily building shall install:

1. Dead-bolt locks that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) for new multifamily construction and peepholes in any exterior swinging entrance door to any such unit; however, any door having a glass panel shall not require a peephole;

2. Manufacturer's locks that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) and removable metal pins or charlie bars in accordance with the Uniform Statewide Building Code on exterior sliding glass doors located in a building at any level designated in the ordinance; and

3. Locking devices that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) on all exterior windows.

Any ordinance adopted pursuant to this section shall further provide that any landlord subject to the ordinance shall have a reasonable time as determined by the governing body in which to comply with the requirements of the ordinance.

§ 55.1-1222. Access of tenant to cable, satellite, and other television facilities.

No landlord of a multifamily dwelling unit shall demand or accept payment of any fee, charge, or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service, or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided and for the reasonable value of the landlord's property used by the television service provider.

No landlord shall demand or accept any such payment from any tenants in exchange for such service unless the landlord is itself the provider of the service, nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained in this section shall prohibit a landlord from (i) requiring that the provider of such service and the tenant bear the entire cost of the installation, operation, or removal of the facilities incident to such service or (ii) demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation, or removal.

§ 55.1-1223. Notice to tenants for insecticide or pesticide use.

A. The landlord shall give written notice to the tenant no less than 48 hours prior to his application of an insecticide or pesticide in the tenant's dwelling unit unless the tenant agrees to a shorter notification period. If a tenant requests the application of the insecticide or pesticide, the 48-hour notice is not required. Tenants who have concerns about specific insecticides or pesticides shall notify the landlord in writing no less than 24 hours before the scheduled insecticide or pesticide application. The tenant shall prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord and, if insects or pests are found to be present, follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides.

B. In addition, the landlord shall post notice of all insecticide or pesticide applications in areas of the premises other than the dwelling units. Such notice shall consist of conspicuous signs placed in or upon such premises where the insecticide or pesticide will be applied at least 48 hours prior to the application.

C. A violation by the tenant of this section may be remedied by the landlord in accordance with § 55.1-1248 or by notice given by the landlord requiring the tenant to remedy in accordance with § 55.1-1245, as applicable.

§ 55.1-1224. Limitation of liability.

Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to notice to the tenant of the conveyance. Unless otherwise agreed, a managing agent of premises that includes a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

§ 55.1-1225. Tenancy at will; effect of notice of change of terms or provisions of tenancy.

A notice of any change by a landlord or tenant in any terms or provisions of a tenancy at will shall constitute a notice to vacate the premises, and such notice of change shall be given in accordance with the terms of the rental agreement, if any, or as otherwise required by law.

§ 55.1-1226. Security deposits.

A. No landlord may demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as provided in this section, may be applied by the landlord solely to (i) the payment of accrued rent, including the reasonable charges for late payment of rent specified in the rental agreement; (ii) the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with § 55.1-1227, less reasonable wear and tear; (iii) other damages or charges as provided in the rental agreement; or (iv) actual damages for breach of the rental agreement pursuant to § 55.1-1251. The security deposit and any deductions, damages, and charges shall be itemized by the landlord in a

written notice given to the tenant, together with any amount due to the tenant, within 45 days after the termination date of the tenancy. As of the date of the termination of the tenancy or the date the tenant vacates the dwelling unit, whichever occurs last, the tenant shall be required to deliver possession of the dwelling unit to the landlord. If the termination date is prior to the expiration of the rental agreement or any renewal thereof, or the tenant has not given proper notice of termination of the rental agreement, the tenant shall be liable for actual damages pursuant to § 55.1-1251, in which case, the landlord shall give written notice of security deposit disposition within the 45-day period but may retain any security balance to apply against any financial obligations of the tenant to the landlord pursuant to this chapter or the rental agreement. If the tenant fails to vacate the dwelling unit as of the termination of the tenancy, the landlord may file an unlawful detainer action pursuant to § 8.01-126.

B. Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. The landlord shall make the security deposit disposition within the 45-day time period required by subsection A, but if no forwarding address is provided to the landlord, the landlord may continue to hold such security deposit in escrow. If a tenant fails to provide a forwarding address to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period, the landlord may remit such sum to the State Treasurer as unclaimed property on a form prescribed by the administrator that includes the name; social security number, if known; and last known address of each tenant on the rental agreement. If the landlord or managing agent is a real estate licensee, compliance with this subsection shall be deemed compliance with § 54.1-2108 and corresponding regulations of the Real Estate Board.

C. Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period required by subsection A. However, provided that the landlord has given prior written notice in accordance with this section, the landlord may withhold a reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days, along with payment to the tenant of any balance otherwise due to the tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord shall have so advised the tenant of his rights and obligations under this section in (i) a termination notice to the tenant in accordance with this chapter, (ii) a written notice to the tenant confirming the vacating date in accordance with this section, or (iii) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with § 55.1-1202.

The tenant may provide the landlord with written confirmation of the payment of the final water, sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period required by subsection A. If the tenant provides such written confirmation after the expiration of the 45-day period, the landlord shall refund any remaining balance of the security deposit held to the tenant within 10 days following the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

D. Nothing in this section shall be construed to prohibit the landlord from making the disposition of the security deposit prior to the 45-day period required by subsection A and charging an administrative fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant requests expedited processing in a separate written document.

E. The landlord shall notify the tenant in writing of any deductions provided by this section to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within 30 days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection F. No such notification shall be required for deductions made less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit to the tenant, together with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which case the court shall order an amount equal to the

security deposit credited against the rent due to the landlord. In the event that damages to the premises exceed the amount of the security deposit and require the services of a third-party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period required by subsection A. If notice is given as prescribed in this subsection, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter. The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

F. The landlord shall:

1. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section that the landlord has made by reason of a tenant's noncompliance with § 55.1-1227, or for any other reason set out in this section, during the preceding two years; and

2. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

G. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall provide written notice to the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall, in writing, so advise the landlord, who in turn shall notify the tenant of the date and time of the inspection, which must be made within 72 hours of delivery of possession. Following the move-out inspection, the landlord shall provide the tenant with a written security deposit disposition statement, including an itemized list of damages. If additional damages are discovered by the landlord after the security deposit disposition has been made, nothing in this section shall be construed to preclude the landlord from recovery of such damages against the tenant, provided, however, that the tenant may present into evidence a copy of the move-out report to support the tenant's position that such additional damages did not exist at the time of the move-out inspection.

H. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section.

Article 3.

Tenant Obligations.

§ 55.1-1227. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and promptly notify the landlord of the existence of any insects or pests;

4. Remove from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord;

5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including an elevator in a multifamily premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

7. Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or permit any person, whether known by the tenant or not, to do so;

8. Not remove or tamper with a properly functioning smoke alarm installed by the landlord, including removing any working batteries, so as to render the alarm inoperative. The tenant shall maintain the smoke alarm in accordance with the uniform set of standards for maintenance of smoke alarms established in the

Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Uniform Statewide Building Code (§ 36-97 et seq.);

9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including the removal of any working batteries, so as to render the carbon monoxide alarm inoperative. The tenant shall maintain the carbon monoxide alarm in accordance with the uniform set of standards for maintenance of carbon monoxide alarms established in the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Uniform Statewide Building Code (§ 36-97 et seq.);

10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold and promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord, provided that (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces, or making alterations in the dwelling unit;

12. Be responsible for his conduct and the conduct of other persons, whether known by the tenant or not, who are on the premises with his consent, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed;

13. Abide by all reasonable rules and regulations imposed by the landlord;

14. Be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied; and

15. Use reasonable care to prevent any dog or other animal in possession of the tenant, authorized occupants, or guests or invitees from causing personal injuries to a third party in the dwelling unit or on the premises, or property damage to the dwelling unit or the premises.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

§ 55.1-1228. Rules and regulations.

A. A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the dwelling unit and premises. Any such rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

2. It is reasonably related to the purpose for which it is adopted;

3. It applies to all tenants in the premises in a fair manner;

4. It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he is required to do or is prohibited from doing to comply;

5. It is not for the purpose of evading the obligations of the landlord; and

6. The tenant has been provided with a copy of the rules and regulations or changes to such rules and regulations at the time he enters into the rental agreement or when they are adopted.

B. A rule or regulation adopted, changed, or provided to the tenant after the tenant enters into the rental agreement shall be enforceable against the tenant if reasonable notice of its adoption or change has been given to the tenant and it does not constitute a substantial modification of his bargain. If a rule or regulation adopted or changed after the tenant enters into the rental agreement does constitute a substantial modification of his bargain, it shall not be valid unless the tenant consents to it in writing.

C. Any court enforcing this chapter shall consider violations of the reasonable rules and regulations imposed under this section as a breach of the rental agreement and grant the landlord appropriate relief.

§ 55.1-1229. Access; consent; correction of nonemergency conditions; relocation of tenant; security systems.

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed-upon repairs, decorations, alterations, or

improvements; supply necessary or agreed-upon services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors. If, upon inspection of a dwelling unit during the term of a tenancy, the landlord determines there is a violation by the tenant of § 55.1-1227 or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning in accordance with § 55.1-1248, the landlord may make such repairs and send the tenant an invoice for payment. If, upon inspection of the dwelling unit during the term of a tenancy, the landlord discovers a violation of the rental agreement, this chapter, or other applicable law, the landlord may send a written notice of termination pursuant to § 55.1-1245. If the rental agreement so provides and if a tenant without reasonable justification declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant.

The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24 hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant. During the pendency of an unlawful detainer filed by the landlord against the tenant, the landlord may request the court to enter an order requiring the tenant to provide the landlord with access to such dwelling unit.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, or hotel, as selected by the landlord and at no expense or cost to the tenant. The landlord shall not be required to pay for any other expenses of the tenant that arise after the temporary relocation period. The landlord and tenant may agree for the tenant to temporarily vacate the dwelling unit in less than 30 days. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § 55.1-1220; (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the nonemergency property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing in this section shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing in this section shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this subsection. During the pendency of an unlawful detainer filed by the landlord against the tenant, the landlord may request the court to enter an order requiring the tenant to provide the landlord with access to such dwelling unit.

C. The landlord has no other right to access except by court order or that permitted by §§ 55.1-1248 and 55.1-1249 or if the tenant has abandoned or surrendered the premises.

D. The tenant may install within the dwelling unit new security systems that the tenant may believe necessary to ensure his safety, including chain latch devices approved by the landlord and fire detection devices, provided that:

1. Installation does no permanent damage to any part of the dwelling unit;

2. A duplicate of all keys and instructions for the operation of all devices are given to the landlord; and

3. Upon termination of the tenancy, the tenant is responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

E. Upon written request of a tenant in a dwelling unit, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days. The landlord may charge the tenant a reasonable fee to recover

the costs of the equipment and labor for such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code (§ 36-97 et seq.).

§ 55.1-1230. Access following entry of certain court orders.

A. A tenant or authorized occupant who has obtained an order from a court pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant or authorized occupant to do so, provided that:

1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and

2. A duplicate copy of all keys and instructions for the operation of all devices are given to the landlord.

Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. A person who is not a tenant or authorized occupant of the dwelling unit and who has obtained an order from a court pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide a copy of such order to the landlord and submit a rental application to become a tenant of such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant of such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days after the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required by this section, such person shall vacate the dwelling unit no later than 30 days after the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit as required in this section.

Any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement and any applicable laws and regulations. The landlord may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action pursuant to § 8.01-126 to obtain a money judgment and to evict any persons residing in such dwelling unit.

C. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.

D. This section shall not apply when the court order excluding a person was issued ex parte.

§ 55.1-1231. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55.1-1200 for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant or (ii) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The landlord shall not be required to pay for any other expenses of the tenant that arise after the relocation period. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where the landlord has remediated a mold condition in accordance with professional standards as defined in § 55.1-1200. The landlord shall pay all costs of the relocation and the mold remediation, unless the mold is a result of the tenant's failure to comply with § 55.1-1227.

§ 55.1-1232. Use and occupancy by tenant.

Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a residence.

§ 55.1-1233. Tenant to surrender possession of dwelling unit.

At the termination of the term of tenancy, whether by expiration of the rental agreement or by reason of default by the tenant, the tenant shall promptly vacate the premises, removing all items of personal property and leaving the premises in good and clean order, reasonable wear and tear excepted. If the tenant fails to vacate, the landlord may bring an action for possession and damages, including reasonable attorney fees.

Article 4.

Tenant Remedies.

§ 55.1-1234. Noncompliance by landlord.

Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this chapter, materially affecting health and safety, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if such breach is not remedied in 21 days.

If the landlord commits a breach that is not remediable, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the landlord has been served with a prior written notice that required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, an authorized occupant, or a guest or invitee of the tenant. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this chapter. The tenant shall be entitled to recover reasonable attorney fees unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances. If the rental agreement is terminated due to the landlord's noncompliance, the landlord shall return the security deposit in accordance with § 55.1-1226.

§ 55.1-1235. Early termination of rental agreement by military personnel.

A. Any member of the Armed Forces of the United States or a member of the National Guard serving on full-time duty or as a civil service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit, (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit, (iii) is discharged or released from active duty with the Armed Forces of the United States or from his full-time duty or technician status with the National Guard, or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated in such written notice, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter, confirming the orders, from the tenant's commanding officer.

C. The landlord may not charge any liquidated damages.

D. Nothing in this section shall affect the tenant's obligations established by § 55.1-1227.

§ 55.1-1236. Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.

A. Any tenant who is a victim of (i) family abuse as defined by § 16.1-228, (ii) sexual abuse as defined by § 18.2-67.10, or (iii) other criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 may terminate such tenant's obligations under a rental agreement under the following circumstances:

1. The victim has obtained an order of protection pursuant to § 16.1-279.1 and has given written notice of termination in accordance with subsection B during the period of the protective order or any extension thereof; or

2. A court has entered an order convicting a perpetrator of any crime of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, sexual abuse as defined by § 18.2-67.10, or family abuse as defined by § 16.1-228 against the victim and the victim gives written notice of termination in accordance with subsection B. A victim may exercise a right of termination under this section to terminate a rental agreement in effect when the conviction order is entered and one subsequent rental agreement based upon the same conviction.

B. A tenant who qualifies to terminate such tenant's obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated in such written notice, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.

C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.

D. The landlord may not charge any liquidated damages.

E. The victim's obligations as a tenant under § 55.1-1227 shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may terminate the rental agreement and collect actual damages for such termination against the perpetrator pursuant to § 55.1-1251.

§ 55.1-1237. Notice to tenant in event of foreclosure.

A. The landlord of a dwelling unit used as a single-family residence shall give written notice to the tenant or any prospective tenant of such dwelling unit that the landlord has received a notice of a mortgage default, mortgage acceleration, or foreclosure sale relative to the loan on the dwelling unit within five business days after written notice from the lender is received by the landlord. This requirement shall not apply (i) to any managing agent who does not receive a copy of such written notice from the lender or (ii) if the tenant or prospective tenant provides a copy of the written notice from the lender to the landlord or the managing agent.

B. If the landlord fails to provide the notice required by this section, the tenant shall have the right to terminate the rental agreement upon written notice to the landlord at least five business days prior to the effective date of termination. If the tenant terminates the rental agreement, the landlord shall make disposition of the tenant's security deposit in accordance with law or the provisions of the rental agreement, whichever is applicable.

C. If there is in effect at the date of the foreclosure sale a tenant in a dwelling unit foreclosed upon, the foreclosure shall act as a termination of the rental agreement by the owner. In such case, the tenant may remain in possession of such dwelling unit as a month-to-month tenant on the terms of the terminated rental agreement until the successor owner gives a notice of termination of such month-to-month tenancy. If the successor owner elects to terminate the month-to-month tenancy, written notice of such termination shall be given in accordance with the rental agreement or the provisions of § 55.1-1202 or 55.1-1410, as applicable.

D. Unless or until the successor owner terminates the month-to-month tenancy, the terms of the terminated rental agreement remain in effect except that the tenant shall make rental payments (i) to the successor owner as directed in a written notice to the tenant in this subsection; (ii) to the managing agent of the owner, if any, or successor owner; or (iii) into a court escrow account pursuant to the provisions of § 55.1-1244; however, there is no obligation of a tenant to file a tenant's assertion and pay rent into escrow. Where there is not a managing agent designated in the terminated rental agreement, the tenant shall remain obligated for payment of the rent but shall not be held to be delinquent or assessed a late charge until the successor owner provides written notice identifying the name, address, and telephone number of the party to which the rent should be paid.

E. The successor owner may enter into a new rental agreement with the tenant in the dwelling unit, in which case, upon the commencement date of the new rental agreement, the month-to-month tenancy shall terminate.

§ 55.1-1238. Failure to deliver possession.

If the landlord willfully fails to deliver possession of the dwelling unit to the tenant, then rent abates until possession is delivered, and the tenant may (i) terminate the rental agreement upon at least five days' written notice to the landlord, upon which termination the landlord shall return all prepaid rent and security deposits, or (ii) demand performance of the rental agreement by the landlord. If the tenant elects, he may file an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person the actual damages sustained by him and reasonable attorney fees.

§ 55.1-1239. Wrongful failure to supply an essential service.

A. If contrary to the rental agreement or provisions of this chapter the landlord willfully or negligently fails to supply an essential service, the tenant shall serve a written notice on the landlord specifying the breach, if acting under this section, and, in such event and after allowing the landlord reasonable time to correct such breach, may:

1. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

2. Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance, as determined by the court.

B. If the tenant proceeds under this section, he shall be entitled to recover reasonable attorney fees; however, he may not proceed under § 55.1-1234 as to that breach. The rights of the tenant under this section shall not arise until he has given written notice to the landlord; however, no rights arise if the condition was caused by the deliberate or negligent act or omission of the tenant, an authorized occupant, or a guest or invitee of the tenant.

§ 55.1-1240. Fire or casualty damage.

If the dwelling unit or premises is damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and within 14 days thereafter, serving on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating. If continued occupancy is lawful, § 55.1-1411 shall apply.

The landlord may terminate the rental agreement by giving the tenant 14 days' notice of his intention to terminate the rental agreement on the basis of the landlord's determination that such damage requires the removal of the tenant and that the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § 55.1-1226 and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, an authorized occupant, or a guest or invitee of the tenant was the cause of the damage or casualty, in which case the landlord shall provide a written statement to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty, and may recover actual damages sustained pursuant to § 55.1-1251. Proration for rent in the event of termination or apportionment shall be made as of the date of the casualty.

§ 55.1-1241. Landlord's noncompliance as defense to action for possession for nonpayment of rent.

A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises a condition that constitutes, or will constitute, a fire hazard or a serious threat to the life, health, or safety of the occupants of the dwelling unit, including (i) a lack of heat, running water, light, electricity, or adequate sewage disposal facilities; (ii) an infestation of rodents; or (iii) a condition that constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

1. Prior to the commencement of the action for rent or possession, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the condition by the tenant or was notified of such condition by a violation or condemnation notice from an appropriate state or local agency. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.

B. It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes that (i) the conditions alleged in the defense do not in fact exist; (ii) such conditions have been removed or remedied; (iii) such conditions have been caused by the tenant, his guest or invitee, members of the family of such tenant, or a guest or invitee of such family member; or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the purposes of correcting such conditions.

C. The court shall make findings of fact upon any defense raised under this section or the answer to any defense and shall issue any order as may be required, including any one or more of the following:

1. Reducing rent in such amount as the court determines to be equitable to represent the existence of any condition set forth in subsection A;

2. Terminating the rental agreement or ordering the surrender of the premises to the landlord; or

3. Referring any matter before the court to the proper state or local agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court any rents that will become due during the period of continuance, to be held by the court pending its further order, or, in its discretion, the court may use such funds to (i) pay a mortgage on the property in order to stay a foreclosure, (ii) pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or (iii) remedy any condition set forth in subsection A that is found by the court to exist.

D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving rise to the violation, the court may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable attorney fees.

§ 55.1-1242. Rent escrow required for continuance of tenant's case.

A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as provided by this chapter and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance or to set the case for a contested trial, the court shall not require the rent to be escrowed.

B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. The court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.

E. Except as provided in subsection D, no rent required to be escrowed under this section shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit court to be held in such court escrow account pending the outcome of the appeal.

§ 55.1-1243. Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.

If a landlord unlawfully removes or excludes a tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of an essential service to the tenant, the tenant may obtain an order from a general district court to recover possession, require the landlord to resume any such interrupted essential service, or terminate the rental agreement and, in any case, recover the actual damages sustained by him and reasonable attorney fees. If the rental agreement is terminated, the landlord shall return all of the security deposit in accordance with § 55.1-1226.

§ 55.1-1244. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises a condition that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law or that, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of occupants of the premises, including (i) a lack of heat or hot or cold running water, except where the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; (ii) a lack of light, electricity, or adequate sewage disposal facilities; (iii) an infestation of rodents; or (iv) the existence of paint containing lead pigment on surfaces within the dwelling,

provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court in which the premises is located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the condition by the tenant or was notified of such condition by a violation or condemnation notice from an appropriate state or local agency. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due under the rental agreement, unless or until such amount is modified by subsequent order of the court under this chapter.

C. It shall be sufficient answer or rejoinder to an assertion made pursuant to subsection A if the landlord establishes to the satisfaction of the court that (i) the conditions alleged by the tenant do not in fact exist; (ii) such conditions have been removed or remedied; (iii) such conditions have been caused by the tenant, his guest or invitee, members of the family of such tenant, or a guest or invitee of such family member; or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

D. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include any one or more of the following:

1. Terminating the rental agreement upon the request of the tenant or ordering the surrender of the premises to the landlord if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of any condition found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or local agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court, within five days of date due under the rental agreement, subject to any abatement under this section, rents that become due during the period of the continuance, to be held by the court pending its further order;

7. Ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure; or

8. Ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

E. Notwithstanding any provision of subsection D, where an escrow account is established by the court and the condition is not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end of the period, the condition has not been remedied.

F. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15 calendar days from the date of service of process on the landlord as authorized by § 55.1-1216, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage disposal facilities, or any other condition that constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of

the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

Article 5.

Landlord Remedies.

§ 55.1-1245. Noncompliance with rental agreement; monetary penalty.

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of the tenant shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 on the basis of information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate solely due to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event later than seven days. If the

provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § 55.1-1227 and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. If the tenant has been served with a prior written notice that required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227. In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

§ 55.1-1246. Barring guest or invitee of a tenant.

A. A guest or invitee of a tenant may be barred from the premises by the landlord upon written notice served personally upon the guest or invitee of the tenant for conduct on the landlord's property where the premises are located that violates the terms and conditions of the rental agreement, a local ordinance, or a state or federal law. A copy of the notice shall be served upon the tenant in accordance with this chapter. The notice shall describe the conduct of the guest or invitee that is the basis for the landlord's action.

B. In addition to the remedies against the tenant authorized by this chapter, a landlord may apply to the magistrate for a warrant for trespass, provided that the guest or invitee has been served in accordance with subsection A.

C. The tenant may file a tenant's assertion, in accordance with § 55.1-1244, requesting that the general district court review the landlord's action to bar the guest or invitee.

§ 55.1-1247. Sheriffs authorized to serve certain notices; fee for service.

The sheriff of any county or city, upon request, may deliver any notice to a tenant on behalf of a landlord or lessor under the provisions of § 55.1-1245 or 55.1-1415. For this service, the sheriff shall be allowed a fee not to exceed $12.

§ 55.1-1248. Remedy by repair, etc.; emergencies.

If there is a violation by the tenant of § 55.1-1227 or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner and submit an itemized bill for the actual and reasonable cost for such work to the tenant, which shall be due as rent on the next rent due date or, if the rental agreement has terminated, for immediate payment.

In case of emergency the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost for such work to the tenant, which shall be due as rent on the next rent due date or, if the rental agreement has terminated, for immediate payment.

The landlord may perform the repair, replacement, or cleaning or may engage a third party to do so.

§ 55.1-1249. Remedies for absence, nonuse, and abandonment.

If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days and the tenant fails to do so, the landlord may recover actual damages from the tenant. During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary to protect his possessions and property. The rental agreement is deemed to be terminated by the landlord as of the date of abandonment by the tenant. If the landlord cannot determine whether the premises has been abandoned by the tenant, the landlord shall serve written notice on the tenant in accordance with § 55.1-1202 requiring the tenant to give written notice to the landlord within seven days that the tenant intends to remain in occupancy of the premises. If the tenant gives such written notice to the landlord, or if the landlord otherwise determines that the tenant remains in occupancy of the premises, the landlord shall not treat the premises as having been abandoned. Unless the landlord receives written notice from the tenant or otherwise determines that the tenant remains in occupancy of the premises, upon the expiration of seven days from the date of the landlord's notice to the tenant, there shall be a rebuttable presumption that the premises has been abandoned by the tenant, and the rental agreement shall be deemed to terminate on that date. The landlord shall mitigate damages in accordance with § 55.1-1251.

§ 55.1-1250. Landlord's acceptance of rent with reservation.

A. The landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § 55.1-1255, provided that the landlord has stated in a written notice to the tenant that any and all amounts owed to the landlord by the tenant, including payment of any rent, damages, money judgment, award of attorney fees, and court costs, would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. Such notice may be included in a written termination notice given by the landlord to the tenant in accordance with § 55.1-1245, and if so included, nothing herein shall be construed by a court of law or otherwise as requiring such landlord to give the tenant subsequent written notice. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, nothing in this section shall be construed to require that written notice be given to any public agency paying a portion of the rent under the rental agreement. If a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable.

B. The tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, at or before the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of such return date.

C. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, and dismiss the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return

date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

D. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term of the rental agreement.

§ 55.1-1251. Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable attorney fees as provided in § 55.1-1245, and the cost of service of any notice under § 55.1-1245 or 55.1-1415 or process by a sheriff or private process server, which cost shall not exceed the amount authorized by § 55.1-1247, and such claims may be enforced, without limitation, by initiating an action for unlawful entry or detainer. Actual damages for breach of the rental agreement may include a claim for rent that would have accrued until the expiration of the term of the rental agreement or until a tenancy pursuant to a new rental agreement commences, whichever occurs first, provided that nothing contained in this section shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined in this section, the landlord shall not seek a judgment for accelerated rent through the end of the term of the tenancy.

In any unlawful detainer action brought by the landlord, this section shall not be construed to prevent the landlord from being granted by the court a simultaneous judgment for money due and for possession of the premises without a credit for any security deposit. Upon the tenant vacating the premises either voluntarily or by a writ of possession, security deposits shall be credited to the tenant's account by the landlord in accordance with the requirements of § 55.1-1226.

§ 55.1-1252. Recovery of possession limited.

A landlord may not recover or take possession of the dwelling unit (i) by willful diminution of services to the tenant by interrupting or causing the interruption of an essential service required by the rental agreement or (ii) by refusal to permit the tenant access to the unit unless such refusal is pursuant to a court order for possession.

§ 55.1-1253. Periodic tenancy; holdover remedies.

A. The landlord or the tenant may terminate a week-to-week tenancy by serving a written notice on the other at least seven days prior to the next rent due date. The landlord or the tenant may terminate a month-to-month tenancy by serving a written notice on the other at least 30 days prior to the next rent due date, unless the rental agreement provides for a different notice period. The landlord and the tenant may agree in writing to an early termination of a rental agreement. In the event that no such agreement is reached, the provisions of § 55.1-1251 shall control.

B. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and may also recover actual damages, reasonable attorney fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling unit as of the termination date was reasonable. The landlord may include in the rental agreement a reasonable liquidated damage penalty, not to exceed an amount equal to 150 percent of the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice. However, if the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, any liquidated damage penalty shall not exceed an amount equal to the per diem of the monthly rent set out in the lease agreement. If the landlord consents to the tenant's continued occupancy, § 55.1-1204 applies.

C. In the event of termination of a rental agreement where the tenant remains in possession with the agreement of the landlord either as a hold-over tenant or a month-to-month tenant and no new rental agreement is entered into, the terms of the terminated agreement shall remain in effect and govern the hold-over or month-to-month tenancy, except that the amount of rent shall be either as provided in the terminated rental agreement

or the amount set forth in a written notice to the tenant, provided that such new rent amount shall not take effect until the next rent due date coming 30 days after the notice.

§ 55.1-1254. Disposal of property abandoned by tenants.

If any items of personal property are left in the dwelling unit, the premises, or any storage area provided by the landlord after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided that he has given (i) a termination notice to the tenant in accordance with this chapter, including a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after termination; (ii) written notice to the tenant in accordance with § 55.1-1249, including a statement that any items of personal property left in the dwelling unit, the premises, or the storage area would be disposed of within the 24-hour period after expiration of the seven-day notice period; or (iii) a separate written notice to the tenant, including a statement that any items of personal property left in the dwelling unit, the premises, or the storage area would be disposed of within 24 hours after expiration of a 10-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § 55.1-1202. The tenant shall have the right to remove his personal property from the dwelling unit, the premises, or the storage area at reasonable times during the 24-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply the funds to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing, or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55.1-1226. The provisions of this section shall not be applicable if the landlord has been granted a writ of possession for the premises in accordance with Title 8.01 and execution of such writ has been completed pursuant to § 8.01-470.

Nothing in this section shall affect the right of a landlord to enforce an inchoate or perfected lien of the landlord on the personal property of a tenant in a dwelling unit or on the premises leased to such tenant and the right of a landlord to distress, levy, and seize such personal property as otherwise provided by law.

§ 55.1-1255. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit, the premises, or any storage area provided by the landlord pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled to such dwelling unit, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction or at such other reasonable times until the landlord has disposed of the property as provided in this section. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply the funds to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord

in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55.1-1226.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include a copy of this statute attached to, or made a part of, the notice.

§ 55.1-1256. Disposal of property of deceased tenants.

A. If a tenant who is the sole tenant under a written rental agreement still residing in the dwelling unit dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the dwelling unit or upon the premises. However, the landlord shall give at least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § 55.1-1202 if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § 55.1-1254, if not claimed within 10 days. Authorized occupants, or guests or invitees, are not allowed to occupy the dwelling unit after the death of the sole remaining tenant and shall vacate the dwelling unit prior to the end of the 10-day period.

B. The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling unit or the premises and to the tenant records maintained by the landlord and (ii) rightfully claim the personal property of the deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.

C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the tenant who is the sole tenant under a written rental agreement still residing in the dwelling unit, and the landlord shall not be required to seek an order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable for actual damages under § 55.1-1251, and the landlord shall mitigate such damages.

§ 55.1-1257. Who may recover rent or possession.

Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of § 54.1-2106.1, (ii) any property manager, or a managing agent of a landlord as defined in § 55.1-1200, or (iii) any employee, who is authorized in writing by a corporate officer with the approval of the board of directors, or by a manager, a general partner, or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership, business trust, or family trust to sign pleadings as the agent of the business entity may obtain a judgment (a) for possession in the general district court for the county or city in which the premises, or part thereof, is situated or (b) for rent or damages, including actual damages for breach of the rental agreement, or for final rent and damages under § 8.01-128, in any general district court where venue is proper under Chapter 5 (§ 8.01-257 et seq.) of Title 8.01, against any defendant if the person seeking such judgment had a contractual agreement with the landlord to manage the premises for which rent or possession is due and may prepare, execute, file, and have served on other parties in any general district court a warrant in debt, suggestion for summons in garnishment, garnishment summons, writ of possession, or writ of fieri facias arising out of a landlord-tenant relationship. However, the activities of any such person in court shall be limited by the provisions of § 16.1-88.03. However, nothing shall be construed as preventing a nonlawyer from requesting relief from the court as provided by law or statute when such nonlawyer is before the court on one of the actions specified herein.

Article 6.

Retaliatory Action.

§ 55.1-1258. Retaliatory conduct prohibited.

A. Except as provided in this section or as otherwise provided by law, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement pursuant to § 55.1-1253 or 55.1-1410 after he has knowledge that (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety, (ii) the tenant has made a complaint to or filed an action against the landlord for a violation of any provision of this

chapter, (iii) the tenant has organized or become a member of a tenant's organization, or (iv) the tenant has testified in a court proceeding against the landlord. However, the provisions of this subsection shall not be construed to prevent the landlord from increasing rent to that which is charged for similar market rentals nor decreasing services that apply equally to all tenants.

B. If the landlord acts in violation of this section, the tenant is entitled to the applicable remedies provided for in this chapter, including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession. The burden of proving retaliatory intent shall be on the tenant.

C. Notwithstanding subsections A and B, a landlord may terminate the rental agreement pursuant to § 55.1-1253 or 55.1-1410 and bring an action for possession if:

1. Violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, an authorized occupant, or a guest or invitee of the tenant;

2. The tenant is in default in rent;

3. Compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit; or

4. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others. The maintenance of the action provided in this section does not release the landlord from liability under § 55.1-1226.

D. The landlord may also terminate the rental agreement pursuant to § 55.1-1253 or 55.1-1410 for any other reason not prohibited by law unless the court finds that the reason for the termination was retaliation.

§ 55.1-1259. Actions to enforce chapter.

In addition to any other remedies in this chapter, any person adversely affected by an act or omission prohibited under this chapter may institute an action for injunction and damages against the person responsible for such act or omission in the circuit court in the county or city in which such act or omission occurred. If the court finds that the defendant was responsible for such act or omission, it shall enjoin the defendant from continuance of such practice, and in its discretion award the plaintiff damages as provided in this section.

CHAPTER 13.

MANUFACTURED HOME LOT RENTAL ACT.

§ 55.1-1300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Abandoned manufactured home" means a manufactured home occupying a manufactured home lot pursuant to a written agreement under which (i) the tenant has defaulted in rent or (ii) the landlord has the right to terminate the written rental agreement pursuant to § 55.1-1249.

"Guest or invitee" means a person, other than the tenant, who has the permission of the tenant to visit but not to occupy the premises.

"Landlord" means the manufactured home park owner or the lessor or sublessor of a manufactured home park. "Landlord" also means a manufactured home park operator who fails to disclose the name of such owner, lessor, or sublessor as provided in § 55.1-1216.

"Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

"Manufactured home lot" means a parcel of land within the boundaries of a manufactured home park provided for the placement of a single manufactured home and the exclusive use of its occupants.

"Manufactured home owner" means the owner of a manufactured home.

"Manufactured home park" means a parcel of land under single or common ownership upon which five or more manufactured homes are located on a continual, nonrecreational basis together with any structure, equipment, road, or facility intended for use incidental to the occupancy of the manufactured homes. "Manufactured home park" does not include a premises used solely for storage or display of uninhabited manufactured homes or a premises occupied solely by a landowner and members of his family.

"Manufactured home park operator" means a person employed or contracted by a manufactured home park owner or landlord to manage a manufactured home park.

"Manufactured home park owner" means a person who owns land that accommodates a manufactured home park.

"Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to the property or (ii) all or part of the beneficial ownership and right to present use and enjoyment of the premises. "Owner" includes a mortgagee in possession.

"Reasonable charges in addition to rent" means any routine maintenance and utility charges for which the tenant is liable under the rental agreement.

"Rent" means payments made by the tenant to the landlord for use of a manufactured home lot and other facilities or services provided by the landlord.

"Rental agreement" means any agreement, written or oral, and valid rules and regulations adopted in conformance with § 55.1-1228 embodying the terms and conditions concerning the use and occupancy of a manufactured home lot and premises and other facilities or services provided by the landlord.

"Secured party" means the same as that term is defined in § 8.9A-102.

"Security interest" means the same as that term is defined in § 8.1A-201.

"Tenant" means a person entitled as under a rental agreement to occupy a manufactured home lot to the exclusion of others.

§ 55.1-1301. Written rental agreement required.

A. Before the tenancy begins, all parties shall sign and date a written rental agreement that includes all terms governing the rental and occupancy of a manufactured home lot. The landlord shall give the tenant a copy of the signed and dated written rental agreement and a copy of this chapter or a clear and simple description of the obligations of landlords and tenants under this chapter within seven days after the tenant signs the written rental agreement. The written rental agreement shall not contain any provisions contrary to the provisions of this chapter and shall not contain a provision prohibiting the tenant from selling his manufactured home. A notice of any change by a landlord in any terms or provisions of the written rental agreement shall constitute a notice to vacate the premises, and such notice shall be given in accordance with the terms of the written rental agreement or as otherwise required by law. The written rental agreement shall not provide that the tenant pay any recurring charges except fixed rent, utility charges, or reasonable incidental charges for services or facilities supplied by the landlord. The landlord shall post a copy of this chapter, including the full text of the sections referenced in § 55.1-1311, in the manufactured home park.

B. In the event that any party has a secured interest in the manufactured home, the written rental agreement or rental application shall include the name and address of such party and the name and address of the dealer from whom the manufactured home was purchased. In addition, the written rental agreement shall require the tenant to notify the landlord within 10 days of any new security interest, change of existing security interest, or settlement of security interest.

§ 55.1-1302. Term of rental agreement; renewal; security deposits.

A. A landlord shall offer all current and prospective year-round residents a rental agreement with a rental period of not less than one year. Such offer shall contain the same terms and conditions as are offered with shorter term leases, except that rental discounts may be offered by a landlord to residents who enter into a rental agreement for a period of not less than one year.

B. Upon the expiration of a rental agreement, the agreement shall be automatically renewed for a term of one year with the same terms unless the landlord provides written notice to the tenant of any change in the terms of the agreement at least 60 days prior to the expiration date. In the case of an automatic renewal of a rental agreement for a year-round resident, the security deposit initially furnished by the tenant shall not be increased by the landlord, nor shall an additional security deposit be required.

C. Except as limited by subsection B, the provisions of § 55.1-1226 shall govern the terms and conditions of security deposits for rental agreements under this chapter.

§ 55.1-1303. Landlord's obligations.

The landlord shall:

1. Comply with applicable laws governing health, zoning, safety, and other matters pertaining to manufactured home parks;

2. Make all repairs and do whatever is necessary to put and keep the manufactured home park in a fit and habitable condition, including maintaining in a clean and safe condition all facilities and common areas provided by the landlord for use by the tenants of two or more manufactured home lots;

3. Maintain in good and working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord;

4. Provide and maintain appropriate receptacles as a manufactured home park facility, except when door-to-door garbage and waste pickup is available within the manufactured home park for the collection and storage of garbage and other waste incidental to the occupancy of the manufactured home park, and arrange for the removal of the garbage and other waste; and

5. Provide reasonable access to electric, water, and sewage disposal connections for each manufactured home lot. In the event of a planned disruption by the landlord in electric, water, or sewage disposal services, the landlord shall give written notice to tenants no less than 48 hours prior to the planned disruption in service.

§ 55.1-1304. Tenant's obligations.

In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with applicable laws affecting manufactured home owners and tenants;

2. Keep and maintain the exterior of the tenant's manufactured home and manufactured home lot as clean and safe as conditions permit;

3. Place all garbage and other waste in the appropriate receptacles, which shall be provided by the tenant when door-to-door garbage and waste pickup is provided;

4. Use in a reasonable and orderly manner all facilities and appliances in the manufactured home park and require any guest or invitee to do so;

5. Conduct himself and require any guest or invitee to conduct himself in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises;

6. Abide by all reasonable rules and regulations imposed by the landlord; and

7. In the absence of express written agreement to the contrary, occupy the tenant's manufactured home only as a dwelling unit.

§ 55.1-1305. Rent; liability of secured party taking possession of an abandoned manufactured home.

A. A secured party shall have no liability for rent or other charges to a landlord except as provided in this section.

B. In the event that a manufactured home subject to a security interest becomes an abandoned manufactured home, the landlord shall send notice of abandonment to the manufactured home owner, the secured party, and the dealer as provided for in § 55.1-1202 at the addresses shown in the written rental agreement or rental application. The notice of abandonment shall state the amount of rent and the amount and nature of any reasonable charges in addition to rent for which the secured party will be liable. The notice shall include any written rental agreement previously signed by the tenant and the landlord.

C. A secured party that has a security interest in an abandoned manufactured home, and that has a right to possession of the manufactured home under § 8.9A-609 or under the applicable security agreement, is liable to the landlord under the same payment terms as the tenant prior to the secured party's accrual of the right of possession and for any other reasonable charges in addition to rent incurred. Such liability is for the period that begins 15 days from receipt of the notice of abandonment by the secured party and ends upon the earlier to occur of the removal of the abandoned manufactured home from the manufactured home park or disposition of the abandoned manufactured home under §§ 8.9A-610 through 8.9A-624 or under the applicable security agreement.

D. This section shall not affect the availability of the landlord's lien as provided in § 55.1-1316, nor shall this section impact the priority of the secured party's lien as provided in § 46.2-640.

E. Any rent or reasonable charges in addition to rent owed by the secured party to the landlord pursuant to this section shall be paid to the landlord prior to the removal of the manufactured home from the manufactured home park.

F. If a secured party that has a secured interest in an abandoned manufactured home becomes liable to the landlord pursuant to this section, then the relationship between the secured party and the landlord shall be governed by the rental agreement previously signed by the tenant and the landlord unless otherwise agreed, except that the term of the rental agreement shall convert to a month-to-month tenancy. No waiver is required to convert the rental agreement to a month-to-month tenancy. Either the landlord or the secured party may terminate the month-to-month tenancy upon giving written notice of at least 30 days. The secured party and the landlord are not required to execute a new rental agreement. Nothing in this section shall be construed to be a waiver of any rights by the tenant.

§ 55.1-1306. Demands and charges prohibited; access by tenant's guest or invitee; purchases by manufactured home owner not restricted; exception; conditions of occupancy.

A. A landlord shall not demand or collect:

1. An entrance fee for the privilege of leasing or occupying a manufactured home lot;

2. A commission on the sale of a manufactured home located in the manufactured home park, unless the tenant expressly employs him to perform a service in connection with such sale, but no such employment of the landlord by the tenant shall be a condition or term of the initial sale or rental;

3. A fee for improvements or installations on the interior of a manufactured home, unless the tenant expressly employs him to perform a service in connection with such improvements or installations;

4. A fee, charge, or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service, or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided and for the reasonable value of the landlord's property used by the television service provider.

No landlord shall demand or accept any such payment from any tenants in exchange for such services, unless the landlord is itself the provider of the service, nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing in this subdivision shall prohibit a landlord from requiring that the provider of such service and the tenant bear the entire cost of the installation, operation, or removal of the facilities incident to such installation, operation, or removal or prohibit a landlord from demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation, or removal; or

5. An exit fee for moving a manufactured home from a manufactured home park.

B. A guest or invitee of the tenant shall have free access to the tenant's manufactured home site without charge or registration.

C. A manufactured home owner shall not be restricted in his choice of vendors from whom he may purchase his (i) manufactured home, except in connection with the initial leasing or renting of a newly constructed lot not previously leased or rented to any other person, or (ii) goods and services. However, nothing in this chapter shall prohibit a landlord from prescribing reasonable requirements governing, as a condition of occupancy, the style, size, or quality of the manufactured home or other structures placed on the manufactured home lot.

§ 55.1-1307. Charge for utility service.

Notwithstanding the provisions of § 56-245.3, a landlord who purchases from a publicly regulated utility any electricity, gas, or other utility service, including water and sewer services, for resale or pass-through to a tenant may not charge for the resale or pass-through of such service an amount that exceeds the amount permitted under the provisions of § 55.1-1212.

§ 55.1-1308. Termination of tenancy.

A. Either party may terminate a rental agreement with a term of 60 days or more by giving written notice to the other at least 60 days prior to the termination date; however, the rental agreement may require a longer period of notice. Notwithstanding the provisions of this section, where a landlord and seller of a manufactured home have in common (i) one or more owners, (ii) immediate family members, or (iii) officers or directors, the rental agreement shall be renewed except for reasons that would justify a termination of the rental agreement or eviction by the landlord as authorized by this chapter. A landlord may not cause the eviction of a tenant by willfully interrupting gas, electricity, water, or any other essential service, or by removal of the manufactured home from the manufactured home lot, or by any other willful self-help measure.

B. If the termination is due to rehabilitation or a change in the use of all or any part of a manufactured home park by the landlord, a 180-day written notice is required to terminate a rental agreement. As used in this subsection, "change" includes conversion to hotel, motel, or other commercial use; planned unit development; rehabilitation; demolition; or sale to a contract purchaser. This 180-day notice requirement shall not be waived; however, a period of less than 180 days may be agreed upon by both the landlord and tenant in a written agreement separate from the rental agreement executed after such notice is given and applicable only to the 180-day notice period.

§ 55.1-1309. Waiver of landlord's right to terminate.

Unless the landlord accepts the rent with reservation, and gives a written notice to the tenant of such acceptance within five business days of receipt of the rent, acceptance of periodic rent payments with knowledge

in fact of a material noncompliance by the tenant shall constitute a waiver of the landlord's right to terminate the rental agreement. Except as provided in § 55.1-1423, if the landlord has given the tenant written notice that the rent payments have been accepted with reservation, the landlord may accept full payment of all rent payments and still be entitled to receive an order of possession terminating the rental agreement.

§ 55.1-1310. Sale or lease of manufactured home by manufactured home owner.

No landlord shall unreasonably refuse or restrict the sale or rental of a manufactured home located in his manufactured home park by a tenant. No landlord shall prohibit the manufactured home owner from placing a "for sale" sign on or in the owner's home except that the size, placement, and character of all signs are subject to the rules and regulations of the manufactured home park. Prior to selling or leasing the manufactured home, the tenant shall give notice to the landlord, including the name of the prospective vendee or lessee if the prospective vendee or lessee intends to occupy the manufactured home in that manufactured home park. The landlord shall have the burden of proving that his refusal or restriction regarding the sale or rental of a manufactured home was reasonable. The refusal or restriction of the sale or rental of a manufactured home exclusively or predominantly based on the age of the home shall be considered unreasonable. Any refusal or restriction based on race, color, religion, national origin, familial status, elderliness, handicap, or sex shall be conclusively presumed to be unreasonable.

§ 55.1-1311. Other provisions of law applicable.

Sections 55.1-1202, 55.1-1207, 55.1-1208, 55.1-1216, 55.1-1224, 55.1-1226, 55.1-1228, 55.1-1234 through 55.1-1249, 55.1-1251, 55.1-1252, and 55.1-1259 shall, insofar as they are not inconsistent with this chapter, apply, mutatis mutandis, to the rental and occupancy of a manufactured home lot.

§ 55.1-1312. Authority of local governments over manufactured home parks.

The governing body of any locality may adopt ordinances to enforce the obligations imposed on landlords by § 55.1-1303.

§ 55.1-1313. Notice of uncorrected violations.

If a landlord does not remedy a violation of an ordinance that pertains to the health and safety of tenants in a manufactured home park within seven days of receiving notice from the locality of such violation, the locality shall notify tenants of the manufactured home park who are affected by the violation. Such notification may consist of posting the notice of violation in a conspicuous place in the manufactured home park or mailing copies of the notice to affected tenants.

§ 55.1-1314. Retaliatory conduct prohibited.

A. Except as provided in this section, or as otherwise provided by law, a landlord shall not retaliate by selectively increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the landlord has knowledge that (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety, (ii) the tenant has made a complaint to or filed an action against the landlord for a violation of any provision of this chapter, (iii) the tenant has organized or become a member of a tenant's organization, or (iv) the tenant has testified in a court proceeding against the landlord.

B. The landlord shall be deemed to have knowledge of a fact if he has actual knowledge of it, he has received a notice or notification of it, or, from all the facts and circumstances known to him at the time in question, he has reason to know that it exists.

C. Notwithstanding the provisions of subsections A and B, a landlord may terminate the rental agreement pursuant to subsection A of § 55.1-1308 and bring an action for possession if:

1. Violation of the applicable building and housing code was caused by lack of reasonable care by the tenant, a member of the tenant's household, or a guest or invitee of the tenant;

2. The tenant is in default in rent; or

3. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of the tenant or others.

§ 55.1-1315. Eviction of tenant.

A landlord may evict a tenant only for:

1. Nonpayment of rent;

2. Violation of the applicable building and housing code caused by a lack of reasonable care by the tenant, a member of the tenant's household, or a guest or invitee of the tenant;

3. Violation of a federal, state, or local law or ordinance that is detrimental to the health, safety, and welfare of other tenants in the manufactured home park;

4. Violation of any rule or provisions of the rental agreement materially affecting the health, safety, and welfare of the tenant or others; or

5. Two or more violations of any rule or provision of the rental agreement occurring within a six-month period.

§ 55.1-1316. Right to sell manufactured home upon eviction.

A tenant who has been evicted from a manufactured home park shall have 90 days after judgment has been entered in which to sell the manufactured home or remove the manufactured home from the manufactured home park. Such tenant shall be responsible for paying the rental amount and for regular maintenance of the manufactured home lot during the period between the date of eviction and the sale of the manufactured home or the removal of the manufactured home from the manufactured home park. Such right to keep the manufactured home in the manufactured home park shall be conditioned upon the payment of all rent accrued prior to the date of judgment and prospective monthly rent as it becomes due. During such term, a secured party shall be liable for such charges as provided in § 55.1-1305. The manufactured home park owner shall have a lien on the manufactured home to the extent that such rental payments are not made. Any sale of the manufactured home shall be subject to the rights of any secured party having a security interest in the home, and the lien granted to the manufactured home park owner under this section shall be subject to any such security interest.

§ 55.1-1317. Transfer of deposits upon purchase.

The manufactured home park owner shall transfer any security deposits and any accrued interest on the deposits in his possession to the new manufactured home park owner at the time of the transfer of the rental property. If the current manufactured home park owner has entered into a written property management agreement with a managing agent in accordance with the provisions of subsection E of § 54.1-2135, the current manufactured home park owner shall give written notice to the managing agent requesting payment of such security deposits to the current manufactured home park owner prior to settlement with the new manufactured home park owner. Upon receipt of the written notice, the managing agent shall transfer the security deposits to the current manufactured home park owner and provide written notice to each tenant that his security deposit has been transferred to the new manufactured home park owner in accordance with this section.

§ 55.1-1318. Penalties for violation of chapter.

If the landlord acts in willful violation of § 55.1-1303, 55.1-1306, 55.1-1310, or 55.1-1314 or if the landlord fails to provide a written, dated rental agreement, the tenant is entitled to recover from the landlord an amount equal to the greater of either the tenant's monthly rental payment at the time of the violation or actual damages and reasonable attorney fees.

§ 55.1-1319. Injunctive relief.

The attorney for any locality may file an action for injunctive relief for violations of this chapter.

CHAPTER 14.

NONRESIDENTIAL TENANCIES.

Article 1.

General Provisions.

§ 55.1-1400. Applicability; right to terminate tenant.

A. As used in this chapter, unless the context requires a different meaning, "nonresidential tenancy" means the rental of any real estate for purposes other than residential use, including business, industrial, or agricultural purposes.

B. The provisions of this chapter shall apply to all nonresidential tenancies. The lease or rental agreement controls the landlord-tenant relationship unless such lease or rental agreement is silent, in which case the provisions of this chapter apply. The right to evict a tenant whose right of possession has been terminated in any commercial or other nonresidential tenancy under this chapter may be effectuated by self-help eviction without further legal process so long as such eviction does not incite a breach of the peace. However, nothing in this chapter shall be construed to preclude termination of any commercial or other nonresidential tenancy by the filing of an unlawful detainer action, entry of an order of possession, and eviction pursuant to § 55.1-1416.

§ 55.1-1401. Appointment of resident agent by nonresident property owner; service of process, etc., on such agent or on Secretary of the Commonwealth.

Any nonresident person as the term "person" is defined in § 55.1-1200 of the Commonwealth who owns and leases nonresidential real property within the Commonwealth shall have and continuously maintain an

agent who is a resident and maintains a business office within the Commonwealth. Every lease executed by or on behalf of nonresident property owners regarding any such real property shall specifically designate such agent and the agent's office address for the purpose of service of any process, notice, order, or demand required or permitted by law to be served upon such nonresident property owner.

Whenever any nonresident property owner fails to appoint or maintain an agent, as required in this section, or whenever his agent cannot with reasonable diligence be found, then the Secretary of the Commonwealth shall be an agent of the nonresident property owner upon whom may be served any process, notice, order, or demand. Service may be made on the Secretary of the Commonwealth or any of his staff at his office who shall forthwith cause it to be sent by registered or certified mail addressed to the nonresident property owner at his address as shown on the official tax records maintained by the locality where the property is located.

The name and office address of the agent appointed as provided in this section shall be filed in the office of the clerk of the court in which deeds are recorded in the county or city in which the property lies. Recordation shall be in the same book as certificates of fictitious names are recorded as provided by § 59.1-74 for which the clerk shall be entitled to a fee of $10.

No nonresident property owner shall maintain an action in the courts of the Commonwealth concerning property for which a designation is required by this section until such designation has been filed.

§ 55.1-1402. Apportionment on purchase of part of land by holder of rent.

When the holder of a rent purchases part of the land out of which the rent issues, such rent shall be apportioned in like manner as if the land had come to him by descent, and when the holder of land that is part of land out of which rent issues purchases such rent or part of it, the rent so purchased shall be apportioned as in like manner as if the land had come to him by descent.

§ 55.1-1403. Perfection of lien or interest in leases, rents, and profits.

The recordation pursuant to § 55.1-600, in the county or city in which the real property is located, of any deed, deed of trust, or other instrument granting, transferring, or assigning the interest of the grantor, transferor, assignor, pledgor, or lessor in leases, rents, or profits arising from the real property described in such deed, deed of trust, or other instrument shall fully perfect the interest of the grantee, transferee, assignee, or pledgee as to the assignor and all third parties without the necessity of (i) furnishing notice to the assignor or lessee, (ii) obtaining possession of the real property, (iii) impounding the rents, (iv) securing the appointment of a receiver, or (v) taking any other affirmative action. The lessee is authorized to pay the assignor until the lessee receives written notification that rents due or to become due have been assigned and that payment is to be made to the assignee.

§ 55.1-1404. Energy submetering, energy allocation equipment, sewer and water submetering equipment, ratio utility billings systems; local government fees.

A. As used in this section:

"Building" means all of the individual units served through the same utility-owned meter within a building that is used as a nonresidential tenancy, including a building used as an office building or shopping center as those terms are defined in § 56-245.2.

"Campground" means the same as that term is defined in § 35.1-1.

"Campsite" means the same as that term is defined in § 35.1-1.

"Energy allocation equipment" means the same as that term is defined in § 56-245.2.

"Energy submetering equipment" has the same meaning ascribed to "submetering equipment" in § 56-245.2.

"Local government fees" means any local government charges or fees assessed against a building or campground, including stormwater, recycling, trash collection, elevator testing, or fire or life safety testing.

"Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among the tenants in a building or campground, the actual or anticipated water, sewer, electrical, oil, or natural gas billings billed to the building or campground owner from a third-party provider of the utility service. Permitted allocation methods may include formulas based on square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building or campground owner and the tenant in the rental agreement or lease.

"Water and sewer submetering equipment" means equipment used to measure actual water or sewer usage in any nonresidential rental unit, as defined in § 56-245.2, when such equipment is not owned or controlled by the utility or other provider of water or sewer service that provides service to the building in which the nonresidential rental unit is located or campground where the campsite is located.

B. Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system may be used in a building or campground if clearly stated in the rental agreement or lease for the leased premises. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission pursuant to § 56-245.3.

C. If energy submetering equipment, water and sewer submetering equipment, or energy allocation equipment is used in any building or campground, the owner, manager, or operator of the building or campground shall bill the tenant for electricity, oil, natural gas, or water and sewer for the same billing period as the utility serving the building or campground, unless the rental agreement or lease expressly provides otherwise. The owner, manager, or operator of the building or campground may charge and collect from the tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the building or campground owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building or campground owner and the tenant in the rental agreement or lease. The building or campground owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.

D. If a ratio utility billing system is used in any building or campground, in lieu of increasing the rent, the owner, manager, or operator of the building or campground may employ such a program that utilizes a mathematical formula for allocating, among the tenants in a building or campground, the actual or anticipated water, sewer, electrical, oil, or natural gas billings billed to the building or campground owner from a third-party provider of the utility service. The owner, manager, or operator of the building or campground may charge and collect from the tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billings charged to the building or campground owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building or campground owner and the tenant in the rental agreement or lease. The building or campground owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.

E. Energy allocation equipment shall be tested periodically by the owner, manager, or operator of the building or campground. Upon the request by a tenant, the owner shall test the energy allocation equipment without charge. The test conducted without charge to the tenant shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 working days after the completion of the test.

F. The owner of any building or campground shall maintain adequate records regarding energy submetering equipment, water and sewer submetering equipment, energy allocation equipment, or a ratio utility billing system. A tenant may inspect and copy the records for the leased premises during reasonable business hours at a convenient location within the building or campground. The owner of the building or campground may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

G. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 56-245.3, if applicable, to the same extent as such actions may be maintained for breach of other terms of the rental agreement or lease under this chapter, if applicable. The use of energy submetering equipment, water and sewer submetering equipment, energy allocation equipment, or a ratio utility billing system is not within the jurisdiction of the Department of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2.

H. In lieu of increasing the rent, the owner, manager, or operator of a building or campground may employ a program that utilizes a mathematical formula for allocating the actual or anticipated local government fees billed to the building or campground owner among the tenants in such building or campground if clearly stated in the rental agreement or lease for the leased premises. Permitted allocation methods may include formulas based upon square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building or campground owner and the tenant in the rental agreement or lease. Such owner, manager, or

operator of a building or campground may also charge and collect from each tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses for administration of such a program.

I. Nothing in this section shall be construed to prohibit an owner, manager, or operator of a building or campground from including water, sewer, electrical, natural gas, oil, or other utilities in the amount of rent as specified in the rental agreement or lease.

§ 55.1-1405. Transfer of deposits upon purchase.

The current owner of nonresidential rental property shall transfer any security deposits and any accrued interest on the deposits in his possession to the new owner at the time of the transfer of the rental property. If the current owner has entered into a written property management agreement with a managing agent in accordance with the provisions of subsection E of § 54.1-2135, the current owner shall give written notice to the managing agent requesting payment of such security deposits to the current owner prior to settlement with the new owner. Upon receipt of the written notice, the managing agent shall transfer the security deposits to the current owner and provide written notice to each tenant that his security deposit has been transferred to the new owner in accordance with this section.

Article 2.

Assignments.

§ 55.1-1406. Grantees and assignees have same rights against lessees as lessors.

A grantee or assignee of any land leased, or of the reversion thereof, and his heirs, personal representative, or assigns, shall enjoy against the lessee, and his heirs, personal representative, or assigns, the like advantage, by action or entry for any forfeiture or by action upon any covenant or promise in the lease that the grantor, assignor, or lessor, or his heirs, might have enjoyed.

§ 55.1-1407. Lessees have same rights against grantees as against lessors.

A lessee, his personal representative, or his assigns may have against a grantee or alienee of the reversion, or of any part of such reversion, his heirs, or his assigns the like benefit of any condition, covenant, or promise in the lease as he could have had against the lessor himself and his heirs and assigns, except the benefit of any warranty, in deed or law.

§ 55.1-1408. What powers to pass to grantee or devisee; when attornment unnecessary.

In conveyances or devises of rents in fee, with powers of distress and reentry, or either of them, such powers shall pass to the grantee or devisee without express words. A grant or devise of a rent, or of a reversion or remainder, is good and effectual without attornment of the tenant, but no tenant who, before notice of the grant, paid the rent to the grantor shall suffer any damage as a result of such payment.

§ 55.1-1409. When attornment void.

The attornment of a tenant to any stranger is void, unless it is with the consent of the landlord of such tenant or pursuant to or in consequence of the judgment or order of a court.

Article 3.

Landlord Obligations.

§ 55.1-1410. Notice to terminate a tenancy in nonresidential rental property; notice of change in use of multifamily residential building.

A. A year-to-year tenancy in a nonresidential rental property may be terminated by either party giving three months' notice, in writing, prior to the end of any year of the tenancy, of his intention to terminate the same. A month-to-month tenancy may be terminated by either party giving 30 days' notice in writing, prior to the next rent due date, of his intention to terminate the same, unless the rental agreement provides for a different notice period. Written notice of termination shall be given in accordance with this chapter or the lease agreement.

B. In addition to the termination rights set forth in subsection A, and notwithstanding the terms of the lease, the landlord may terminate a lease agreement in a multifamily residential building due to rehabilitation or a change in the use of all or any part of such building that contains at least four residential units, upon 120 days' prior written notice to the tenant. Changes in use shall include conversion to hotel, motel, apartment hotel, or other commercial use, planned unit development, substantial rehabilitation, demolition, or sale to a contract purchaser requiring an empty building. This 120-day notice requirement shall not be waived except in the case of a month-to-month tenancy, which may be terminated by the landlord by giving the tenant 30 days' written notice prior to the next rent due date of the landlord's intention to terminate the tenancy.

The written notice required by this section to terminate a tenancy shall not be contained in the rental agreement or lease, but shall be a separate writing.

§ 55.1-1411. Nonresidential buildings destroyed or lessee deprived of possession; covenant to pay rent or repair; reduction of rent.

No covenant or promise by a lessee of nonresidential property to pay the rent, or that he will keep or leave the premises in good repair, shall have the effect, if the buildings on the premises are destroyed by fire or otherwise, in whole or in part, without fault or negligence on his part, or if he is deprived of the possession of the premises by the public enemy, of binding him to make such payment or repair or erect such buildings again, unless there are other words showing it to be the intent of the parties that he should be so bound. But in case of such destruction there shall be a reasonable reduction of the rent for such time as may elapse until there are again upon the premises buildings of as much value to the tenant for his purposes as what may have been so destroyed, and, in case of such deprivation of possession, a like reduction until possession of the premises is restored to him.

§ 55.1-1412. Security systems for nonresidential rental property.

No landlord of a premises used for nonresidential purposes shall unreasonably withhold or delay consent for the tenant to install security systems within such premises.

Article 4.

Landlord Remedies.

§ 55.1-1413. Effect of failure of tenant in nonresidential rental property to vacate premises at expiration of term.

A tenant from year-to-year, month-to-month, or other definite term in a nonresidential rental property shall not, by his mere failure to vacate the premises upon the expiration of the lease, be held as tenant for another term when such failure is not due to his willfulness, negligence, or other avoidable cause, but such tenant shall be liable to the lessor for use and occupation of the premises and also for any loss or damage sustained by the lessor because of such failure to surrender possession at the time stipulated.

§ 55.1-1414. Abandonment of nonresidential rental property.

If any tenant from whom rent is owing and unpaid abandons a nonresidential rental property and leaves such premises unoccupied, and if the tenant's personal property that is subject to distress is not sufficient to satisfy the rent owed, the lessor or his agent may post a written notice on a conspicuous part of the premises requiring the tenant to pay the rent within 10 days from the date of such notice, in the case of a monthly tenant, or within one month from the date of such notice, in the case of a yearly tenant. If the owed rent is not paid within the time specified in the notice, the lessor shall be entitled to possession of the premises and may enter the premises, and the right of such tenant to possess the premises shall terminate, but the landlord may recover the rent up to such termination.

§ 55.1-1415. Failure to pay certain rents after five days' notice forfeits right of possession.

If any tenant or lessee of nonresidential rental property who is in default in the payment of rent continues to be in default five days after receipt of written notice that requires possession of the premises or the payment of rent, such tenant or lessee forfeits his right to possession of the premises. In such case, the possession of the defendant may, at the option of the landlord or lessor, be deemed unlawful, and he may proceed to recover possession of the premises.

The right to evict a tenant whose right of possession has been terminated in any nonresidential tenancy under this chapter may be effectuated by self-help eviction without further legal process so long as such eviction does not incite a breach of the peace. However, nothing in this section shall be construed to preclude termination of any nonresidential tenancy by the filing of an unlawful detainer action as provided by Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, entry of an order of possession, and eviction pursuant to § 55.1-1416.

§ 55.1-1416. Authority of sheriffs to store and sell personal property removed from nonresidential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from any nonresidential rental property pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the premises in order to restore such premises to the person entitled to such premises, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour

period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the leased or rented premises. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the premises or at such other reasonable times until the landlord has disposed of the property as provided in this section. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the loss of such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive relief and such other relief as may be provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply such funds to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the notice a copy of this statute attached to, or made a part of, this notice.

Nothing in this section shall affect the right of a landlord to enforce an inchoate or perfected lien of the landlord on the personal property of a tenant in a nonresidential premises leased to such tenant or the right of a landlord to distress, levy, and seize such personal property as otherwise provided by law.

§ 55.1-1417. Who may recover rent or possession.

Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of § 54.1-2106.1, (ii) any property manager, or a managing agent of a landlord as defined in § 55.1-1200, or directors, or by a manager, a general partner, or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership, business trust, or family trust to sign pleadings as the agent of the business entity, may obtain a judgment (a) for possession in the general district court for the county or city in which the premises, or part thereof, is situated or (b) for rent or damages, including actual damages for breach of the rental agreement, or for final rent and damages under § 8.01-128, in any general district court where venue is proper under Chapter 5 (§ 8.01-257 et seq.) of Title 8.01, against any defendant if the person seeking such judgment had a contractual agreement with the landlord to manage the premises for which rent or possession is due and may prepare, execute, file, and have served on other parties in any general district court a warrant in debt, suggestion for summons in garnishment, garnishment summons, writ of possession, or writ of fieri facias arising out of a landlord-tenant relationship. However, the activities of any such person in court shall be limited by the provisions of § 16.1-88.03. However, nothing shall be construed as preventing a nonlawyer from requesting relief from the court as provided by law or statute when such nonlawyer is before the court on one of the actions specified herein.

Article 5.

Miscellaneous Provisions.

§ 55.1-1418. Remedy when rent is to be paid in other thing than money.

When goods are distrained or attached for rent reserved in a share of the crop, or in anything other than money, the claimant of the rent shall give the tenant 10 days' notice, and the claimant may then apply to the court to which the attachment is returnable, or the circuit court of the county or city in which the distress is made, to ascertain the value in money of the rent reserved and to order a sale of the goods distrained or attached. The tenant may make the same defenses that he could to a motion on a forfeited forthcoming bond given for rent and may also contest the value of what was reserved for the rent. The court shall ascertain, either by its own judgment or, if either party requires it, by the verdict of a jury impaneled without the formality of pleading, the extent of the liability of the tenant for rent and the value in money of such rent and if the tenant has been served with notice shall enter judgment against him for the amount so ascertained. It shall also order the goods distrained or attached, or so much thereof as may be necessary, to be sold to pay the amount so

ascertained. The officer charged with the execution of such warrant or attachment shall return such warrant or attachment to the clerk's office of the court, showing how he has executed such warrant or attachment. If the goods so directed to be sold prove insufficient to pay the amount of the rent so ascertained, an execution may be issued on the judgment as in case of other judgments, which may be levied on such property as would be leviable under an execution issued on a judgment in an action brought to recover the rent.

§ 55.1-1419. Proceedings to establish right of reentry; judgment.

Any person who has a right of reentry into lands by reason of any rent issuing thereout being in arrear, or by reason of the breach of any covenant or condition, may serve a declaration in ejectment on the tenant in possession, if any, or, if the possession is vacant, by posting the declaration upon the front door of the building, or at any other notorious place on the premises, and such service shall be in lieu of a demand and reentry. Upon proof to the court, by affidavit in case of judgment by default or upon proof on the trial, that the rent claimed was due and no sufficient distress was upon the premises, or that the covenant or condition was broken before the service of the declaration and that the plaintiff had power to reenter, he shall recover judgment and have execution for such lands.

§ 55.1-1420. When defendant barred of relief.

Should the defendant to a proceeding filed pursuant to § 55.1-1419, or other person on his behalf, not pay the rent in arrear, with interest and costs, nor file a complaint for relief against such forfeiture, within 12 months after execution executed, he shall be barred of all right to be restored to such lands or tenements.

§ 55.1-1421. How trustee or mortgagee relieved from the forfeiture.

Any mortgagee or trustee of lands subject to a proceeding filed pursuant to § 55.1-1419 may, within 12 months after execution executed, pay the rent and all arrears, with interest and costs, or file a complaint for relief against such forfeiture; and thereupon may be relieved against it, on the same terms and conditions as the owner of such lands or tenements would be entitled to.

§ 55.1-1422. How owner relieved in court.

If the owner of lands subject to a proceeding filed pursuant to § 55-1419, or any person having right or claim to such land, files within the appropriate time his complaint for relief, he shall not have or continue any injunction against the proceedings at law on the ejectment, unless, within 30 days following a full and perfect answer filed by the plaintiff in ejectment, he brings into court, or deposits in a bank within the Commonwealth to the credit of the cause, such money as the plaintiff in ejectment, in his answers, swears to be due and in arrear, over and above all just allowances and also the costs taxed in the action, there to remain until the hearing of the cause, or to be paid out to the plaintiff on good security, subject to the order of the court. If the complaint is filed within the appropriate time, and after execution executed, the plaintiff shall be accountable for no more than he, really and bona fide, without fraud, deceit, or willful neglect, makes of the premises from the time of his entering into the actual possession of the premises, and if it is less than the rent payable, then the possession shall not be restored until the plaintiff is paid the balance of the rent for the time he so held the lands.

§ 55.1-1423. How judgment of forfeiture prevented.

If any party having right or claim to lands subject to a proceeding filed pursuant to § 55-1419, at any time before the trial in such ejectment, pays to the party entitled to such rent, or to his attorney, or pays into court, all the rent and arrears owed, along with any reasonable attorney fees and late charges contracted for in a written rental agreement, interest, and costs, all further proceedings in the ejectment shall cease. If the person claiming the land is relieved, he is entitled to hold the land in the same manner as he was prior to the commencement of the proceedings, without a new lease or conveyance. If the parties dispute the amount of rent and other charges owed, the court shall take evidence on the issue and make orders for the tender, payment, or refund of any appropriate amounts.

§ 55.1-1424. When action for reentry brought.

Proceedings for ejectment shall not be initiated until the time for reentry of the premises specified in the rental agreement has lapsed.

§ 55.1-1425. Written act of reentry to be returned and recorded and certificate of reentry published.

When actual reentry is made, the party by or for whom the reentry is made shall return a written act of reentry, sworn to by the sheriff or another authorized officer, to the clerk of the circuit court of the county or city in which the lands or tenements are located. The clerk shall record the written act of reentry in the deed book and shall deliver to the party making the reentry a certificate setting forth the substance of such written act. Such certificate shall be published at least once a week for two months successively in a newspaper

published in or nearest to such county or city. Such publication shall be proved by affidavit to the satisfaction of the clerk, who shall record such affidavit in the deed book. Such affidavit shall reference the book and page where the original written act of reentry was recorded. The clerk shall return the original act of reentry to the party entitled to it. The written act of reentry, when recorded, and the record of such written act, or a duly certified copy from such record, shall be evidence, in all cases, of the facts contained therein.

§ 55.1-1426. Fee of clerk.

The clerk shall be paid for recording, granting certificate, and noting publication, as required by § 55.1-1425, the fee prescribed in subdivision A 2 of § 17.1-275 and shall collect and account for the same tax upon every such act of reentry offered for record as is levied by law upon deeds of conveyance.

§ 55.1-1427. How person entitled to lands may be restored to his possession.

If the person entitled to lands subject to a proceeding filed pursuant to § 55.1-1419 at the time of reentry made, or having claim to such lands, does not pay the rent and all arrears owed, with interest and all reasonable expenses incurred about such reentry, within one year from the first day of publication pursuant to § 55.1-1425, he shall be forever barred from all right to the lands. If any party who has the right of possession pays the rent and arrears owed, with interest and expenses pursuant to this section, to the party making reentry, within the required time, he shall be reinstated in his possession to hold as if the reentry had not been made.

§ 55.1-1428. Limitation of action against person in possession by reentry.

No person who, or who with his predecessor in title under whom he claims, has possessed lands by virtue of a reentry for the term of two years shall be disturbed therein by action or otherwise for any defect of proceedings in such entry.

CHAPTER 15.

RESIDENTIAL GROUND RENT ACT.

§ 55.1-1500. Definitions.

As used in this chapter:

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper and lower boundaries, if any, of the parcel in question be identified with reference to established data.

"Obligee" means any person or entity to whom a residential ground rent is owed.

"Obligor" means one or more individuals who are obligated to pay a residential ground rent.

"Residential ground rent" means a rent or charge paid for the use of land, whether or not title to such land is transferred to the user, or a lease of land, for personal residential purposes, (i) which is assignable by the obligor without the obligee's consent; (ii) which is for a term in excess of 15 years, including any rights of renewal at the option of the obligor; (iii) where the obligor has a present or future right to terminate such ground rent and to acquire the entire interest of the obligee in the land by the payment of a determined or determinable amount; and (iv) where the obligee's interest in the land is primarily a security interest to protect his right to be paid the rent or charge.

§ 55.1-1501. Form of instrument.

Any agreement in which a residential ground rent is created shall:

1. Be reduced to writing;

2. Be in recordable form; and

3. Disclose the date, the names of the parties, the ground rent and any future adjustments to the ground rent, when such rent is payable, the duration of the agreement, and the value of the land at the time the agreement is made. If the parties agree to the amount for which the ground rent may be redeemed, such amount shall also be included in the agreement. Such agreement shall be included as a part of the deed or other instrument of transfer.

§ 55.1-1502. Changes in amount of rent.

The amount of a residential ground rent may be changed on demand of either the obligor or obligee at the end of five years from the date of the agreement, and every five years thereafter, by giving notice to the other party by certified mail or overnight delivery using a commercial service or the United States Postal Service between 90 and 60 days prior to such fifth anniversary. Unless the parties agree otherwise, such change in ground rent shall not exceed the percentage change for the preceding three years in the Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the

U.S. Department of Labor or such other instrument or agency of the United States or of the Commonwealth as may be designated by the General Assembly. The first of such years shall constitute the base year.

§ 55.1-1503. Encumbrance on real property.

A residential ground rent shall constitute a lien against the real estate from the time it is recorded. Any deed of trust or mortgage may provide that a default in payment of ground rent shall constitute a default in such deed of trust or mortgage, that the trustee or beneficiary of the deed of trust or mortgage may satisfy such obligation for rent, and that the money used to satisfy such obligation, along with interest, shall be a part of the debt secured, to be repaid as provided in § 55.1-320 et seq.

§ 55.1-1504. Redemption rights.

The obligor shall have the right to redeem a residential ground rent at any time after three years from the date the ground rent agreement is made. The redemption shall be effected for the amount agreed upon by the obligor and the obligee or, in the absence of such an agreement, shall be determined by capitalizing the ground rent in effect at the time of redemption, using the average rate on long-term business loans charged by commercial banks in the southeast, as published by the Federal Reserve Board. Upon tender of such amount by the obligor, together with any lawfully collectible arrearages of rent and interest thereon, the obligor may redeem the land from, and shall be entitled to a release from, all obligation to pay ground rent. Such release shall be in recordable form and the cost of recording the same, together with any other charges incidental to it, other than the state transfer tax, shall be paid by the obligor.

§ 55.1-1505. Incorporation of agreement into deed.

A ground rent agreement made pursuant to the provisions of this chapter may be incorporated into the deed or other instrument of transfer in the following form:

This deed is subject to annual ground rent or charge as follows:

1. Date of agreement: _____;

2. Parties:

a. Obligor: _____; and

b. Obligee: _____;

3. Ground rent and any future adjustments to it: _____;

4. When payable: _____;

5. Duration: _____;

6. Original value of land: _____; and

7. Redemption price, if agreed on: _____.

CHAPTER 16.

DEEDS OF LEASE.

§ 55.1-1600. Form of a lease.

A deed of lease may be made in a form substantially similar to the following: "This deed, made the _____ day of _____, in the year _____, between (herein insert the names of parties), witnesseth: that the said _____ doth (or do) demise unto the said _____, his personal representative and assigns, all (here describe the property) from the _____ day of _____, for the term of _____, thence ensuing, yielding therefor during the said term the rent of (here state the rent and mode of payment). Witness the following signature and seal (or signatures and seals)."

§ 55.1-1601. Memoranda of leases and options.

A. In lieu of the recording of a lease, a memorandum of such lease may be recorded, executed by the lessor and the lessee in the manner that would entitle a conveyance to be recorded. Such memorandum of lease shall contain at least the following information with respect to the lease:

1. The name of the lessor;

2. The name of the lessee and a reference to the lease;

3. The addresses, if any, set forth in the lease as addresses of such parties;

4. The date of the memorandum of such lease;

5. A description of the leased premises; and

6. A statement of the term, commencement date or termination date, and rights of extension or renewal, if any, to the extent required to determine the period for which or date to which the lease may be in effect.

B. In lieu of the recording of an option to purchase real estate, a memorandum of such option may be recorded, executed by the grantor of the option in the manner that would entitle a conveyance to be recorded.

Such memorandum of option to purchase real estate shall contain at least the following information with respect to the option:

1. The name of the person granting the option;

2. The name of the optionee and a reference to the option;

3. The addresses, if any, set forth in the agreement as addresses of such parties;

4. The date of the memorandum of the option;

5. A description of the optioned premises;

6. The option price or reference to the document containing the method with regard to how the option price is computed; and

7. The statement of the term, commencement date or termination date, and rights of extension or renewal, if any, to the extent required to determine the period during which or date to which the option may be in effect.

§ 55.1-1602. Certain covenants of lessee "to pay the rent" and "to pay the taxes."

In a deed of lease, (i) a covenant by the lessee "to pay the rent" shall have the effect of a covenant that the rent reserved by the deed shall be paid to the lessor, or those entitled under the lessor, in the manner stated in the deed, and (ii) a covenant by the lessee "to pay the taxes" shall have the effect of a covenant that all the taxes, levies, and assessments upon the demised premises, or upon the lessor on account thereof, shall be paid by the lessee or those claiming under the lessee.

§ 55.1-1603. Certain covenants of lessee that "he will not assign without leave" and that "he will leave the premises in good repair."

In a deed of lease, (i) a covenant by the lessee that "he will not assign without leave" shall have the same effect as a covenant that the lessee will not, during the term, assign, transfer, or set over the premises, or any part of such premises, to any person without the consent, in writing, of the lessor or the lessor's representative or assigns, and (ii) a covenant by the lessee that "he will leave the premises in good repair" shall, subject to the qualifications of § 55.1-1411, have the same effect as a covenant that the demised premises will, at the expiration or other sooner determination of the term, be peaceably surrendered and yielded to the lessor or the lessor's representatives or assigns in good and substantial repair and condition, reasonable wear and tear excepted.

§ 55.1-1604. Covenant of lessor "for lessee's quiet enjoyment."

A covenant by a lessor "for the lessee's quiet enjoyment of his term" shall have the same effect as a covenant that the lessee, or the lessee's personal representative or lawful assigns, paying the rent reserved and performing his covenants, shall peaceably possess and enjoy the demised premises, for the term granted, without any interruption or disturbance from any person.

§ 55.1-1605. Effect of provision for reentry by lessor.

If a deed of lease provides that "the lessor may reenter for default of _____ days in the payment of rent, or for the breach of covenants," it has the effect of an agreement that if the rent reserved, or any part of such rent, is unpaid for such number of days after the day on which it was due, or if any of the other covenants on the part of the lessee or his personal representative or assigns is broken, then, in either of such cases, the lessor, or those entitled in the lessor's place, at any time afterwards may reenter into and upon the demised premises, or any part of such premises, in the name of the whole, and the same again have, repossess, and enjoy, as of his former estate.

CHAPTER 17.
EMBLEMENTS.

§ 55.1-1700. Law of emblements.

In all cases, the right to emblements shall be as at common law, provided, however, that in any sale of land under a deed of trust or mortgage, such sale shall be made subject to the right and interest of a tenant in any crop planted by him under a bona fide lease for no more than one year, entered into by him with the mortgagor after the execution of such deed of trust or mortgage, but during such time as the mortgagor is allowed to remain in possession of the mortgaged premises and before the premises is advertised for sale under such deed of trust, or under an order in an action brought for the foreclosure of such deed of trust or mortgage.

§ 55.1-1701. What rent tenant entitled to emblements to pay.

The tenant who is entitled to emblements, or his personal representative, shall pay a reasonable rent for the land occupied by the emblements in the same proportion as such land bears in quantity and value to the entire premises. Such rent shall be apportioned among the owners of the reversion, if there is more than one, according to their respective interests.

§ 55.1-1702. Compensation to outgoing tenant for preparation of land for crop.

In the case of an outgoing tenant, those who succeed to the land shall pay such outgoing tenant reasonable compensation for any preparation of such land by the tenant for the purpose of planting a crop if the outgoing tenant, or his personal representative, would have been entitled to emblements had the crop been planted by him.

§ 55.1-1703. Lessee of life tenant may hold land through end of year on death of tenant; apportionment of rent.

If there is a tenant for life or other uncertain interest in land that is leased to another, upon the death of such tenant for life or termination of such other uncertain interest, the lessee may hold the land through the end of the current year of the tenancy, paying rent. The rent, if it is reserved in money, shall be apportioned between the tenant for life or other uncertain interest, or his personal representative, and those who succeed to the land. If rent is reserved in kind, it shall be paid to the tenant for life or other uncertain interest, or his personal representative, and the tenant or his personal representative, as the case may be, shall pay to those who succeed to the land a reasonable rent, in money, from the expiration of the life estate or other uncertain interest to the end of the current year of the tenancy. The rent to be paid to those who succeed to the land shall be a charge in preference to other claims on the rent received in kind by such tenant or his personal representative.

SUBTITLE IV.
COMMON INTEREST COMMUNITIES.
CHAPTER 18.
PROPERTY OWNERS' ASSOCIATION ACT.
Article 1.
General Provisions.

§ 55.1-1800. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association or a committee that is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement, or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased, or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as a common area in the declaration.

"Common interest community" means the same as that term is defined in § 54.1-2345.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

"Development" means real property located within the Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through 9 of § 55.1-1809. The update shall include a copy of the original disclosure packet.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication.

Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § 55.1-1809.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

§ 55.1-1801. Applicability.

A. This chapter applies to developments subject to a declaration initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the Subdivided Land Sales Act (§ 55.1-2300 et seq.). For the purposes of this chapter, as used in the Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation, and control of a development are deemed to correspond with the term "declaration."

"Developer" is deemed to correspond with the term "declarant."

"Subdivision" is deemed to correspond with the term "development."

B. This chapter supersedes the Subdivided Land Sales Act (§ 55.1-2300 et seq.), and no development shall be subject to the Subdivided Land Sales Act on or after July 1, 1998.

This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998, provided, however, that this chapter shall be applicable to any development established prior to the enactment of the Subdivided Land Sales Act (§ 55.1-2300 et seq.) (i) located in a county with an urban county executive form of government, (ii) containing 500 or more lots, (iii) each lot of which is located within the boundaries of a watershed improvement district established pursuant to Article 3 (§ 10.1-614 et seq.) of Chapter 6 of Title 10.1, and (iv) each lot of which is subject to substantially similar deed restrictions, which shall be considered a declaration under this chapter.

In addition, any development established prior to July 1, 1978, may specifically provide for the applicability of the provisions of this chapter.

C. This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent that the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

D. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§ 55.1-1900 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit, taxable corporation with

nonmandatory membership which, as its primary function, makes available golf, ski, and other recreational facilities both to its members and to the general public.

§ 55.1-1802. Developer to register and file annual report; payment of real estate taxes attributable to the common area.

A. (Effective July 1, 2019) Unless control of the association has been transferred to the members, the developer shall register the association with the Common Interest Community Board within 30 days after recordation of the declaration and thereafter shall ensure that the report required pursuant to § 55.1-1835 has been filed.

B. Upon the transfer of the common area to the association, the developer shall pay all real estate taxes attributable to the open or common space as defined in § 58.1-3284.1 through the date of the transfer to the association.

§ 55.1-1803. Limitation on certain contracts and leases by declarant.

A. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group shall be entered into for a period in excess of five years. Any such contract or agreement may be terminated without penalty by the association or its board of directors upon not less than 90 days' written notice to the other party given no later than 60 days after the expiration of the period of declarant control contemplated by the declaration.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions of such contract or lease.

C. If entered into at any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract, lease, or agreement, other than those subject to the provisions of subsection A or B, may be entered into by or on behalf of the association, its board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the association at the time entered into under the circumstances.

D. This section shall be strictly construed to protect the rights of the lot owners.

§ 55.1-1804. Documents to be provided by declarant upon transfer of control.

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors other than the declarant are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including minute books and rules and regulations and all amendments to such rules and regulations that may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the lot owners, not to exceed 60 days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (vi) all association insurance policies that are currently in force; (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (viii) any contracts in which the association is a contracting party; (ix) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the association property; and (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors.

If the association is managed by a common interest community manager in which the declarant, or its principals, has no pecuniary interest or management role, then such common interest community manager shall have the responsibility to provide the documents and information required by clauses (i), (ii), (vi), and (viii).

§ 55.1-1805. Association charges.

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55.1-1810 or 55.1-1811 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55.1-1810 or 55.1-1811. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator pursuant to § 54.1-2349 or 54.1-2352, as applicable.

§ 55.1-1806. Rental of lots.

A. Except as expressly authorized in this chapter, in the declaration, or as otherwise provided by law, no association shall:

1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an assessment or impose a charge except as provided in § 55.1-1805;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of $50 during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55.1-1805;

4. Require the lot owner to use a lease or an addendum to the lease prepared by the association;

5. Charge any deposit from the lot owner or the tenant of the lot owner; or

6. Have the authority to evict a tenant of any lot owner or to require any lot owner to execute a power of attorney authorizing the association to evict such a tenant. However, if the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative with respect to any lease, the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative. Notwithstanding the foregoing, the requirements of § 55.1-1828 and the declaration shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

B. The association may require the lot owner to provide the association with (i) the names and contact information of and vehicle information for the tenants and authorized occupants under such lease and (ii) the name and contact information of any authorized agent of the lot owner. The association may require the lot owner to provide the association with the tenant's acknowledgment of and consent to any rules and regulations of the association.

C. The provisions of this section shall not apply to lots owned by the association.

§ 55.1-1807. Statement of lot owner rights.

Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § 55.1-1815, including records of all financial transactions;

2. The right to cast a vote on any matter requiring a vote by the association's membership in proportion to the lot owner's ownership interest, unless the declaration provides otherwise;

3. The right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection G of § 55.1-1815 and § 55.1-1816;

4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at such proceeding, as provided in § 55.1-1819, and the right of due process in the conduct of that hearing; and

5. The right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § 55.1-1828.

Article 2.

Disclosure Requirements; Authorized Fees.

§ 55.1-1808. Contract disclosure statement; right of cancellation.

A. For purposes of this article, unless the context requires a different meaning:

"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Receives," "received," or "receiving" the disclosure packet means that the purchaser or purchaser's authorized agent has received the disclosure packet by one of the methods specified in this section.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

B. Subject to the provisions of subsection A of § 55.1-1814, an owner selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Property Owners' Association Act (§ 55.1-1800 et seq.); (ii) the Property Owners' Association Act (§ 55.1-1800 et seq.) requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection H of § 55.1-1810 or subsection D of § 55.1-1811, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (a) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55.1-1835, (b) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection A of § 55.1-1809, or (c) written notice has been provided by the association that a packet is not available.

C. If the contract does not contain the disclosure required by subsection B, the purchaser's sole remedy is to cancel the contract prior to settlement.

D. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection G of § 55.1-1810 or subsection D of § 55.1-1811, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract if, on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt is obtained; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser also may cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser.

Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing in the form of a certificate of service prepared by the sender confirming such mailing;

3. Electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be in the form of an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser.

E. Whenever any contract is canceled based on a failure to comply with subsection B or D or pursuant to subsection C, any deposit or escrowed funds shall be returned within 30 days of the cancellation, unless the parties to the contract specify in writing a shorter period.

F. Any rights of the purchaser to cancel the contract provided by this chapter are waived if not exercised prior to settlement.

G. Except as expressly provided in this chapter, the provisions of this section and § 55.1-1809 may not be varied by agreement, and the rights conferred by this section and § 55.1-1809 may not be waived.

H. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the disclosure packet may be made by the lot owner or the lot owner's authorized agent.

I. If the lot is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last disclosure packet or resale certificate.

§ 55.1-1809. Contents of association disclosure packet; delivery of packet.

A. Within 14 days after receipt of a written request and instructions by a seller or the seller's authorized agent, the association shall deliver an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in the Commonwealth;

2. A statement of any expenditure of funds approved by the association or the board of directors that requires an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to the right of use of common areas, and the status of the account;

4. A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;

5. The current reserve study report or summary of such report, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;

6. A copy of the association's current budget or a summary of such budget, prepared by the association, and a copy of its statement of income and expenses or statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;

7. A statement of the nature and status of any pending action or unpaid judgment (i) to which the association is a party and (ii) that could or would have a material impact on the association or its members or that relates to the lot being purchased;

8. A statement setting forth the insurance coverage that is provided for all lot owners by the association, including the fidelity coverage maintained by the association, and any additional insurance that is required or recommended for each lot owner;

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned to such lot, is or is not in violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association;

10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including reasonable restrictions as to the size, place, and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

12. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to install or use solar energy collection devices on the owner's property;

13. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;

14. A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the disclosure packet;

15. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

16. A copy of the fully completed form developed by the Common Interest Community Board pursuant to § 54.1-2350;

17. Certification that the association has filed with the Common Interest Community Board the annual report required by § 55.1-1835. Such certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing; and

18. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies.

B. Failure to receive copies of an association disclosure packet shall not excuse any failure to comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

C. The disclosure packet shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the disclosure packet shall be delivered electronically or in hard copy, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. The disclosure packet required by this section shall not, in and of itself, be deemed a security as defined in § 13.1-501.

D. The seller or the seller's authorized agent may request that the disclosure packet be provided in hard copy or in electronic form. An association or common interest community manager may provide the disclosure packet electronically; however, the seller or the seller's authorized agent shall have the right to request that the association disclosure packet be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the disclosure packet in person at the principal place of business of the association. If the seller or the seller's authorized agent requests that the disclosure packet be provided in electronic format, neither the association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The disclosure packet shall not be delivered in hard copy if the requester has requested delivery of such disclosure packet electronically. If the disclosure packet is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § 55.1-1810. If the seller or the seller's authorized agent asks that the disclosure packet be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the property owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § 55.1-1810. Regardless of whether the disclosure packet is delivered in paper form or electronically, the preparer of the disclosure packet shall provide such disclosure packet directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

§ 55.1-1810. Fees for disclosure packet; professionally managed associations.

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55.1-1809, and for such other services as set out in this section. The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered.

B. A reasonable fee may be charged by the preparer as follows:

1. For the inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and as required to prepare the association disclosure packet, a fee not to exceed $100;

2. For the preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed $150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of $125 for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. The preparer of the disclosure packet shall provide the disclosure packet directly to the designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

3. At the option of the seller or the seller's authorized agent, with the consent of the association or the common interest community manager, for expediting the inspection, preparation, and delivery of the disclosure packet, an additional expedite fee not to exceed $50;

4. At the option of the seller or the seller's authorized agent, for an additional hard copy of the disclosure packet, a fee not to exceed $25 per hard copy;

5. At the option of the seller or the seller's authorized agent, for hand delivery or overnight delivery of the overnight disclosure packet, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service; and

6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of establishing the purchaser as the owner of the property in the records of the association, a fee not to exceed $50.

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1833, if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever occurs first.

For purposes of this section, an expedite fee shall be charged only if the inspection and preparation of delivery of the disclosure packet are completed within five business days of the request for a disclosure packet.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and responsibilities of the association under this chapter. No additional fee shall be charged for access to the association's or common interest community manager's website. The association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so the seller or the seller's authorized agent will know such fees at the time of requesting the packet.

D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale of the lot and shall be due and payable out of the settlement proceeds in accordance with this section. The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. The seller shall be responsible for all costs associated with the preparation and delivery of the association disclosure packet, except for the costs of any disclosure packet update or financial update, which costs shall be the responsibility of the requester, payable at settlement. Neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the association disclosure packet.

E. If settlement does not occur within 60 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1834. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requester shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of

the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the disclosure packet update or financial update may be charged by the preparer not to exceed $50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the association or the common interest community manager perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed $100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. Neither the association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No association or common interest community manager may require the requester to request the specified update electronically. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requester asks that the specified update be provided in electronic format, neither the association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or the seller's authorized agent.

K. When an association disclosure packet has been delivered as required by § 55.1-1809, the association shall, as to the purchaser, be bound by the statements set forth in the disclosure packet as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55.1-1809, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $1,000. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the association disclosure packet within 14 days against any (i) property owners' association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

N. No association may collect fees authorized by this section unless the association (i) is registered with the Common Interest Community Board, (ii) is current in filing the most recent annual report with the Common Interest Community Board, (iii) is current in paying the annual payment to the Common Interest Community Board pursuant to § 55.1-1835 and any assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5, and (iv) provides the disclosure packet electronically if so requested by the requester.

§ 55.1-1811. Fees for disclosure packet; associations not professionally managed.

A. An association that is not professionally managed may charge a fee for the preparation and issuance of the association disclosure packet required by § 55.1-1809. Any fee shall reflect the actual cost of the preparation of the association disclosure packet, but shall not exceed $0.10 per page of copying costs or a total of $100 for all costs incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify whether the association disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent, the preparer shall provide the disclosure packet directly to the designated persons at the same time it is delivered to the seller or his authorized agent. The association shall advise the requester if electronic delivery of the disclosure packet or the disclosure packet update or financial update is not available, if electronic delivery has been requested by the seller or his authorized agent.

B. At the option of the seller or the seller's authorized agent, with the consent of the association, a reasonable fee may be charged for (i) expediting the inspection, preparation, and delivery of the disclosure packet, if completed within five business days of the request, not to exceed $50; (ii) an additional hard copy of the disclosure packet not to exceed $25 per hard copy; and (iii) third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet not to exceed an amount equal to the actual cost paid.

C. No fees other than those specified in this section shall be charged by the association for compliance with duties and responsibilities under this section. Any fees charged pursuant to this section shall be collected at the time of delivery of the disclosure packet. If unpaid, any such fees shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1833. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association.

D. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requester shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request for such disclosure packet update.

E. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request for such financial update.

F. A reasonable fee for the disclosure packet update or a financial update may be charged by the preparer not to exceed $50. At the option of the purchaser or his authorized agent, the requester may request that the association perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed $50. Any fees charged for the specified update shall be collected at the time of delivery of the update. The association shall not require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requester may request that the specified update be provided in hard copy or in electronic form.

G. No association may require the requester to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the association's principal place of business. If the requester asks that the specified update be provided in electronic format, the association shall not require the requester to pay any fees to use the provider's electronic network or system. If the requester asks that the specified update be provided in electronic format, the requester may designate no more than two additional recipients to receive the specified update in electronic format at no additional charge. A copy of the specified update shall be provided to the seller or his authorized agent.

H. When a disclosure packet has been delivered as required by § 55.1-1809, the association shall, as to the purchaser, be bound by the statements set forth in the disclosure packet as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

I. If the association has been requested to furnish the association disclosure packet required by this section, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

J. No association may collect fees authorized by this section unless the association (i) is registered with the Common Interest Community Board, (ii) is current in filing the most recent annual report with the Common Interest Community Board, and (iii) is current in paying the annual payment to the Common Interest

Community Board pursuant to § 55.1-1835 and any assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5.

K. An association that is not professionally managed may charge and collect fees for inspection of the property, the preparation and issuance of an association disclosure packet, and such other services as set out in § 55.1-1810, provided that the association provides the disclosure packet electronically if so requested by the requester and otherwise complies with § 55.1-1810.

§ 55.1-1812. Properties subject to more than one declaration.

If the lot is subject to more than one declaration, the association or its common interest community manager may charge the fees authorized by § 55.1-1810 or 55.1-1811 for each of the applicable associations, provided, however, that no association shall charge inspection fees unless the association has architectural control over the lot.

§ 55.1-1813. Requests by settlement agents.

A. The settlement agent may request a financial update from the preparer of the disclosure packet. The preparer of the disclosure packet shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions. However, a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the disclosure packet with (i) the complete record name of the seller, (ii) the address of the subject lot, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

§ 55.1-1814. Exceptions to disclosure requirements.

A. The contract disclosures required by § 55.1-1808 and the association disclosure packet required by § 55.1-1809 shall not be provided in the case of:

1. A disposition of a lot by gift;

2. A disposition of a lot pursuant to court order if the court so directs;

3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;

4. A disposition of a lot by a sale at an auction, where the association disclosure packet was made available as part of an auction package for prospective purchasers prior to the auction sale; or

5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

B. In any transaction in which an association disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the association disclosure packet from the association and provide the packet to the purchaser.

C. In the case of an initial disposition of a lot by the declarant, the association disclosure packet required by § 55.1-1809 need not include the information referenced in subdivisions A 2, 3, 5, or 9 of § 55.1-1809, and it shall include the information referenced in subdivision A 17 of § 55.1-1809 only if the association has filed an annual report prior to the date of such disclosure packet.

Article 3.

Operation and Management of Association.

§ 55.1-1815. Access to association records; association meetings; notice.

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

2. The actual salary of the six highest compensated employees of the association earning over $75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person having standing to bring legal action or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55.1-1819;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55.1-1816;

8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual lot owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

F. Notwithstanding the provisions of subsections B and C, all books and records of the association, including individual salary information for all employees and payments to independent contractors, shall be available for examination and copying upon request by a member of the board of directors in the discharge of his duties as a director.

G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the association at which directors are elected, the seven-day notice of

any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot. Notice may instead be hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the member. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (i) within 60 days from the conclusion of the meeting to which such minutes appertain or (ii) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

§ 55.1-1816. Meetings of the board of directors.

A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

Any member may record any portion of a meeting that is required to be open. The board of directors or subcommittee or other committee of the board of directors conducting the meeting may adopt rules (a) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (b) requiring the member recording the meeting to provide notice that the meeting is being recorded.

If a meeting is conducted by telephone conference or video conference or similar electronic means, at least two members of the board of directors shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any member of the board of directors participating in the meeting who is not physically present.

Except for the election of officers, voting by secret or written ballot in an open meeting shall be a violation of this chapter.

C. The board of directors or any subcommittee or other committee of the board of directors may (i) convene in executive session to consider personnel matters; (ii) consult with legal counsel; (iii) discuss and consider contracts, pending or probable litigation, and matters involving violations of the declaration or rules and regulations adopted pursuant to such declaration for which a member or his family members, tenants, guests, or other invitees are responsible; or (iv) discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee of the board of directors, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which

shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period of time during a meeting to allow members an opportunity to comment on any matter relating to the association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the board of directors may limit the comments of members to the topics listed on the meeting agenda.

§ 55.1-1817. Distribution of information by members.

The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

§ 55.1-1818. Common areas; notice of pesticide application.

The association shall post notice of all pesticide applications in or upon the common areas. Such notice shall consist of conspicuous signs placed in or upon the common areas where the pesticide will be applied at least 48 hours prior to the application.

§ 55.1-1819. Adoption and enforcement of rules.

A. Except as otherwise provided in this chapter, the board of directors shall have the power 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. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose shall 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 may award to the prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant to such declaration expressly so provide, 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 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 violation remains uncorrected, 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.

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.

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 action. In addition, if

the court finds that the violation remains uncorrected, the court may order the lot owner to abate or remedy the violation.

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

§ 55.1-1820. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), no association shall 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 (4 U.S.C. § 1 et seq.), 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 that 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.

C. In any action brought by the association under § 55.1-1819 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 § 55.1-1819, 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 § 55.1-1809.

§ 55.1-1821. Home-based businesses permitted; compliance with local ordinances.

Except to the extent that the declaration provides otherwise, no association shall prohibit any lot owner from operating a home-based business within his personal residence. The association may, however, establish (i) reasonable restrictions as to the time, place, and manner of the operation of a home-based business and (ii) reasonable restrictions as to the size, place, duration, and manner of the placement or display of any signs on the owner's lot related to such home-based business. Any home-based business shall comply with all applicable local ordinances.

§ 55.1-1822. Use of for sale signs in connection with sale.

Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall require the use of any for sale sign that is (i) an association sign or (ii) a real estate sign that does not comply with the requirements of the Virginia Real Estate Board. An association may, however, prohibit the placement of signs in the common area and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Virginia Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed.

§ 55.1-1823. Designation of authorized representative.

Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall require any lot owner to execute a formal power of attorney if the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative, and the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization signed by the lot owner designating such representative. Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

§ 55.1-1824. Assessments; late fees.

Except to the extent that the declaration or any rules or regulations promulgated pursuant to such declaration provide otherwise, the board may impose a late fee that does not exceed the penalty provided in § 58.1-3915 for any assessment or installment that is not paid within 60 days of the due date for payment of such assessment.

§ 55.1-1825. Authority to levy special assessments.

A. In addition to all other assessments that are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if (i) the purpose in so doing is found by the board to be in the best interests of the association and (ii) the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any such claimed breach of fiduciary duty.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § 55.1-1833 as well as any other rights afforded a creditor under law.

C. The failure of a member to pay the special assessment allowed by subsection A will provide the association with the right to deny the member access to any or all of the common areas. However, the member shall not be denied direct access to the member's lot over any road within the development that is a common area.

§ 55.1-1826. Reserves for capital components.

A. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect.

§ 55.1-1827. Deposit of funds; fidelity bond.

A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the association and shall be segregated for each account in the managing agent's records in a manner that permits the funds to be identified on an individual association basis.

B. Any association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the association or committed by any managing agent or employees of the managing agent. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $1 million or the amount of the reserve balances of the association plus one-fourth of the aggregate annual assessment income of such association. The minimum coverage amount shall be $10,000. The board of directors or managing agent may obtain such bond or insurance on behalf of the association.

§ 55.1-1828. Compliance with declaration.

A. Every lot owner, and all those entitled to occupy a lot, shall comply with all lawful provisions of this chapter and all provisions of the declaration. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association or by its board of directors or any managing agent on behalf of such association or, in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. Except

as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section shall not preclude an action against the association and authorizes the recovery by the prevailing party in any such action of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a lot owner for nonpayment of assessments in which the lot owner has failed to pay assessments levied by the association on more than one lot or in which such lot owner has had legal actions taken against him for nonpayment of any prior assessment, and the prevailing party is the association or its board of directors or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the association, whether any judicial proceedings are filed.

C. A declaration may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the development is located, or as mutually agreed to by the parties.

§ 55.1-1829. Amendment to declaration and bylaws; consent of mortgagee.

A. In the event that any provision in the declaration requires the written consent of a mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, or by regular mail with proof of mailing to the mortgagee at the address supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the declaration and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise. If the mortgagee has not supplied an address to the association, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise.

B. Subsection A shall not apply to amendments that alter the priority of the lien of the mortgagee or that materially impair or affect a lot as collateral or the right of the mortgagee to foreclose on a lot as collateral.

C. Where the declaration is silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the declaration does not specifically affect mortgagee rights.

D. Except as otherwise provided in the declaration, a declaration may be amended by a two-thirds vote of the lot owners.

E. An action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is effective.

F. Agreement of the required majority of lot owners to any amendment of the declaration adopted pursuant to subsection D shall be evidenced by their execution of the amendment, or ratifications of such amendment, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the association or by such other officer or officers as the declaration may specify, that the requisite majority of the lot owners signed the amendment or ratifications of such amendment.

G. Subsections D and F shall not be construed to affect the validity of any amendment recorded prior to July 1, 2017.

§ 55.1-1830. Validity of declaration; corrective amendments.

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

§ 55.1-1831. Reformation of declaration; judicial procedure.

A. An association may petition the circuit court in the county or city in which the development or the greater part of the development is located to reform a declaration where the association, acting through its board of directors, has attempted to amend the declaration regarding ownership of legal title of the common areas or real property using provisions outlined in such declaration to resolve (i) ambiguities or inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the association or individual lot owners or (ii) scrivener's errors, including incorrectly identifying the association, incorrectly identifying an entity other than the association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common areas or real property to:

1. Reform, in whole or in part, any provision of a declaration; and

2. Correct any mistake or other error in the declaration that may exist with respect to the declaration for any other purpose.

C. A petition filed by the association with the court setting forth any inconsistency or error made in the declaration, or the necessity for any change in the declaration, shall be deemed sufficient basis for the reformation, in whole or in part, of the declaration, provided that:

1. The association has made three good faith attempts to convene a duly called meeting of the association to present for consideration amendments to the declaration for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the development still owns a lot or other property in the development, the declarant joins in the petition of the association;

4. A copy of the petition is sent to all owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association.

D. Any mortgagee of a lot in the development shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any lot as collateral for a mortgage, or affect a mortgagee's right to foreclose on a lot as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1829.

§ 55.1-1832. Use of technology.

A. Unless the declaration expressly provides otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using electronic means.

B. The association, the lot owners, and those entitled to occupy a lot may perform any obligation or exercise any right under any declaration or bylaw provision or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any declaration or bylaw provision or any provision of this chapter.

D. Voting on, consent to, and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic means, provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form.

E. Subject to other provisions of law, no action required or permitted by any declaration or bylaw provision or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive board.

F. If any person does not have the capability or desire to conduct business using electronic means, the association shall make reasonable accommodation, at its expense, for such person to conduct business with the association without use of such electronic means.

G. This section shall not apply to any notice related to an enforcement action by the association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

§ 55.1-1833. Lien for assessments.

A. The association shall have a lien, once perfected, on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of such lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under § 55.1-318 shall be given in the same fashion as if the association's lien were a judgment.

B. The association, in order to perfect the lien given by this section, shall file, before the expiration of 12 months from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such development is situated, a memorandum, verified by the oath of the principal officer of the association or such other officer or officers as the declaration may specify, which contains the following:

1. The name of the development;

2. A description of the lot;

3. The name or names of the persons constituting the owners of that lot;

4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;

5. The date of issuance of the memorandum;

6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and

7. A statement that the association is obtaining a lien in accordance with the provisions of the Property Owners' Association Act as set forth in Chapter 18 (§ 55.1-1800 et seq.) of Title 55.1.

It shall be the duty of the clerk in whose office such memorandum is filed as provided in this section to record and index the same as provided in subsection D, in the names of the persons identified in such memorandum as well as in the name of the association. The cost of recording and releasing the memorandum shall be taxed against the person found liable in any judgment or order enforcing such lien.

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable county or city. The notice shall be sent at least 10 days before the actual filing date of the memorandum of lien.

D. Notwithstanding any other provision of this section or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No action to enforce any lien perfected under subsection B shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any action in which the petition may be properly filed shall be regarded as the institution of an action under this section. Nothing in this subsection shall extend the time within which any such lien may be perfected.

F. The judgment or order in an action brought pursuant to this section shall include reimbursement for costs and reasonable attorney fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B, the lien shall be released in accordance with the provisions of § 55.1-339. Any lien that is not so released shall subject the lien creditor to the penalty set forth in subdivision B 1 of § 55.1-339. For the purposes of § 55.1-339, the principal officer of the association, or any other officer or officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55.1-1828.

I. At any time after perfecting the lien pursuant to this section, the property owners' association may sell the lot at public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the lot and shall be deemed the lot owner's statutory agent for the purpose of transferring title to the lot. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The association shall give notice to the lot owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the lot owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the lot. The notice shall further inform the lot owner of the right to bring a court action in the circuit court of the county or city where the lot is located to assert the nonexistence of a debt or any other defense of the lot owner to the sale.

2. After expiration of the 60-day notice period specified in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which such development is situated. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection D, in the names of the persons identified in such appointment as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the lot owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the lot owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the lot. Those conditions are that the lot owner (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pay all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees.

4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, including the name, address, and telephone number of the trustee, by hand delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust, provided that the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders and their assigns, at the addresses noted in the memorandum of lien, by United States mail, postage prepaid, no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the county or city in which the property to be sold, or any portion of such property, is located pursuant to the following provisions:

a. The association shall advertise once a week for four successive weeks; however, if the property or some portion of such property is located in a city or in a county immediately contiguous to a city, publication of the advertisement on five different days, which may be consecutive days, shall be deemed adequate. The sale shall

be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b, the association may further advertise as the association finds appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. The association shall have the following powers and duties upon a sale:

a. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the declaration, the association may bid to purchase the lot at a foreclosure sale. The association may own, lease, encumber, exchange, sell, or convey the lot. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision I 10 and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the association, its agent, or its attorney.

b. The association may require any bidder at any sale to post a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or, if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the association in connection with that sale.

c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the owner or his assigns, provided, however, that, as to the payment of such residue, the association shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the lot with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale of such property or to deliver possession of the lot to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309, and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55.1-1815 upon the written request of the prior lot owner, the current lot owner, or any holder of a recorded lien against the lot at the time of the sale. The association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a lot is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia and an order is entered requiring such sale to be set aside.

§ 55.1-1834. Notice of sale under deed of trust.

In accordance with the provisions of § 15.2-979, the association shall be given notice whenever a lot becomes subject to a sale under a deed of trust. Upon receipt of such notice, the board of directors, on behalf of the association, shall exercise whatever due diligence it deems necessary with respect to the lot subject to a sale under a deed of trust to protect the interests of the association.

§ 55.1-1835. Annual report by association.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The annual report shall be accompanied by a fixed fee in an amount established by the Board.

B. The association shall also remit to the agency an annual payment as follows:

1. The lesser of:

a. $1,000 or such other amount as established by agency regulation; or

b. Five hundredths of one percent (0.05%) of the association's gross assessment income during the preceding year.

2. For the purposes of subdivision 1 b, no minimum payment shall be less than $10.

C. The annual payment shall be remitted to the State Treasurer and shall be credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

§ 55.1-1836. Condemnation of common area; procedure.

When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment for such portion shall be paid to the association, which shall be a party in interest in the condemnation proceeding. The common area that is affected shall be valued on the basis of the common area's highest and best use as though it were free from restriction to sole use as a common area.

Except to the extent that the declaration or any rules and regulations duly adopted pursuant to such declaration otherwise provide, the board of directors shall have the authority to negotiate with the condemning authority, agree to an award or payment amount with the condemning authority without instituting condemnation proceedings, and, upon such agreement, convey the subject common area to the condemning authority. Thereafter, the president of the association may unilaterally execute and record the deed of conveyance to the condemning authority.

A member of the association, by virtue of his membership, shall be estopped from contesting the action of the association in any proceeding held pursuant to this section.

CHAPTER 19.

VIRGINIA CONDOMINIUM ACT.

Article 1.

General Provisions.

§ 55.1-1900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents to or interests in such real property, lawfully subject to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" means, collectively, the declaration, bylaws, and plats and plans recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification recorded with a condominium instrument shall be deemed an integral part of that condominium instrument. Once recorded, any amendment or certification of any condominium instrument shall be deemed an integral part of the affected condominium instrument if such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit.

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium.

"Conversion condominium" means a condominium containing structures that before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a portion of the common elements within which additional units or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium that a declarant may convert into one or more units or common elements, including limited common elements, in accordance with the provisions of the declaration and this chapter.

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of its interest in a condominium unit not previously disposed of, including an institutional lender that may not have succeeded to or accepted any special declarant rights pursuant to § 55.1-1947; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), "declarant" does not include an institutional lender that acquires title by foreclosure or deed in lieu of foreclosure unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55.1-1947. "Declarant" does not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but does not include the transfer or release of security for a debt.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act has the meaning set forth in that section.

"Executive board" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and this chapter.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest in such land, within which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser that is in no way binding on the prospective purchaser and that may be canceled without penalty at the sole discretion of the prospective purchaser.

"Offer" means any inducement, solicitation, or attempt to encourage any person to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing that expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered shall be considered an "offer."

"Officer" means any member of the executive board or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value may be considered substantially identical within the meaning of §§ 55.1-1917 and 55.1-1918.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person, other than a declarant, that acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

"Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the plat and plans and rounded to the nearest whole number. Certain spaces within the units, including attic, basement, or garage space, may be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium; (ii) contract a contractable condominium; (iii) convert convertible land or convertible space or both; (iv) appoint or remove any officers of the unit owners' association or the executive board pursuant to subsection A of § 55.1-1943; (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer, or the executive board; or (vi) maintain sales offices, management offices, model units, and signs pursuant to § 55.1-1929.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection D of § 55.1-1925.

"Unit owner" means one or more persons that own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest in the condominium extends for the entire balance of the unexpired term. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person holding an interest in a condominium unit solely as security for a debt.

§ 55.1-1901. Application and construction of chapter.

A. This chapter applies to all condominiums and to all horizontal property regimes or condominium projects. This chapter supersedes the Horizontal Property Act (§ 55.1-2000 et seq.), and no condominium shall be established under the Horizontal Property Act on or after July 1, 1974. This chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded prior to July 1, 1974. For the purposes of this chapter, as used in the Horizontal Property Act (§ 55.1-2000 et seq.):

"Apartment" corresponds to the term "unit."

"Co-owner" corresponds to the term "unit owner."

"Council of co-owners" corresponds to the term "unit owners' association."

"Developer" corresponds to the term "declarant."

"General common elements" corresponds to the term "common elements."

"Horizontal property regime" and "condominium project" correspond to the term "condominium."

"Master deed" and "master lease" correspond to the term "declaration" and are included in the term "condominium instruments."

B. This chapter does not apply to condominiums located outside the Commonwealth. Sections 55.1-1971, 55.1-1974 through 55.1-1982, and 55.1-1985 through 55.1-1989 apply to all contracts for the disposition of condominium units signed in the Commonwealth by any person, unless exempt under § 55.1-1972.

C. Subsection B of § 55.1-1955 and § 55.1-1982 do not apply to the declarant of a conversion condominium if that declarant is a proprietary lessees' association that, immediately before the creation of the condominium, owned fee simple title to or a fee simple reversionary interest in the real estate described pursuant to subdivision A 3 of § 55.1-1916.

§ 55.1-1902. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter shall not be varied by agreement, and rights conferred by this chapter shall not be waived. A declarant shall not act under power of attorney or use any other device to evade the limitations or prohibitions of this chapter or of the condominium instruments.

§ 55.1-1903. Separate assessments, titles, and taxation.

Except as otherwise provided in this section, each condominium unit constitutes a separate parcel of real estate. If there is any unit owner other than the declarant, each unit, together with its common element interest, but excluding its common element interest in convertible land and in any withdrawable land within which the declarant has the right to create units or limited common elements, shall be separately assessed and taxed. Each convertible land and withdrawable land within which the declarant has the right to create units or limited common elements shall be separately assessed and taxed against the declarant.

§ 55.1-1904. Association charges.

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55.1-1964, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55.1-1992. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349 and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

§ 55.1-1905. Local ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations.

A. No zoning or other land use ordinance shall prohibit condominiums solely on the basis of the form of ownership, nor shall any condominium be treated differently by any zoning or other land use ordinance that would permit a physically identical project or development under a different form of ownership. Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.

B. Subdivision and site plan ordinances in any locality shall apply to any condominium in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership; however, the declarant need not apply for or obtain subdivision approval to record condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

C. During development of a condominium containing additional land or withdrawable land, phase lines created by the condominium instruments shall not be considered property lines for purposes of subdivision. If the condominium can no longer be expanded by the addition of additional land, then the owner of the land not part of the condominium shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the condominium, the condominium and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided that such land is subject to an approved site plan.

D. During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, the declarant has the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including related conditional zoning proffers and agreements that do not create an affirmative obligation on the unit owners' association without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the declarant is not the owner of the land.

In accordance with subsection B of § 55.1-1956, once the declarant no longer has such authority, the executive board of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including related conditional zoning proffers and agreements that do not create an affirmative obligation on the declarant without its consent, with respect to the common

elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and occupancy permits, the unit owner, including the declarant if the declarant is the unit owner, shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land.

E. Localities may provide by ordinance that the declarant of a proposed conversion condominium that does not conform to the zoning, land use, and site plan regulations of the respective locality in which the property is located shall secure a special use permit, a special exception, or a variance, as the case may be, prior to such property's becoming a conversion condominium. The local authority shall grant a request for such a special use permit, special exception, or variance filed on or after July 1, 1982, if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. The local authority shall not unreasonably delay action on any such request. In the event of an approved conversion to condominium ownership, a locality, sanitary district, or other political subdivision may impose such charges and fees as are lawfully imposed by such locality, sanitary district, or political subdivision as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the locality, sanitary district, or political subdivision as a result of the conversion.

F. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.) or any local ordinances regulating design and construction of roads, sewer and water lines, stormwater management facilities, and other public infrastructure to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

§ 55.1-1906. Eminent domain.

A. If any portion of the common elements is taken by eminent domain, the award for such taking shall be paid to the unit owners' association, provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the order to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than one unit at the time of the taking, then the portion of the award attributable to the taking of such limited common element shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element that cannot be reassigned or that can be reassigned only with the consent of the unit owner of the unit to which it is assigned in accordance with § 55.1-1919.

B. If one or more units are taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter an order reflecting the reallocation of undivided interests produced by such taking, and the award shall include just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

C. 1. If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced, in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking.

2. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements, with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with subdivision 1.

3. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested by operation of subdivision 1 and not revested by operation of subdivision 2, as well as for that portion of his unit taken by eminent domain.

D. If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the unit owner of such unit for his entire undivided interest in the common elements and for his entire unit.

E. Votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, appertaining to any unit taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, with any units partially taken participating in such reallocation as though their voting strength in the unit owners' association had been reduced in proportion to the reduction in their undivided interests in the common elements, and the order of the court shall provide accordingly.

F. The order of the court shall require the recordation of such order among the land records of the county or city in which the condominium is located.

Article 2.

Creation, Alteration, and Termination of Condominiums.

§ 55.1-1907. How condominium may be created.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections A and B of § 55.1-1920.

§ 55.1-1908. Release of liens.

A. At the time of the conveyance to the first purchaser of a condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens affecting all of the condominium or a greater portion of the condominium than the condominium unit conveyed shall be paid and satisfied of record, or the declarant shall forthwith have such condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as the period of declarant control specified in § 55.1-1943 has expired and so long as the bylaws authorize such action. This subsection does not apply to any lien on more than one condominium unit in a condominium in which all units are restricted to nonresidential use and in which all unit owners whose condominium units will be subject to such lien expressly agree to assume or take subject to such lien.

B. If any lien, other than a deed of trust or mortgage, becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove his condominium unit from that lien by payment of the amount attributable to his condominium unit. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to subsection D of § 55.1-1964. Subsequent to such payment, discharge, or other satisfaction, the unit owner of that condominium unit shall be entitled to have that lien released as to his condominium unit in accordance with the provisions of § 55.1-341, and the unit owners' association shall not assess, or have a valid lien against, that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 55.1-1964 and 55.1-1966.

§ 55.1-1909. Description of condominium units.

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm if it sets forth the identifying number of that unit, the name of the condominium, the name of the county or city in which the condominium is situated, and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to in the description.

§ 55.1-1910. Execution of condominium instruments.

The declaration and bylaws, and any amendments to either made pursuant to § 55.1-1934, shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. The phrase "owners and lessees"

in this section and in § 55.1-1926 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, any person whose land is subject to an easement included in the condominium, or, in the case of a leasehold condominium subject to any lease executed before July 1, 1962, any lessor of the submitted land who is not a declarant.

§ 55.1-1911. Recordation of condominium instruments.

All amendments and certifications of condominium instruments shall set forth the name of the county or city in which the condominium is located and the deed book and page number where the first page of the declaration is recorded. All condominium instruments and all amendments and certifications of such condominium instruments shall be recorded in every county and city in which any portion of the condominium is located. The condominium instruments, amendments, and certifications shall set forth the name of the condominium and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk.

§ 55.1-1912. Construction of condominium instruments.

Except to the extent otherwise provided by the condominium instruments:

1. The terms defined in § 55.1-1900 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context requires a different meaning.

2. To the extent that walls, floors, or ceilings are designated as the boundaries of the units or of any specified units, all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces of such walls, floors, or ceilings are part of such units, while all other portions of such walls, floors, or ceilings are a part of the common elements.

3. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions serving only that unit are a part of that unit, while any portions serving more than one unit or any portion of the common elements are a part of the common elements.

4. Subject to the provisions of subdivision 3, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of that unit.

5. Any shutters, awnings, doors, windows, window boxes, doorsteps, porches, balconies, patios, or other apparatus designed to serve a single unit, but located outside the boundaries of such unit, are limited common elements appertaining to that unit exclusively, except that if a single unit's electrical master switch is located outside the designated boundaries of the unit, the switch and its cover are a part of the common elements.

§ 55.1-1913. Complementarity of condominium instruments; controlling construction.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the condominium instruments, the declaration shall control; but particular provisions shall control more general provisions, except that a construction consistent with the statute shall in all cases control over any inconsistent construction.

§ 55.1-1914. Validity of condominium instruments; discrimination prohibited.

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

§ 55.1-1915. Compliance with condominium instruments.

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available

at law or in equity, maintainable by the unit owners' association or by its executive board or any managing agent on behalf of such association or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55.1-1956. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section does not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a unit owner for nonpayment of assessments in which the unit owner has failed to pay assessments levied by the unit owners' association on more than one unit or such unit owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association or its executive board or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent unit owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the unit owners' association, whether any judicial proceedings are filed.

C. The condominium instruments may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the condominium is located or as mutually agreed by the parties.

§ 55.1-1916. Contents of declaration.

A. The declaration for every condominium shall contain the following:

1. The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium."

2. The name of the county or city in which the condominium is located.

3. A legal description by metes and bounds of the land submitted in accordance with this chapter.

4. A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries.

5. A description or delineation of any limited common elements, other than those that are limited common elements by virtue of subdivision 5 of § 55.1-1912, showing or designating the unit or units to which each is assigned.

6. A description or delineation of all common elements not within the boundaries of any convertible lands that may subsequently be assigned as limited common elements, together with a statement that (i) they may be so assigned and a description of the method by which any such assignments shall be made in accordance with the provisions of § 55.1-1919 or (ii) once assigned, the conditions under which they may be unassigned and converted to common elements in accordance with § 55.1-1919.

7. The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 55.1-1917.

8. A statement of the extent of the declarant's obligation to complete improvements labeled "NOT YET COMPLETED" or to begin and complete improvements labeled "NOT YET BEGUN" on plats recorded pursuant to the requirements of this chapter. Such statement shall be specific as to the type and quality of materials to be used, the size or capacity of the improvements when material, and the time by which such improvements shall be completed.

9. Such other matters as the declarant deems appropriate.

B. If the condominium contains any convertible land, the declaration shall also contain the following:

1. A legal description by metes and bounds of each convertible land within the condominium.

2. A statement of the maximum number of units that may be created within each such convertible land.

3. A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created in such convertible land that may be occupied by units not restricted exclusively to residential use. Such statement is not required if none of the units on other portions of the submitted land are restricted exclusively to residential use.

4. A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used, and architectural style.

5. A description of all other improvements that may be made on each convertible land within the condominium.

6. A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created in such convertible land.

7. A description of the declarant's reserved right, if any, to create limited common elements within any convertible land or to designate common elements in such convertible land that may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land.

Plats and plans may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 1, 4, 5, 6, and 7.

C. If the condominium is an expandable condominium, the declaration shall also contain the following:

1. The explicit reservation of an option to expand the condominium.

2. A statement of any limitations on that option, including a statement as to whether the consent of any unit owners shall be required, and, if so, a statement as to the method by which such consent shall be ascertained, or a statement that there are no such limitations.

3. A time limit, not exceeding 10 years after the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, that will terminate that option prior to the expiration of the time limit so specified. After the expiration of any period of declarant control reserved pursuant to subsection A of § 55.1-1943, such time limit may be extended by an amendment to the declaration made pursuant to § 55.1-1934.

4. A legal description by metes and bounds of all land that may be added to the condominium, henceforth referred to as "additional land."

5. A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added and, if not, a statement of any limitations as to what portions may be added, or a statement that there are no such limitations.

6. A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds of such portions or regulating the order in which they may be added to the condominium.

7. A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard.

8. A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with subdivision 6, the declaration shall also state the maximum number of units that may be created on each such portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with subdivision 6, then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium.

9. A statement, with respect to the additional land and to any portion of such additional land that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created on such additional land that may be occupied by units not restricted exclusively to residential use. Such statement is not required if none of the units on the submitted land are restricted exclusively to residential use.

10. A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards.

11. A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made on such additional land, or a statement that no assurances are made in that regard.

12. A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created on such additional land, or a statement that no assurances are made in that regard.

13. A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium or to designate common elements in such additional land that may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards.

Plats and plans may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 4, 5, 6, 7, 10, 11, 12, and 13.

D. If the condominium is a contractable condominium, the declaration shall also contain the following:

1. The explicit reservation of an option to contract the condominium.

2. A statement of any limitations on that option, including a statement as to whether the consent of any unit owners shall be required, and, if so, a statement as to the method whereby such consent shall be ascertained, or a statement that there are no such limitations.

3. A time limit, not exceeding 10 years after the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, that will terminate that option prior to the expiration of the time limit so specified.

4. A legal description by metes and bounds of all land that may be withdrawn from the condominium, hereinafter referred to as "withdrawable land."

5. A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds or regulating the order in which they may be withdrawn from the condominium.

6. A legal description by metes and bounds of all of the submitted land to which the option to contract the condominium does not extend. This subdivision shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 55.1-1937.

Plats may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 4, 5, and 6.

E. If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth the county or city in which such lease is recorded and the deed book and page number where the first page of each such lease is recorded, and the declaration shall also contain the following:

1. The date upon which each such lease is due to expire.

2. A statement as to whether any land or improvements will be owned by the unit owners in fee simple and, if so, either (i) a description of the same, including a legal description by metes and bounds of any such land, or (ii) a statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease involved, or a statement that they shall have no such rights.

3. A statement of the rights the unit owners shall have to redeem any reversion, or a statement that they shall have no such rights.

After the recording of the declaration, no lessor who executed such declaration, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person designated in the declaration for the receipt of such rent and who otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder does not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

F. Wherever this section requires a legal description by metes and bounds of land that is submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient description of any easements that are submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, as appropriate. In the case of each such easement, the declaration shall contain the following:

1. A description of the permitted use or uses.

2. If less than all of those entitled to the use of all of the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization.

3. If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the easement.

G. Wherever this section requires a legal description by metes and bounds of land that is submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estate in such lands. No such lands shall be shown on the same plat or plats showing other portions of the condominium but shall be shown instead on separate plats.

§ 55.1-1917. Allocation of interests in the common elements.

A. The declaration may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55.1-1920 an undivided interest in the common elements proportionate to either the size or par value of each unit. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit or any undivided interest in the common elements, voting rights in the unit owners' association, or liability for common expenses assigned on the basis of such par value.

B. If the basis for allocation provided in subsection A is not used, then the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

C. The undivided interests in the common elements allocated in accordance with subsection A or B shall add up to 1 if stated as fractions or 100 percent if stated as percentages.

D. If, in accordance with subsection A or B, an equal undivided interest in the common elements is allocated to each unit, the declaration may state that fact and need not express the fraction or percentage so allocated.

E. Unless an equal undivided interest in the common elements is allocated to each unit, the undivided interest allocated to each unit in accordance with subsection A or B shall be reflected by a table in the declaration, or by an exhibit to the declaration, containing three columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated to such units.

F. Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains is void.

G. The common elements shall not be subject to any action for partition until and unless the condominium is terminated.

§ 55.1-1918. Reallocation of interests in common elements.

A. If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

1. Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections A and B of § 55.1-1920; or

2. Prohibits the creation of any units not described pursuant to subdivision B 6 of § 55.1-1916, in the case of convertible lands, and subdivision C 12 of § 55.1-1916, in the case of additional land, and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

B. Interests in the common elements shall not be allocated to any units to be created within any convertible land or within any additional land until plats and plans depicting the same are recorded pursuant to subsection C of § 55.1-1920. But simultaneously with the recording of such plats and plans, the declarant shall execute and record an amendment to the declaration reallocating undivided interests in the common elements so that the units depicted on such plats and plans shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded simultaneously with the declaration pursuant to subsections A and B of § 55.1-1920.

C. If all of a convertible space is converted into common elements, including limited common elements, then the undivided interest in the common elements appertaining to such space shall then appertain to the

remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced by such conversion.

D. In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium that reduces the number of units, then the undivided interest in the common elements appertaining to any units withdrawn from the condominium shall then appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced by such contraction.

§ 55.1-1919. Assignments of limited common elements; conversion to common element.

A. All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected by such amendment as evidenced by their execution of such amendment, except to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common element.

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to a common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer as the condominium instruments may specify. The officer to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by all of the unit owners concerned and recorded by an officer of the unit owners' association or his agent following payment by the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned only pursuant to subdivision A 6 of § 55.1-1916. The amendment to the declaration making such an assignment shall be prepared and executed by the declarant, the principal officer of the unit owners' association, or by such other officer as the condominium instruments may specify. Such amendment shall be recorded by the declarant or his agent, without charge to any unit owner, or by an officer of the unit owners' association or his agent following payment by all of the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded, and the recordation of such amendment shall be conclusive evidence that the method prescribed pursuant to subdivision A 6 of § 55.1-1916 was adhered to. A copy of the amendment shall be delivered to the unit owners of the units concerned. If executed by the declarant, such an amendment recorded prior to July 1, 1983, shall not be invalid because it was not prepared by an officer of the unit owners' association.

D. If the declarant does not prepare and record an amendment to the declaration to effect the assignment of common elements as limited common elements in accordance with rights reserved in the condominium instruments, but has reflected an intention to make such assignments in deeds conveying units, then the principal officer of the unit owners' association may prepare, execute, and record such an amendment at any time after the declarant ceases to be a unit owner.

E. The declarant may unilaterally record an amendment to the declaration converting a limited common element appurtenant to a unit owned by the declarant into a common element as long as the declarant continues to own the unit.

§ 55.1-1920. Contents of plats and plans.

A. There shall be recorded simultaneously with the declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements that are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise subject to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the

submitted land. The plats shall label every convertible land as a convertible land, and if there is more than one such land, the plats shall label each such land with one or more letters or numbers different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands and shall label each such land as a withdrawable land. The plats shall show the location and dimensions of any additional lands and shall label each such land as an additional land. If, with respect to any portion, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portion, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the plats shall label each such land with one or more letters or numbers different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion of such submitted land is subject and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "NOT YET BEGUN" and which, if any, have been begun but have not been substantially completed by the use of the phrase "NOT YET COMPLETED." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and compliance with the provisions of this subsection by a licensed land surveyor, and the surveyor shall certify in such document or on the face of the plat that all units or portions of such units depicted on such plat pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

B. Plans shall also be recorded with the declaration. Such plans shall show every structure that contains or constitutes all or part of any unit and that is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions of the submitted units so depicted shall bear their identifying numbers. In addition, each convertible space so depicted shall be labeled as convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of such structures, subject to the following exception: In the case of any such unit that does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified on their face or in another recorded document as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer, or licensed land surveyor, and such architect, engineer, or land surveyor shall certify on the plans or in the recorded document that all units or portions of the submitted units depicted on such plans have been substantially completed.

C. When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record, with regard to any structures on the land being converted or added, either plats of survey conforming to the requirements of subsection A and plans conforming to the requirements of subsection B, or certifications conforming to the certification requirements of such subsections of plats and plans previously recorded pursuant to § 55.1-1922.

D. Notwithstanding the provisions of subsections A and B, a time-share interest in a unit that has been subjected to a time-share instrument pursuant to § 55.1-2208 may be conveyed prior to substantial completion of that unit if (i) a completion bond has been filed in compliance with subsection B of § 55.1-1921 and remains in full force and effect until the unit is certified as substantially complete in accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring the time-share estate in the unit certifies to

the purchaser in writing, based on information provided by the Common Interest Community Board, that the bond has been filed with the Common Interest Community Board.

E. When converting all or any portion of any convertible space into one or more units or limited common elements, the declarant shall record, with regard to the structure or portion of such structure constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer, or licensed land surveyor.

F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall show the identifying number of the unit to which it is assigned, if it has been assigned, unless the provisions of subdivision 5 of § 55.1-1912 make such designations unnecessary.

§ 55.1-1921. Bond to insure completion of improvements.

A. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the declarant's obligation as stated in the declaration, of all improvements to the common elements of the condominium labeled in the plat or plats as "NOT YET COMPLETED" or "NOT YET BEGUN" located upon submitted land and which the declarant reasonably believes will not be substantially complete at the time of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation to complete such improvements in strict conformity with the plans and specifications for the same as described in the declaration.

B. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share interest is conveyed before the unit has been certified as substantially complete in accordance with subsections A and B of § 55.1-1920. The bond required by this subsection shall be conditioned upon the faithful performance of the declarant's obligation to complete such improvements in strict conformity with the plans and specifications for the same as described in the declaration.

C. All bonds required in this section shall be executed by a surety company authorized to transact business in the Commonwealth or by such other surety as is satisfactory to the Board.

D. The Board may promulgate reasonable regulations that govern the return of bonds submitted in accordance with this section.

§ 55.1-1922. Preliminary recordation of plats and plans.

Plats and plans previously recorded pursuant to subsections A, B, and C of § 55.1-1916 may be used in lieu of new plats and plans to satisfy in whole or in part the requirements of subsection B of § 55.1-1918, subsection B of § 55.1-1924, or § 55.1-1926 if certifications of such plats and plans are recorded by the declarant in accordance with subsections A and B of § 55.1-1920; and if such certifications are recorded, the plats and plans that they certify shall be deemed recorded pursuant to subsection C of § 55.1-1920 within the meaning of §§ 55.1-1918, 55.1-1924, and 55.1-1926. All condominium instruments for condominiums created prior to July 1, 1991, are hereby validated notwithstanding that the plats were prerecorded as if in compliance with this section and not recorded with amendments converting convertible land or adding additional land if the plats or subsequent amendments contained the required certifications.

§ 55.1-1923. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or employees, and not to relieve the declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

§ 55.1-1924. Conversion of convertible lands.

A. The declarant may convert all or any portion of any convertible land into one or more units or limited common elements subject to any restrictions and limitations that the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B of this section and subsection C of § 55.1-1920.

B. Simultaneously with the recording of plats and plans pursuant to subsection C of § 55.1-1920, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with subsection B of § 55.1-1918. Such amendment shall describe or delineate any limited common elements formed out of the convertible land, showing or designating the unit to which each is assigned.

C. All convertible lands shall be deemed a part of the common elements except for such portions of such convertible lands as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, the declarant alone shall be liable for real estate taxes assessed against the convertible land and any improvements on such convertible land and all other expenses in connection with that real estate, and no other unit owner and no other portion of the condominium shall be subject to a claim for payment of those taxes or expenses, and, unless the declaration provides otherwise, any income or proceeds from the convertible land and any improvements on such convertible land shall inure to the declarant. No such conversion shall occur after 10 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

§ 55.1-1925. Conversion of convertible spaces.

A. The declarant may convert all or any portion of any convertible space into one or more units or common elements, including limited common elements, subject to any restrictions and limitations that the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B and subsection B of § 55.1-1920.

B. Simultaneously with the recording of plats and plans pursuant to subsection E of § 55.1-1920, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate any limited common elements formed out of the convertible space, showing or designating the unit to which each is assigned.

C. If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare and execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with subsection D of § 55.1-1933.

D. Any convertible space not converted in accordance with the provisions of this section, or any portion of such convertible space not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such convertible space, or portion of such convertible space, as though the same were a unit.

§ 55.1-1926. Expansion of condominium.

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to subsection C of § 55.1-1920, together with an amendment to the declaration, duly executed by the declarant, including all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legal description by metes and bounds of the land added to the condominium and shall reallocate undivided interests in the common elements in accordance with the provisions of subsection B of § 55.1-1918. Such amendment may create convertible or withdrawable lands or both within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to subdivision D 3 of § 55.1-1916 and subsection C of § 55.1-1924.

§ 55.1-1927. Contraction of condominium.

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to subdivision D 5 of § 55.1-1916, then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit.

§ 55.1-1928. Easement to facilitate conversion and expansion.

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter and for the purpose of doing all things reasonably necessary and proper in connection with making such improvements.

§ 55.1-1929. Easement to facilitate sales.

The declarant and his duly authorized agents, representatives, and employees may maintain sales offices or model units on the submitted land if and only if the condominium instruments provide for maintaining such sales offices or model units and specify the rights of the declarant with regard to the number, size, location, and relocation of such sales offices or model units. Any such sales office or model unit that is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard to such sales office or model unit unless it is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

§ 55.1-1930. Declarant's obligation to complete and restore.

A. No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either shall be binding as to any portion of either lawfully withdrawn from the condominium or never added to the condominium, except to the extent that the condominium instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done on such land or with regard to such land, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the condominium or any portion of such condominium, this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

B. The declarant shall complete all improvements labeled "NOT YET COMPLETED" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation and shall, in the case of every improvement labeled "NOT YET BEGUN" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

C. To the extent that damage is inflicted on any part of the condominium by any person utilizing the easements reserved by the condominium instruments or created by §§ 55.1-1928 and 55.1-1929, the declarant together with any person causing the same shall be jointly and severally liable for the prompt repair of such damage and for the restoration of the same to a condition compatible with the remainder of the condominium.

§ 55.1-1931. Alterations within units.

A. Except to the extent prohibited, restricted, or limited by the condominium instruments, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. However, no unit owner shall do anything that would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

B. If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures in such unit, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § 55.1-1932.

§ 55.1-1932. Relocation of boundaries between units.

A. If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful that the condominium instruments may specify. The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

B. If the unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners of such units, and the amendment shall contain conveyancing between those unit owners. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

D. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate number of votes in the unit owners' association allocated to those units, an amendment to the bylaws shall reflect that reallocation and a proportionate reallocation of liability for common expenses as between those units.

E. Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted on such plats and plans shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer, or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with this section have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the unit owners of the units involved of all reasonable costs for the preparation, acknowledgment, and recordation of such instruments. Such instruments are effective when executed by the unit owners of the units involved and recorded, and the recordation of such instruments is conclusive evidence that the relocation of boundaries so effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Any relocation of boundaries between adjoining units shall be governed by this section and not by § 55.1-1933. Section 55.1-1933 shall apply only to such subdivisions of units as are intended to result in the creation of two or more new units in place of the subdivided unit.

§ 55.1-1933. Subdivision of units.

A. If the condominium instruments expressly permit the subdivision of any units, then such units may be subdivided in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful that the condominium instruments may specify. No unit shall be subdivided unless the condominium instruments expressly permit it.

B. If the unit owner of any unit that may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall hereinafter be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common element assigned to the subdivided unit exclusively should be assigned to one or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

D. An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit and shall reflect a proportionate allocation to the new units of the liability for common expenses formerly appertaining to the subdivided unit.

E. Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted on such plats and plans shall bear their

new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries of such units, if any, shall be identified on such plats and plans with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer, or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with this section have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the subdivider of all reasonable costs for the preparation, acknowledgment, and recordation of such instruments. Such instruments are effective when executed by the subdivider and recorded, and the recordation of such instruments is conclusive evidence that the subdivision so effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Notwithstanding the definition of "unit" found in § 55.1-1900 and the provisions of subsection D of § 55.1-1925, this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such convertible space, and any such unit shall be deemed a unit for the purposes of this section.

§ 55.1-1934. Amendment of condominium instruments.

A. If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and an amendment signed by the declarant is effective upon recordation. This section shall not be construed to nullify, limit, or otherwise affect the validity of enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. If any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than one year after the amendment is recorded.

D. Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment, or ratifications of such amendment, and the same is effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer as the condominium instruments may specify, that the requisite majority of the unit owners signed the amendment or ratifications of such amendment.

E. Except to the extent expressly permitted or expressly required by other provisions of this chapter or agreed to by 100 percent of the unit owners, no amendment to the condominium instruments shall change (i) the boundaries of any unit, (ii) the undivided interest in the common elements, (iii) the liability for common expenses, or (iv) the number of votes in the unit owners' association that appertains to any unit.

F. Notwithstanding any other provision of this section, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to correct a mathematical mistake, an inconsistency, or a scrivener's error or clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact, including recalculating the undivided interest in the common elements, the liability for common expenses or the number of votes in the unit owners' association appertaining to a unit, within five years after the recordation of the condominium instrument 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 condominium instruments, the principal officer of the unit owners' association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the executive board. All corrective amendments and supplements recorded prior to July 1, 1986, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

§ 55.1-1935. Use of technology.

A. Unless the condominium instruments expressly provide otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using electronic means.

B. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any condominium instrument or any provision of this chapter.

D. Voting, consent to, and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic means provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form.

E. Subject to other provisions of law, no action required or permitted by any condominium instrument or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive board.

F. If any person does not have the capability or desire to conduct business using electronic means, the unit owners' association shall make reasonable accommodation, at its expense, for such person to conduct business with the unit owners' association without use of such electronic means.

G. This section shall not apply to any notice related to an enforcement action by the unit owners' association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

§ 55.1-1936. Merger or consolidation of condominiums; procedure.

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.

B. An agreement to merge or consolidate two or more condominiums pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, provided that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

D. If the condominium instruments of a condominium to be merged or consolidated require a vote or consent of mortgagees in order to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before such merger or consolidation is effective. No merger or consolidation shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. A vote or consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1941.

§ 55.1-1937. Termination of condominium.

A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. An instrument terminating a condominium signed by the declarant is effective upon recordation of such instrument. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. Except in the case of a taking of all the units by eminent domain, if any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium

may be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in this subsection.

C. Agreement of the required majority of unit owners to termination of the condominium shall be evidenced by their execution of a termination agreement, or ratifications of such agreement, and such agreement is effective when a copy of the termination agreement is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer as the condominium instruments may specify, that the requisite majority of the unit owners signed the termination agreement or ratifications. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association appertain. The termination agreement shall specify a date after which the termination agreement is void if the termination agreement is not recorded. For the purposes of this section, an instrument terminating a condominium and any ratification of such instrument shall be deemed a condominium instrument subject to the provisions of § 55.1-1911.

D. In the case of a condominium that contains only units having horizontal boundaries described in the condominium instruments, a termination agreement may provide that all of the common elements and units of the condominium shall be sold following termination. If, pursuant to the termination agreement, any property in the condominium is sold following termination, the termination agreement shall set forth the minimum terms of the sale.

E. In the case of a condominium that contains any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements. The termination agreement may not require that the units be sold following termination, unless the condominium instruments as originally recorded provide otherwise or all the unit owners consent to the sale. In the case of a master condominium that contains a unit that is a part of another condominium, a termination agreement for the master condominium shall not terminate the other condominium.

F. On behalf of the unit owners, the unit owners' association may contract for the disposition of property in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections B and C. If the termination agreement requires that any property in the condominium be sold following termination, title to the property, upon termination, shall vest in the unit owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale. Until the termination has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of the unit owners as provided in subsection I. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the property, each unit owner or his successor in interest shall have an exclusive right to occupancy of the portion of the property that formerly constituted his unit. During the period of occupancy by the unit owner or his successor in interest, each unit owner or his successor in interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium instruments.

G. If the property that constitutes the condominium is not sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the property in the condominium shall vest in the unit owners, upon termination, as tenants in common in proportion to the unit owners' respective interests as provided in subsection I. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his successor in interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of property, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lien holders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a lien on the units immediately before termination.

I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and H shall be as follows:

1. Except as provided in subdivision 2, the respective interests of the unit owners shall be the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which one quarter of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and their common element interests.

2. If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value of such unit or limited common element before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

J. Except as provided in subsection K, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

K. If a lien or encumbrance against a portion of the property that comprises the condominium has priority over the condominium instruments and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the property subject to the lien or encumbrance from the condominium.

L. The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.

§ 55.1-1938. Rights of mortgagees.

No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association.

§ 55.1-1939. Statement of unit owner rights.

Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § 55.1-1945, including records of all financial transactions;

2. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's ownership interest, except to the extent that the condominium instruments provide otherwise;

3. The right to have notice of any meeting of the executive board, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § 55.1-1949;

4. The right to have (i) notice of any proceeding conducted by the executive board or other tribunal specified in the condominium instruments against the unit owner to enforce any rule or regulation of the unit owners' association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as provided in § 55.1-1959, and the right of due process in the conduct of that hearing; and

5. The right to serve on the executive board if duly elected and a member in good standing of the unit owners' association, except to the extent that the condominium instruments provide otherwise.

The rights enumerated in this section shall be enforceable by any unit owner pursuant to the provisions of § 55.1-1915.

Article 3.

Management of Condominium.

§ 55.1-1940. Bylaws to be recorded with declaration; contents; unit owners' association; executive board; amendment of bylaws.

A. Bylaws providing for governance of the condominium by an association of all of the unit owners shall be recorded simultaneously with the declaration. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive board. If there is to be such a board, the bylaws shall specify the powers and responsibilities of the board and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive board shall be filled by a vote of a majority of the remaining members of the executive board at a meeting of the executive board, even though the members of the executive board present at such meeting may constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting of the unit owners' association at which time a successor shall be elected by a vote of the unit owners. The bylaws may delegate to such board, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection C of § 55.1-1915.

D. In any case where an amendment to the declaration is required by subsection B, C, or D of § 55.1-1918, the person required to execute such amendment shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § 55.1-1920 or shall abolish the votes appertaining to former units, as appropriate. The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the amendment.

§ 55.1-1941. Amendment to condominium instruments; consent of mortgagee.

A. If any provision in the condominium instruments requires the written consent of a mortgagee in order to amend the condominium instruments, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address supplied by such mortgagee in a written request to the unit owners' association to receive notice of proposed amendments to the condominium instruments and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise. If the mortgagee has not supplied an address to the unit owners' association, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise.

B. Subsection A shall not apply to amendments that alter the priority of the lien of the mortgagee or that materially impair or affect the unit as collateral or the right of the mortgagee to foreclose on a unit as collateral.

C. Where the condominium instruments are silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the condominium instruments does not specifically affect mortgagee rights.

§ 55.1-1942. Reformation of declaration; judicial procedure.

A. A unit owners' association may petition the circuit court in the county or city in which the condominium or the greater part of the condominium is located to reform the condominium instruments where the unit owners' association, acting through its executive board, has attempted to amend the condominium instruments regarding ownership of legal title of the common elements or real property using provisions outlined in the condominium instruments to resolve (i) ambiguities or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners or (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common elements or real property to:

1. Reform, in whole or in part, any provision of the condominium instruments; and

2. Correct mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose.

C. A petition filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change in such instruments, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that:

1. The unit owners' association has made three good faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant joins in the petition of the unit owners' association;

4. A copy of the petition is sent to all unit owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

D. Any mortgagee of a condominium unit in the condominium shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1941.

§ 55.1-1943. Control of condominium by declarant.

A. The condominium instruments may authorize the declarant, or a managing agent or some other person selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or its executive board, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive board. The declarant, managing agent, or other person selected by the declarant to so appoint and remove officers or the executive board or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive board shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or, if not so specified, within such period as defined in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § 55.1-1978 and described pursuant to subdivision A 4, B 2, or C 8 of § 55.1-1916.

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium; three years in the case of a condominium other than an expandable condominium, containing any convertible land; or two years in the case of any other condominium. Such time period shall begin upon settlement of the first unit to be sold in any portion of the condominium.

Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant.

Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § 55.1-1949 a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive board and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § 55.1-1955 and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest.

C. If entered into any time prior to the expiration of the period of declarant control, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract, or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement entered into on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its executive board upon not less than 90 days' written notice to the other party given not later than 60 days after the expiration of the period of declarant control. Any such contract or agreement may be renewed for periods not in excess of two years; however, at the end of any two-year period the unit owners' association or its executive board may terminate any further renewals or extensions of such contract or agreement. The provisions of this subsection shall not apply to any lease referred to in § 55.1-1910 or subject to subsection E of § 55.1-1916.

D. If entered into at any time prior to the expiration of the period of declarant control, any contract, lease, or agreement, other than those subject to the provisions of subsection C, may be entered into by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, if such contract, lease, or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

E. This section does not apply to any contract, incidental to the disposition of a condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. 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 requiring that the unit owners be parties to such contracts.

F. If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter requires action by the unit owners' association, its executive board, or any officer.

G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the governing body of the locality in which the condominium is located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency designated by the local governing body shall advise the principal elected officer of the condominium unit owners' association of any outstanding violations of applicable building codes or local ordinances or other deficiencies of record.

H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver to the president of the unit owners' association or his designated agent (i) all unit owners' association books and records held by or controlled by the declarant, including minute books and all rules, regulations, and amendments to such rules and regulations that may have been promulgated; (ii) an accurate and complete statement of receipts and expenditures prepared using the accrual method of accounting from the date of the recording of the condominium instruments to the end of the regular accounting period immediately succeeding the first annual meeting of the unit owners, not to exceed 60 days from the date of the election; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans, if available; (iv) all association insurance policies that are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any; (vi) contracts in which the association is a contracting party, if any; and (vii) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

If the unit owners' association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).

I. This section shall be strictly construed to protect the rights of the unit owners.

§ 55.1-1944. Deposit of funds.

All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the unit owners' association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual unit owners' association basis.

§ 55.1-1945. Books, minutes, and records; inspection.

A. The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person having standing to bring legal action or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the executive board held pursuant to subsection C of § 55.1-1949;

8. Documentation, correspondence or management or executive board reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or

9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the

requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, not to exceed the reasonable costs of materials and labor, incurred to provide such copies. Charges may be imposed only in accordance with a cost schedule adopted by the executive board in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

§ 55.1-1946. Management office.

Unless the condominium instruments expressly provide otherwise, the unit owners' association shall not be prohibited from maintaining a management office on common elements or in one or more units in the condominium.

§ 55.1-1947. Transfer of special declarant rights.

A. For the purposes of this section, "affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person is controlled by a declarant if the declarant (a) is a general partner, officer, director, or employer of the person; (b) directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

B. No special declarant right may be transferred except by a document evidencing the transfer recorded in every county and city in which any portion of the condominium is located. The instrument shall not be effective unless executed by the transferee.

C. Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

1. The transferor shall not be relieved of any obligation or liability arising before the transfer and shall remain liable for warranty obligations imposed upon him by subsection B of § 55.1-1955. Lack of privity shall not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

2. If the successor to any special declarant right is an affiliate of a declarant, the transferor shall also be jointly and severally liable with the successor for any obligation or liability of the successor that relates to the condominium.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall also be liable for all obligations and liabilities relating to the retained special declarant rights and imposed on a declarant by this chapter or by the condominium instruments.

4. A transferor shall have no liability for any breach of a contractual or warranty obligation or for any other act or omission, arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

D. Except as otherwise provided by the mortgage or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, tax sale, judicial sale, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of any unit owned by a declarant or land subject to development rights:

1. A person acquiring title to all the land being foreclosed or sold shall, but only upon his request, succeed to all special declarant rights related to that land reserved by that declarant, or only to any rights reserved in the declaration pursuant to § 55.1-1929 and held by that declarant to maintain sales offices, management offices, model units, or signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

For the purposes of this subsection, "development rights" means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land, or convert convertible space.

E. Upon foreclosure, sale by a trustee under a deed of trust, tax sale, judicial sale, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of all units and other land in the condominium owned by a declarant, (i) that declarant ceases to have any special declarant rights and (ii) any period of declarant control reserved under subsection A of § 55.1-1943 shall terminate, unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

F. The liabilities and obligations of any person who succeed to any special declarant right shall be as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the condominium instruments.

2. A successor to any special declarant right, other than a successor described in subdivisions 3 and 4, who is not an affiliate of a declarant shall be subject to all obligations and liabilities imposed by this chapter or the condominium instruments on a declarant that relate to his exercise or nonexercise of special declarant rights, or on his transferor, except for (i) misrepresentations by any prior declarant, (ii) warranty obligations as provided in subsection B of § 55.1-1955 on improvements made by any previous declarant or made before the condominium was created, (iii) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board, or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. Unless he is an affiliate of a declarant, a successor to only a right reserved in the declaration to maintain sales offices, management offices, model units, or signs shall not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except the liabilities and obligations arising under Article 4 (§ 55.1-1970 et seq.) as to disposition by that successor.

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection D may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right reserved by his transferor pursuant to subsection A of § 55.1-1943. Any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he shall not be subject to any liability or obligation as a declarant other than liability for his acts and omissions relating to the exercise of rights reserved under subsection A of § 55.1-1943.

G. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the condominium instruments.

§ 55.1-1948. Declarants not succeeding to special declarant rights.

A declarant who does not succeed to any special declarant rights shall be liable only to the extent of his actions for claims and obligations arising under this chapter or the condominium instruments.

§ 55.1-1949. Meetings of unit owners' association and executive board.

A. 1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

2. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units, unless the unit owner has provided to such officer or his agent an address other than the address of the unit, or notice may be hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

3. In lieu of delivering notice as specified in subdivision 2, such officer or his agent may, to the extent that the condominium instruments or the condominium's rules and regulations expressly provide, send notice by electronic means if consented to by the unit owner to whom the notice is given, provided that the officer or his agent certifies in writing that notice was sent.

B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent that the condominium instruments or adopted rules expressly provide, send notice by electronic means if consented to by the officer to whom the notice is given. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

2. Notice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

A unit owner may make a request to be notified on a continual basis of any such meetings, which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or email in the case of meetings of the executive board or (ii) by email in the case of meetings of any subcommittee or other committee of the executive board or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the (i) executive board or any subcommittee or other committee of such board or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

3. Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board.

4. Any unit owner may record any portion of a meeting required to be open. The executive board or subcommittee or other committee of the executive board conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

If a meeting of the executive board is conducted by telephone conference or video conference or similar electronic means, at least two board members shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any board member participating in the meeting who is not physically present.

5. Voting by secret or written ballot in an open meeting is a violation of this chapter except for the election of officers.

C. The executive board or any subcommittee or other committee of the executive board may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation, and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant to such condominium instruments for which a unit owner, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the executive board or subcommittee or other committee of the executive board, following the executive session, reconvenes in open meeting and takes a vote on such contract,

motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section do not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

§ 55.1-1950. Distribution of information by members.

A. The executive board shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive board regarding any matter concerning the unit owners' association.

B. Except as otherwise provided in the condominium instruments, the executive board shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

§ 55.1-1951. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), 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 (4 U.S.C. § 1 et seq.) 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 that 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.

C. In any action brought by the unit owners' association under § 55.1-1959 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 § 55.1-1959, 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 § 55.1-1976 or 55.1-1991.

§ 55.1-1952. Meetings of unit owners' associations and executive board; quorums.

A. Unless the condominium instruments otherwise provide or as specified in subsection G of § 55.1-1953, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than one-third of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 10 percent.

B. Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive board if persons entitled to cast one-half of the votes in that body are present at the beginning of such meeting.

C. On petition of the unit owners' association or any unit owner entitled to vote, the circuit court of the county or city in which the condominium or the greater part of such condominium is located may order an annual meeting of the unit owners' association be held for the purpose of the election of members of the executive board, provided that:

1. No annual meeting as required by § 55.1-1949 has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments; and

2. The unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years, which attempts have proven unsuccessful due to the failure to obtain a quorum.

The court may set the quorum for the meeting and enter other orders necessary to convene the meeting.

A unit owner filing a petition under this subsection shall provide a copy of the petition to the executive board at least 10 business days prior to filing.

§ 55.1-1953. Meetings of unit owners' associations and executive board; voting by unit owners; proxies.

A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55.1-1920 a number of votes in the unit owners' association proportionate to the undivided interest in the common elements appertaining to each such unit.

B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

C. Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. If more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. For purposes of this subsection, "person" is deemed to include any natural person having authority to execute deeds on behalf of any person, excluding natural persons, that is, either alone or in conjunction with another person, a unit owner.

D. The votes appertaining to any unit may be cast pursuant to a proxy duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Except to the extent otherwise provided in the condominium instruments, any proxy is void if it is not dated, or if it purports to be revocable without the required notice. A proxy is void if not signed by a person having authority, at the time of execution, to execute deeds on behalf of that person. Any proxy shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed. To the extent the condominium instruments or the condominium's rules and regulations expressly so provide, a vote or proxy may be submitted by electronic means, provided that any such electronic means shall either set forth or be submitted with information from which it can be determined that the electronic means was authorized by the unit owner or the unit owner's proxy.

E. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

F. All votes appertaining to units owned by the unit owners' association shall be deemed present for quorum purposes at all duly called meetings of the unit owners' association and shall be deemed cast in the same proportions as the votes cast by unit owners other than the unit owners' association.

G. Except to the extent that the condominium instruments provide otherwise, the voting interest allocated to the unit or member that has been suspended by the unit owners' association or the executive board pursuant to the condominium instruments shall not be counted in the total number of voting interests used to determine the quorum for any meeting or vote under the condominium instruments.

§ 55.1-1954. Officers.

A. If the condominium instruments provide that any officer must be a unit owner, then any such officer who disposes of all of his units in fee shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy effective on or before the termination of his right of occupancy under such disposition.

B. If the condominium instruments provide that any officer must be a unit owner, then notwithstanding the provisions of subdivision 1 of § 55.1-1912, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person that is, either alone or in conjunction with another person, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection A were it a natural person holding such office.

§ 55.1-1955. Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee.

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements and (ii) to the individual unit owner in the case of any unit or any part of such unit, except to the extent that the need for repairs, renovation, restoration, or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. To the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the damage, shall be liable for the prompt repair of such damage.

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee against structural defects each of the units for two years from the date each is conveyed and all of the common elements for two years. For each unit, the declarant shall also warrant that the unit is fit for habitation in the case of a residential unit and constructed in a workmanlike manner so as to pass without objection in the trade. The two-year warranty as to each of the common elements begins whenever that common element has been completed or, if later, (i) as to any common element within any additional land or portion of the additional land, at the time the first unit in that additional land is conveyed; (ii) as to any common element within any convertible land or portion of the convertible land, at the time the first unit in the convertible land is conveyed; and (iii) as to any common element within any other portion of the condominium, at the time the first unit in that portion is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element that reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and that require repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. An action for breach of any warranty prescribed by this section shall begin within (i) five years after the date such warranty period began or (ii) one year after the formation of any warranty review committee pursuant to subsection B of § 55.1-1943, whichever occurs last. However, no such action shall be maintained against the declarant unless a written statement by the claimant, or his agent, attorney, or representative, of the nature of the alleged defect has been sent to the declarant by registered or certified mail at his last known address, as reflected in the records of the Common Interest Community Board, more than six months prior to the beginning of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time, not to exceed five months. Sending the notice required by this subsection shall toll the statute of limitations for beginning a breach of warranty action for a period not to exceed six months.

D. If the initial period of declarant control has been extended in accordance with subsection B of § 55.1-1943, the warranty review committee, referred to in this section as "the committee," shall have (i) subject to the provisions of subdivision 3, the irrevocable power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name of the unit owners' association any claims involving the declarant's warranty against structural defects with respect to all of the common elements and (ii) the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements pursuant to § 55.1-1964 if the committee determines that the assessments levied by the unit owners' association are insufficient to enable the committee reasonably to perform its functions pursuant to this subsection. The committee or the declarant shall notify the governing body of the locality in which the condominium is located of the formation of the committee within 30 days of its formation. Within 30 days after such notice, the local governing body or an agency designated by the local governing body shall advise the chair of the committee of any outstanding violations of applicable building codes, local ordinances, or other deficiencies of record. Members of the committee shall be insured, indemnified, and subject to liability to the same extent as officers or directors under the condominium instruments or applicable law. The unit owners'

association shall provide sufficient funds reasonably necessary for the committee to perform the functions set out in this subsection and to:

1. Engage an independent architect, engineer, legal counsel, and such other experts as the committee may reasonably determine;

2. Investigate whether there exists any breach of the warranty as to any of the common elements. The committee shall document its findings and the evidence that supports such findings. Such findings and evidence shall be confidential and shall not be disclosed to the declarant without the consent of the committee; and

3. Assert or settle in the name of the unit owners' association any claims involving the declarant's warranty on the common elements, provided that (i) the committee sends the declarant at least six months prior to the expiration of the statute of limitations a written statement pursuant to subsection C of the alleged nature of any defect in the common elements giving the declarant an opportunity to cure the alleged defect; (ii) the declarant fails to cure the alleged defect within a reasonable time; and (iii) the declarant control period or the statute of limitations has not expired.

E. Within 45 days after the formation of the committee, the declarant shall deliver to the chair of the committee (i) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (ii) all association insurance policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

§ 55.1-1956. Control of common elements.

A. Except to the extent prohibited, restricted, or limited by the condominium instruments, the unit owners' association shall have the power to:

1. Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the association arising under § 55.1-1955;

2. Make or cause to be made additional improvements on and as a part of the common elements;

3. Grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit that would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval; and

4. Acquire, hold, convey, and encumber title to real property, including condominium units, whether or not the association is incorporated.

B. Except to the extent prohibited, restricted, or limited by the condominium instruments, the executive board of the unit owners' association, if any, and if not, then the unit owners' association itself, has the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, including the right, in the name of the unit owners' association, to (i) grant easements through the common elements and accept easements benefiting all or any portion of the condominium; (ii) assert, through litigation or otherwise, defend against, compromise, adjust, and settle any claims or actions related to common elements, other than claims against or actions involving the declarant during any period of declarant control reserved pursuant to subsection A of § 55.1-1943; and (iii) apply for any governmental approvals under state and local law.

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

§ 55.1-1957. Common elements; notice of pesticide application.

The unit owners' association shall post notice of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least 48 hours prior to the application.

§ 55.1-1958. Tort and contract liability; judgment lien.

A. An action for tort alleging a wrong done (i) by any agent or employee of the declarant or of the unit owners' association or (ii) in connection with the condition of any portion of the condominium that the declarant or the association has the responsibility to maintain shall be brought against the declarant or the association, as appropriate. No unit owner shall be precluded from bringing such an action by virtue of his ownership of an undivided interest in the common elements or by reason of his membership in the association or his status as an officer.

B. Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by § 55.1-1928 or 55.1-1929.

C. An action arising from a contract made by or on behalf of the unit owners' association or its executive board or the unit owners as a group shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to subsection A of § 55.1-1943. No unit owner shall be precluded from bringing such an action by reason of his membership in the association or his status as an officer.

D. A judgment for money against the unit owners' association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to subsection D of § 55.1-1964, but not against any other property of any unit owner. A unit owner who pays a percentage of the total amount due under such judgment equal to such unit owner's liability for common expenses fixed pursuant to subsection D of § 55.1-1964 shall be entitled to a release of any such judgment lien, and the association shall not be entitled to assess the unit for payment of the remaining amount due. Such judgment shall be otherwise subject to the provisions of § 8.01-458.

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

A. The unit owners' association shall have the power, to the extent the condominium instruments or the condominium's rules and regulations expressly provide, 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 that 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 does 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.

B. Before any action authorized in this section 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 § 55.1-1949. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive board or such other tribunal as the condominium instruments or its adopted rules and regulations specify.

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

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

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

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

If the court rules in favor of the unit owners' association, it 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 unit owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

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

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

§ 55.1-1960. Limitation of occupancy of a unit.

To the extent expressly provided in the condominium instruments, the unit owners' association may limit the number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable and shall comply with the provisions of applicable law, including the Virginia Fair Housing Law (§ 36-96.1 et seq.), the Uniform Statewide Building Code (§ 36-97 et seq.), and local ordinances.

§ 55.1-1961. Use of for sale sign in connection with resale.

Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a real estate sign that does not comply with the requirements of the Virginia Real Estate Board. A unit owners' association may, however, prohibit the placement of signs in the common elements and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Virginia Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed.

§ 55.1-1962. Designation of authorized representative.

Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

§ 55.1-1963. Insurance.

A. The condominium instruments may require the unit owners' association, or the executive board or managing agent on behalf of such association, to obtain:

1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements;

2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive board, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium; and

3. Such other policies as may be required by the condominium instruments, including workers' compensation insurance, liability insurance on motor vehicles owned by the unit owners' association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

B. Any unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the unit owners' association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the unit owners' association, or committed by any common interest community manager or employees of the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $1 million or the amount of reserve balances of the unit owners' association plus one-fourth of the aggregate annual assessment of such unit owners' association. The minimum coverage amount shall be $10,000. The executive board or common interest community manager may obtain such bond or insurance on behalf of the unit owners' association.

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of such obtainment and of any subsequent changes in or termination of the policy shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § 55.1-1949.

§ 55.1-1964. Liability for common expenses; late fees.

A. Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

B. To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against any condominium unit involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases. The executive board may impose reasonable user fees.

C. To the extent that the condominium instruments expressly so provide, (i) any common expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the unit owners shall be assessed equally against the condominium units involved and (ii) any common expenses paid or incurred in providing metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § 55.1-1953, those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

E. Except to the extent otherwise provided in the condominium instruments, if the executive board determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive board may levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive board shall give written notice to the unit owners stating the amount of, the reasons for, and the due date for payment of any additional assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

All unit owners shall be obligated to pay the additional assessment unless the unit owners by a majority of votes cast, in person or by proxy, at a meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments within 60 days of the delivery or mailing of the notice required by this subsection, rescind or reduce the additional assessment. No director or officer of the unit owners' association shall be liable for failure to perform his fiduciary duty if an additional assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the unit owners' association in accordance with this subsection. The unit owners' association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty due to the assessment for the necessary funds rescinded by the unit owners' association in accordance with this subsection.

F. Neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner.

G. All condominium instruments for condominiums created prior to January 1, 1981, are hereby validated notwithstanding noncompliance with the first sentence of subsection D if they provide instead that the amount of all common expenses not specially assessed pursuant to subsection A, B, or C shall be assessed against the condominium units in proportion to their respective undivided interests in the common elements.

H. Except to the extent that the condominium instruments or the association's rules or regulations provide otherwise, an executive board may impose a late fee, not to exceed the penalty provided for in § 58.1-3915, for any assessment or installment that is not paid within 60 days of the due date for payment of such assessment or installment.

§ 55.1-1965. Reserves for capital components.

A. Except to the extent otherwise provided in the condominium instruments and unless the condominium instruments impose more stringent requirements, the executive board shall:

1. Conduct a study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the capital components;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect.

§ 55.1-1966. Lien for assessments.

A. The unit owners' association shall have a lien on each condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of such lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. In order to perfect the lien given by this section, the unit owners' association shall file a memorandum verified by the oath of the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, before the expiration of 90 days from the time the first such assessment became due and payable. The memorandum shall be filed in the clerk's office of the circuit court in the county or city in which such condominium is situated. The memorandum shall contain the following:

1. A description of the condominium unit in accordance with the provisions of § 55.1-1909.

2. The name or names of the persons constituting the unit owners of that condominium unit.

3. The amount of unpaid assessments currently due or past due together with the date when each fell due.

4. The date of issuance of the memorandum.

The clerk in whose office such memorandum is filed shall record and index the memorandum as provided in subsection B, in the names of the persons identified in such memorandum as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment enforcing such lien.

D. No action to enforce any lien perfected under subsection C shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any action in which such petition may be properly filed shall be regarded as the institution of an action under this section. Nothing in this subsection shall extend the time within which any such lien may be perfected.

E. The judgment in an action brought pursuant to this section shall include reimbursement for costs and attorney fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, such lien shall be released in accordance with the provisions of § 55.1-339. Any lien that is not so released shall subject the lien creditor to the penalty set forth in subdivision B 1 of § 55.1-339. For the purposes of that section, the

principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55.1-1915.

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of such condominium unit, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a fee not exceeding $10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

I. At any time after perfecting the lien pursuant to this section, the unit owners' association may sell the unit at public sale, subject to prior liens. For purposes of this section, the unit owners' association shall have the power both to sell and convey the unit and shall be deemed the unit owner's statutory agent for the purpose of transferring title to the unit. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The unit owners' association shall give notice to the unit owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the unit owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the unit. The notice shall further inform the unit owner of the right to bring a court action in the circuit court of the county or city where the condominium is located to assert the nonexistence of a debt or any other defense of the unit owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the unit owners' association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the condominium is located. The clerk in whose office such appointment is filed shall record and index the appointment as provided in subsection C, in the names of the persons identified therein as well as in the name of the unit owners' association. The unit owners' association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the unit owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the unit. Those conditions are that the unit owner (a) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees.

4. In addition to the advertisement required by subdivision 5, the unit owners' association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, and shall include the name, address, and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the condominium unit to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the condominium unit secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the locality in which the condominium unit to be sold, or any portion of such unit, is located pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the condominium unit or some portion of such unit is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed

adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the condominium unit to be sold, which description need not be as extensive as that contained in the deed of trust but shall identify the condominium unit by street address, if any, or, if none, shall give the general location of the condominium unit with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the unit owners' association. The advertisement shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b, the unit owners' association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of a sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the condominium unit voidable by the court.

8. In the event of a sale, the unit owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell, or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 of this subsection and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the unit owners' association or its agent or attorney.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the condominium unit is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in connection with that sale.

c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns, provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the unit owner's equity, without actual notice of such encumbrance prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with special warranty of title. The trustee shall not be required to take possession of the condominium unit prior to the sale or to deliver possession of the unit to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309 and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55.1-1945 upon the written request of the prior unit owner, current unit owner, or any holder of a recorded lien against the unit at the time of the sale. The unit owners' association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a unit is made pursuant to this subsection and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the

accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia and an order is entered requiring such sale to be set aside.

§ 55.1-1967. Notice of sale under deed of trust.

In accordance with the provisions of § 15.2-979, the unit owners' association shall be given notice whenever a condominium unit becomes subject to a sale under a deed of trust. Upon receipt of such notice, the executive board, on behalf of the unit owners' association, shall exercise whatever due diligence it deems necessary with respect to the unit subject to a sale under a deed of trust to protect the interests of the unit owners' association.

§ 55.1-1968. Bond to be posted by declarant.

A. The declarant of a condominium containing units that are required by this chapter to be registered with the Common Interest Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to $1,000 per unit, except that such sum shall not be less than $10,000, nor more than $100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than 10 percent of the units in the condominium or, if the declarant owns less than 10 percent of the units in the condominium, until the declarant is current in the payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided that such declarant is current in the payment of assessments.

B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth or by such other surety as is satisfactory to the Board, and such bond shall be conditioned upon the payment of all assessments levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

The Board may promulgate reasonable regulations that govern the return of bonds submitted in accordance with this section.

§ 55.1-1969. Restraints on alienation.

If the condominium instruments create any rights of first refusal or other restraints on free alienability of the condominium units, such rights and restraints are void unless the condominium instruments make provision for promptly furnishing to any unit owner or purchaser requesting such rights and restraints a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a fee not exceeding $25 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

Article 4.

Administration of Chapter; Sale, Etc., of Condominium Units.

§ 55.1-1970. Common Interest Community Board.

This chapter shall be administered by the Common Interest Community Board.

§ 55.1-1971. General powers and duties of the Common Interest Community Board.

A. The Common Interest Community Board shall prescribe reasonable regulations, which shall be adopted, amended, or repealed in compliance with law applicable to the administrative procedure of agencies of government. The regulations shall include provisions for advertising standards to assure full and fair disclosure, provisions for operating procedures, and other regulations as are necessary and proper to accomplish the purpose of this chapter.

B. The Common Interest Community Board by regulation or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to condominiums prior to its distribution.

C. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or Common Interest Community Board regulation or order, the Common Interest Community Board, with or without prior administrative proceedings, may bring an action in the circuit court of the county or city in which any portion of the condominium is located to enjoin the acts or practices and to enforce compliance with this chapter or any Common Interest Community Board regulation or order. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Common Interest Community Board is not required to post a bond in any court proceedings or prove that no other adequate remedy at law exists.

D. With respect to any lawful process served upon the Common Interest Community Board pursuant to the appointment made in accordance with subdivision A 1 of § 55.1-1975, the Common Interest Community Board shall forthwith cause the same to be sent by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in such application or the most recent annual report.

E. The Common Interest Community Board may intervene in any action involving the declarant. In any action by or against a declarant involving a condominium, the declarant shall promptly furnish the Common Interest Community Board notice of the action and copies of all pleadings.

F. The Common Interest Community Board may:

1. Accept registrations filed in other states or with the federal government;

2. Contract with similar agencies in the Commonwealth or other jurisdictions to perform investigative functions; and

3. Accept grants in aid from any governmental source.

G. The Common Interest Community Board shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, regulations, and common administrative practices.

§ 55.1-1972. Exemptions from certain provisions of article.

A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 55.1-1974 through 55.1-1979, subsections B and D of § 55.1-1982, and §§ 55.1-1990 and 55.1-1991 do not apply to:

1. Dispositions pursuant to court order;

2. Dispositions by any government or government agency;

3. Offers by the declarant on nonbinding reservation agreements;

4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units; or

5. A disposition of a unit by a sale at an auction where a current public offering statement or resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of §§ 55.1-1974 through 55.1-1983 shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

§ 55.1-1973. Rental of units.

A. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall:

1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § 55.1-1904;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of $50 during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55.1-1904;

4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit owners' association;

5. Charge any deposit from the unit owner or the tenant of the unit owner; or

6. Have the authority to evict a tenant of any unit owner or to require any unit owner to execute a power of attorney authorizing the unit owners' association to so evict. However, if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative with respect to any lease, the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding any other provision of this subdivision, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

B. The unit owners' association may require the unit owner to provide the unit owners' association with the names and contact information of the tenants and authorized occupants under such lease and of any authorized agent of the unit owner and vehicle information for such tenants or authorized occupants. The unit owners'

association may require the unit owner to provide the unit owners' association with the tenant's acknowledgment of and consent to any rules and regulations of the unit owners' association.

C. The provisions of this section shall not apply to units owned by the unit owners' association.

§ 55.1-1974. Limitations on dispositions of units.

Unless exempt by § 55.1-1972:

1. No declarant may offer or dispose of any interest in a condominium unit located in the Commonwealth, nor offer or dispose of in the Commonwealth any interest in a condominium unit located outside of the Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

2. No declarant may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within five calendar days from the contract date of the disposition or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice of such cancellation hand-delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be set forth on the first page of the purchase contract in boldface print of not less than 12-point type.

4. The prospective purchaser may cancel by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest in such unit. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this section, nor shall any such provision be a part of any ancillary agreement.

§ 55.1-1975. Application for registration; fee.

A. The application for registration of the condominium shall be filed as prescribed by the Common Interest Community Board's regulations and shall contain the following documents and information:

1. An irrevocable appointment of the Common Interest Community Board to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative if nonresidents of the Commonwealth;

2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order or judgment entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name and address; the form, date, and jurisdiction of organization; and the address of each of its offices in the Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions and the extent and nature of his interest in the applicant or the condominium, as of a specified date within 30 days of the filing of the application;

5. A statement, in a form acceptable to the Common Interest Community Board, of the condition of the title to the condominium project, including encumbrances, as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the Common Interest Community Board;

6. Copies of the instruments that will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements that a purchaser will be required to agree to or sign;

7. Copies of any management agreements, employment contracts, or other contracts or agreements affecting the use, maintenance, or access of all or a part of the condominium;

8. A statement of the zoning and other governmental regulations affecting the use of the condominium, including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments that affect the condominium;

9. A narrative description of the promotional plan for the disposition of the units in the condominium;

10. Plats and plans of the condominium that comply with the provisions of § 55.1-1920 other than the certification requirements, and that show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands, except that the Common Interest Community Board may establish by regulation or order requirements in lieu of the provisions of § 55.1-1920 for plats and plans of a condominium located outside the Commonwealth;

11. The proposed public offering statement;

12. Any bonds required to be posted pursuant to the provisions of this chapter;

13. A current financial statement or other documentation to demonstrate the declarant's financial ability to complete all proposed improvements on the condominium; and

14. Any other information that the Common Interest Community Board's regulations require for the protection of purchasers.

B. If the declarant registers additional units to be offered for disposition in the same condominium, he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

C. The declarant shall immediately report any material changes in the information contained in an application for registration.

D. Each application shall be accompanied by a fee in an amount established by the Common Interest Community Board pursuant to § 54.1-113. All fees shall be remitted by the Common Interest Community Board to the State Treasurer and shall be credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

§ 55.1-1976. Public offering statement; condominium securities.

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units being offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the Common Interest Community Board shall be in a form prescribed by its regulations and shall include the following:

1. The name and principal address of the declarant and the condominium;

2. A general narrative description of the condominium stating the total number of units in the offering, the total number of units planned to be sold and rented, and the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control; a projected budget for at least the first year of the condominium's operation, including projected common expense assessments for each unit; and provisions for reserves for capital expenditures and restraints on alienation;

4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;

6. The significant terms of any encumbrances, easements, liens, and matters of title affecting the condominium;

7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;

8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection B of § 55.1-1955;

9. A statement that, pursuant to subdivision 2 of § 55.1-1974, the purchaser may cancel the disposition within five calendar days of delivery of the current public offering statement or within five calendar days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium that are planned but not yet begun or begun but not yet completed. Such statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;

11. If the units in the condominium are being subjected to a time-share instrument pursuant to § 55.1-1108, the information required to be disclosed by § 55.1-2217;

12. A statement listing the facilities or amenities that are defined as common elements or limited common elements in the condominium instruments that are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities that are not

included as part of any assessment and the amount of such fees or charges, if any, a purchaser may be required to pay;

13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

14. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display the flag of the United States, including reasonable restrictions as to the size, place, and manner of placement or display of such flag; and

15. Additional information required by the Common Interest Community Board to assure full and fair disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purposes before registration of the condominium project and shall be used afterwards only if it is used in its entirety. No person may advertise or represent that the Common Interest Community Board approves or recommends the condominium or disposition of any unit in the condominium. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the Common Interest Community Board requires it.

C. The Common Interest Community Board may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the Common Interest Community Board and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

D. If an interest in a condominium is currently registered with the U.S. Securities and Exchange Commission, a declarant satisfies all requirements relating to the preparation of a public offering statement in this chapter if he delivers to the purchaser and files with the Common Interest Community Board a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).

§ 55.1-1977. Inquiry and examination.

Upon receipt of an application for registration, the Common Interest Community Board shall conduct an examination of the material submitted to determine that:

1. The declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;

2. There is reasonable assurance that all proposed improvements will be completed as represented;

3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Common Interest Community Board in its regulations and afford full and fair disclosure;

4. The declarant has not, or if a corporation its officers and principals have not, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in the Commonwealth, United States, or any other state or foreign country within the past 10 years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions;

5. The public offering statement requirements of this chapter have been satisfied; and

6. All other requirements of this chapter and the Common Interest Community Board's regulations have been satisfied.

§ 55.1-1978. Notice of filing and registration.

A. Upon receipt of the application for registration, the Common Interest Community Board shall issue a notice of filing to the applicant within five business days. In the case of receipt of an application for a condominium that is a conversion condominium, the Common Interest Community Board shall also issue within five business days a notice of filing to the chief administrative officer of the county or city in which the proposed condominium is located, and the notice shall include the name and address of the applicant and the name and address or location of the proposed condominium. Within 60 days from the date of the notice of filing, the Common Interest Community Board shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the Common Interest Community Board affirmatively determines, upon inquiry and examination, that the requirements of this chapter and the Common Interest Community Board's regulations have been met, it shall enter an order registering the condominium and shall designate the form of the public offering statement.

C. If the Common Interest Community Board determines upon inquiry and examination that any of the requirements of this chapter and the Common Interest Community Board's regulations have not been met, the Common Interest Community Board shall notify the applicant that the application for registration must be corrected in the particulars specified within 20 days. If the requirements are not met within the time allowed, the Common Interest Community Board shall enter an order rejecting the registration, and such order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days after issuance of the order. During this 20-day period, the applicant may petition for reconsideration and shall be entitled to a hearing to correct the particulars specified in the Common Interest Community Board's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, is given to the applicant.

§ 55.1-1979. Annual report by declarant.

The declarant shall file a report in the form prescribed by the regulations of the Common Interest Community Board within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

§ 55.1-1980. Annual report by unit owners' association.

A. The unit owners' association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The filing of the annual report required by this section shall begin upon the termination of the declarant control period pursuant to § 55.1-1943. The annual report shall be accompanied by a fixed fee in an amount established by the Common Interest Community Board.

B. The unit owners' association shall also remit to the Common Interest Community Board an annual payment as follows:

1. The lesser of:

a. $1,000 or such other amount as established by Common Interest Community Board regulation; or

b. Five hundredths of one percent (0.05%) of the gross assessment income of the unit owners' association during the preceding year.

2. For the purposes of subdivision B 1 b, no minimum payment shall be less than $10.

C. The annual payment shall be remitted to the State Treasurer and shall be credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

§ 55.1-1981. Termination of registration.

A. In the event that all of the units in the condominium have been disposed of and that all periods for conversion or expansion have expired, the Common Interest Community Board shall issue an order terminating the registration of the condominium.

B. Notwithstanding any other provision of this chapter, the Common Interest Community Board may administratively terminate the registration of a condominium if:

1. The declarant has not filed an annual report in accordance with § 55.1-1979 for three or more consecutive years; or

2. The declarant's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

§ 55.1-1982. Conversion condominiums; special provisions.

A. For the purposes of this section:

"Affordable rent" means a monthly rent that does not exceed the greater of 30 percent of the annual gross income of the tenant household or 30 percent of the imputed income limit applicable to such unit size, as published by the Virginia Housing Development Authority for compliance with the Low Income Housing Tax Credit program.

"Certified nonprofit housing corporation" means a nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that has been certified by a locality as actively engaged in producing or preserving affordable housing as determined by criteria established by the locality.

"Disabled" means a person suffering from a severe, chronic physical or mental impairment that results in substantial functional imitations.

"Elderly" means a person not less than 62 years of age.

B. Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of § 55.1-1976 the following:

1. A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee;

2. Information on the actual expenditures made on all repairs, maintenance, operation, or upkeep of the subject building within the last three years, set forth in a tabular format with the proposed budget of the condominium and cumulatively broken down on a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws. If such building has not been occupied for a period of three years, then the information shall be set forth for the maximum period such building has been occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect;

4. A statement of the declarant as to the present condition of all structural components and major utility installations in the condominium, including the approximate dates of construction, installation, and major repairs and the expected useful life of each such item, together with the estimated cost of replacing each such item;

5. If any building included or that may be included in the condominium was substantially completed prior to July 1, 1978, a statement that each such building has been inspected for asbestos in accordance with standards in effect at the time of inspection, or that an asbestos inspection will be conducted, and whether asbestos requiring response actions has been found and, if found, that response actions have been or will be completed in accordance with applicable standards prior to the conveyance of any unit in such building. Any asbestos management program or response action undertaken by the building owner shall comply with the standards promulgated pursuant to § 2.2-1164.

C. In the case of a conversion condominium, the declarant shall give, at the time specified in subsection D, formal notice to each of the tenants of the building that the declarant has submitted or intends to submit to the provisions of this chapter. This notice shall advise each tenant of (i) the offering price of the unit he occupies; (ii) the projected common expense assessments against that unit for at least the first year of the condominium's operation; (iii) any relocation services or assistance, public or private, of which the declarant is aware; (iv) any measures taken or to be taken by the declarant to reduce the incidence of tenant dislocation; and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. During the first 60 days after such notice is mailed or hand delivered, each of the tenants shall have the exclusive right to purchase the unit he occupies, but only if such unit is to be retained in the conversion condominium without substantial alteration in its physical layout. If the conversion condominium is subject to local ordinances that have been adopted pursuant to subsections G and H, any tenant who is disabled or elderly may assign the exclusive right to purchase his unit to a governmental agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent, following the provisions of subsection G. The acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not (a) exceed the greater of one unit or five percent of the total number of units in the condominium or (b) impede the condominium conversion process. In determining which, if any, units shall be acquired pursuant to this subsection, preference shall be given to elderly or disabled tenants.

The notice required in this subsection shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the conversion to condominium. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55.1-1410, except that, despite the provisions of § 55.1-1410, a tenancy from month-to-month may only be terminated upon 120 days' notice when such termination is in regard to the creation of a conversion condominium. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the declarant, in order to then terminate the tenancy, such declarant shall give the tenant a further notice as provided in § 55.1-1410. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided by subsection A of § 55.1-1229 and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations, or improvements, provided that (i) the making of the same does not constitute an actual or constructive eviction of the tenant and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. The declarant shall also provide general notice to the tenants of the condominium or proposed condominium at the time of application to the Common Interest Community Board in addition to the formal notice required by this subsection.

D. The declarant of a conversion condominium shall, in addition to the requirements of § 55.1-1975, include with the application for registration a copy of the formal notice set forth in subsection C and a certified statement that such notice, fully complying with the provisions of subsection C, shall be at the time of the

registration of such condominium mailed or delivered to each of the tenants in the building for which registration is sought. The price and projected common expense assessments for each unit need not be filed with the Common Interest Community Board until such notice is mailed to the tenants.

E. Notwithstanding the provisions of § 55.1-1901, in the case of any conversion condominium created under the provisions of the Horizontal Property Act (§ 55.1-2000 et seq.) for which a final report has not been issued by the Common Interest Community Board pursuant to former § 55-79.21 prior to June 1, 1975, the provisions of subsections B and C shall apply and the declarant shall be required to furnish evidence of full compliance with subsections B and C prior to the issuance by the Common Interest Community Board of a final report for such conversion condominium.

F. Any locality may require by ordinance that the declarant of a conversion condominium file with that governing body all information that is required by the Common Interest Community Board pursuant to § 55.1-1975 and a copy of the formal notice required by subsection C. Such information shall be filed with that governing body when the application for registration is filed with the Common Interest Community Board, and such copy of the formal notice shall be filed with that governing body. There shall be no fees for such filings.

G. The governing body of any locality may enact an ordinance requiring that elderly or disabled tenants occupying as their residence, at the time of issuance of the general notice required by subsection C, apartments or units in a conversion condominium be offered leases or extensions of leases on the apartments or units they then occupied, or on other apartments or units of at least equal size and overall quality. The terms and conditions of such leases or extensions shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion condominium and such lease shall include or incorporate by reference the bylaws or rules and regulations, if any, of the association. No such ordinance shall require that such leases or extensions be offered on more than 20 percent of the apartments or units in such conversion condominium, nor shall any such ordinance require that such leases or extensions extend beyond three years from the date of such notice. Such leases or extensions shall not be required, however, in the case of any apartments or units that will in the course of the conversion be substantially altered in the physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

H. The governing body of any county utilizing the optional urban county executive form of government (§ 15.2-800 et seq.) or the optional county manager plan of government (§ 15.2-702 et seq.), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential condominium converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount that the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Transportation.

§ 55.1-1983. Escrow of deposits.

A. Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose that is federally insured and located in the Commonwealth, except where such deposits are being held by a real estate broker or attorney licensed under the laws of the Commonwealth, in which case such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

B. In lieu of escrowing deposits as provided in subsection A, the declarant of a condominium consisting of more than 50 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth below; or

2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth below.

The surety bond or letter of credit shall be maintained until (i) the granting of a deed to the unit, (ii) the purchaser's default under a purchase contract for the unit entitling the declarant to retain the deposit, or (iii) the refund of the deposit to the purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The declarant shall file the bond with the Common Interest Community

Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds $10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. $75,000 or less, the blanket bond shall be $75,000;

2. More than $75,000 but less than $200,000, the blanket bond shall be $200,000;

3. $200,000 or more but less than $500,000, the blanket bond shall be $500,000;

4. $500,000 or more but less than $1 million, the blanket bond shall be $1 million; and

5. $1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for use and benefit of every person protected under this chapter. The declarant shall file the letter of credit with the Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds $10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. $75,000 or less, the blanket letter of credit shall be $75,000;

2. More than $75,000 but less than $200,000, the blanket letter of credit shall be $200,000;

3. $200,000 or more but less than $500,000, the blanket letter of credit shall be $500,000;

4. $500,000 or more but less than $1 million, the blanket letter of credit shall be $1 million; and

5. $1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a declarant maintains in any calendar year, the total amount of deposits considered held by the declarant shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

§ 55.1-1984. Declarant to deliver declaration to purchaser.

The declarant shall within 10 days of recordation of the condominium instruments as provided for in §§ 55.1-1907 and 55.1-1911 forward to each purchaser at his last known address by first-class mail, return receipt requested, an exact copy of the recorded declaration and bylaws.

§ 55.1-1985. Investigations and proceedings.

A. Whenever the Common Interest Community Board receives a written complaint that appears to state a valid claim, the Common Interest Community Board shall make necessary public or private investigations in accordance with law within or outside of the Commonwealth to determine whether any declarant or its agents, employees, or other representatives have violated or are about to violate this chapter or any Common Interest Community Board regulation or order, or to aid in the enforcement of this chapter or in the prescribing of Common Interest Community Board regulations and forms. The Common Interest Community Board may also in like manner and with like authority investigate written complaints against persons other than the declarant or its agents, employees, or other representatives.

B. For the purpose of any investigation or proceeding under this chapter, the Common Interest Community Board or any officer designated by regulation may administer oaths or affirmations and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected by such failure, the Common Interest Community Board may apply to the Circuit Court of the County of Henrico for an order compelling compliance.

§ 55.1-1986. Cease and desist orders.

A. The Common Interest Community Board may issue an order requiring a person to cease and desist from any of the unlawful practices enumerated in subdivisions 1 through 5 and to take such affirmative action as in the judgment of the Common Interest Community Board will carry out the purposes of this chapter if the Common Interest Community Board determines after notice and hearing that such person has:

1. Violated any provision of this chapter;

2. Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

3. Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the Common Interest Community Board;

4. Disposed of any units that have not been registered with the Common Interest Community Board; or

5. Violated any lawful order or regulation of the Common Interest Community Board.

B. If the Common Interest Community Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Common Interest Community Board shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether it becomes permanent.

§ 55.1-1987. Revocation of registration.

A. A registration may be revoked by the Common Interest Community Board after notice and hearing upon a written finding of fact in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that the declarant has:

1. Failed to comply with the terms of a cease and desist order;

2. Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

3. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

4. Failed faithfully to perform any stipulation or agreement made with the Common Interest Community Board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

5. Made intentional misrepresentations or concealed material facts in an application for registration.

B. If the Common Interest Community Board finds after notice and a hearing that the developer has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

§ 55.1-1988. Judicial review.

Proceedings for judicial review shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 55.1-1989. Penalties.

Any person who willfully violates any provision of § 55.1-1972, 55.1-1974, 55.1-1975, 55.1-1976, 55.1-1979, 55.1-1982, or 55.1-1983 or any regulation adopted under or order issued pursuant to § 55.1-1971, or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact is guilty of a misdemeanor and may be fined not less than $1,000 or double the amount of gain from the transaction, whichever is the larger, but not more than $50,000, or he may be imprisoned for not more than six months, or both, for each offense.

Article 5.

Disclosure Requirements; Authorized Fees.

§ 55.1-1990. Resale by purchaser; contract disclosure; right of cancellation.

A. For purposes of this article:

"Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this article.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § 55.1-1991.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Receives," "received," or "receiving" the resale certificate means that the purchaser or purchaser's authorized agent has received the resale certificate by one of the methods specified in this article.

"Resale certificate update" means an update of the financial information referenced in subdivisions A 2 through 9 and 12 of § 55.1-1991. The update shall include a copy of the original resale certificate.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

B. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and subsection A of § 55.1-1972, the unit owner shall disclose in the contract that (i) the unit is located within a development that is subject to the Condominium Act; (ii) the Condominium Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available; (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55.1-1992, as appropriate; and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55.1-1980, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C of § 55.1-1991, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

C. If the contract does not contain the disclosure required by subsection B, the purchaser's sole remedy is to cancel the contract prior to settlement.

D. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55.1-1992, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate or is notified that the resale certificate will not be available on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate or notice that the resale certificate will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt is obtained; or (iii) within six days after the postmark date if the resale certificate or notice that the resale certificate will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the resale certificate will not be available and the resale certificate is not delivered to the purchaser.

Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing in the form of a certificate of service prepared by the sender confirming such mailing;

3. Electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.

§ 55.1-1991. Contents of resale certificate; delivery.

A. A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55.1-1966, which need not be notarized, and, if applicable, an appropriate statement pursuant to § 55.1-1969;

2. A statement of any expenditure of funds approved by the unit owners' association or the executive board that requires an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;

3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the condominium unit and the use of the common elements, and the status of the account;

4. A statement of whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;

5. The current reserve study report or a summary of such report and a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the executive board;

6. A copy of the unit owners' association's current budget or a summary of such budget prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due of any outstanding loans of the unit owners' association;

7. A statement of the nature and status of any pending actions or unpaid judgments to which the unit owners' association is a party that either could or would have a material impact on the unit owners' association or the unit owners or that relates to the unit being purchased;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including the fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, are or are not in violation of the condominium instruments;

10. A copy of the current bylaws, rules and regulations, and architectural guidelines adopted by the unit owners' association and the amendments to any such documents;

11. A statement of whether any portion of the condominium is located within a development subject to the Property Owners' Association Act (§ 55.1-1800 et seq.);

12. A copy of the notice given to the unit owner by the unit owners' association of any current or pending rule or architectural violation;

13. A copy of any approved minutes of the executive board and unit owners' association meetings for the six calendar months preceding the request for the resale certificate;

14. Certification that the unit owners' association has filed with the Common Interest Community Board the annual report required by § 55.1-1980, the filing number assigned by the Common Interest Community Board, and the expiration date of such filing;

15. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

16. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display the flag of the United States, including reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;

17. A statement setting forth any restriction, limitation, or prohibition on the right of a unit owner to install or use solar energy collection devices on the unit owner's property;

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

19. A copy of the fully completed form developed by the Common Interest Community Board pursuant to § 54.1-2350.

B. Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

C. The resale certificate shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or the seller's authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or the seller's authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or the seller's authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The resale certificate shall not be delivered in hard copy if the requester has requested delivery of such resale certificate electronically. If the resale certificate is provided electronically by

a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § 55.1-1992. If the seller or the seller's authorized agent asks that the resale certificate be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the unit owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § 55.1-1992. Regardless of whether the resale certificate is delivered in paper form or electronically, the preparer of the resale certificate shall provide such resale certificate directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

E. Subject to the provisions of § 55.1-1972, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55.1-2000 et seq.).

F. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the resale certificate may be made by the unit owner or the seller's authorized agent.

G. If the unit is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last resale certificate or disclosure packet.

§ 55.1-1992. Fees for resale certificate.

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, for the preparation and issuance of the resale certificate required by §§ 55.1-1990 and 55.1-1991, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

B. A reasonable fee may be charged by the preparer of the resale certificate as follows:

1. For the inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed $100;

2. For preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed $150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of $125, for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. Only one fee shall be charged for the preparation and delivery of the resale certificate;

3. At the option of the seller or the seller's authorized agent, with the consent of the unit owners' association or the common interest community manager, for expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed $50;

4. At the option of the seller or the seller's authorized agent, for an additional hard copy of the resale certificate, a fee not to exceed $25 per hard copy;

5. At the option of the seller or the seller's authorized agent, for hand delivery or overnight delivery of the resale certificate, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service; and

6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee not to exceed $50.

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55.1-1964, if not paid at settlement or within 60 days of the delivery of the resale certificate, whichever occurs first.

For purposes of this section, an expedite fee shall be charged only if the inspection and preparation of delivery of the resale certificate are completed within five business days of the request for a resale certificate.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. No additional fee shall be charged for access

to the unit owners' association's or common interest community manager's website. The unit owners' association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or the seller's authorized agent will know such fees at the time of requesting the resale certificate.

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requester, payable at settlement. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55.1-1964. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent or the purchaser or the purchaser's authorized agent, may request a resale certificate update. The requester shall specify whether the resale certificate update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the resale certificate update or financial update may be charged by the preparer, not to exceed $50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit, as authorized in the declaration, for a fee not to exceed $100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' association or common interest community manager may require the requester to request the specified update electronically. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the unit owners' association. If the requester asks that the specified update be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or the seller's authorized agent.

K. When a resale certificate has been delivered as required by § 55.1-1991, the unit owners' association shall, as to the purchaser, be bound by the statements set forth in the certificate as to the status of the assessment account and the status of the unit with respect to any violation of the condominium instruments as of the date

of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § 55.1-1991, failure to provide the resale certificate substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $1,000. The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the resale certificate within 14 days against any (i) unit owners' association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

§ 55.1-1993. Properties subject to more than one declaration.

If the unit is subject to more than one declaration, the unit owners' association or its common interest community manager may charge the fee authorized by § 55.1-1992 for each of the applicable associations, provided, however, that no association shall charge an inspection fee unless the association has architectural control over the unit.

§ 55.1-1994. Requests by settlement agents.

A. The settlement agent may request a financial update from the preparer of the resale certificate. The preparer of the resale certificate shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions; however, a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the unit owners' association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the resale certificate with (i) the complete record name of the seller, (ii) the address of the subject unit, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

§ 55.1-1995. Exceptions to disclosure requirements.

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

1. A disposition of a unit by gift;

2. A disposition of a unit pursuant to court order if the court so directs;

3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or

4. A disposition of a unit by a sale at auction when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.

B. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.

CHAPTER 20.

HORIZONTAL PROPERTY ACT.

Article 1.

General Provisions.

§ 55.1-2000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Apartment" means a dwelling that is an enclosed space consisting of one or more rooms occupying all or part of one or more floors in a building of one or more floors regardless of whether it is designed or used for residence, for office, for the operation of any industry or business, or for any other type of independent use, or combination of uses, provided that the dwelling has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare. "Apartment" also includes such accessories as may be appurtenant to such dwelling.

"Condominium" means the ownership of a single unit in a multiple-unit structure with common elements in a condominium project.

"Condominium project" means a plan or project whereby four or more apartments, rooms, office spaces, or other units existing or proposed, whether the unit involves a single structure, attached to or detached from other units, or is in one or more multiple-unit structures, on contiguous parcels of real estate are offered or proposed to be offered for sale.

"Co-owner" means a person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, that owns an apartment within the building.

"Council of co-owners" means all of the co-owners acting as a group in accordance with the bylaws of the horizontal property regime.

"Developer" means a person that undertakes to develop a real estate condominium project.

"General common elements," unless otherwise provided in the master deed or lease, means and includes:

1. The land, whether leased or in fee simple, on which the building stands;

2. The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exits or communication ways;

3. The basements, flat roofs, yards, and gardens, except as otherwise provided or stipulated;

4. The premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;

5. The compartments or installations of central services, including power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks, and pumps;

6. The elevators, garbage incinerators, and all other devices or installations existing for common use; and

7. All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety.

"Limited common elements" means those common elements that are agreed upon by all of the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, including special corridors, stairways and elevators, and sanitary services common to the apartments of a particular floor.

"Majority of co-owners" means more than 50 percent of the votes of the co-owners computed in accordance with the bylaws of the horizontal property regime.

"Master deed" or "master lease" means the deed or lease recording the property of the horizontal property regime.

"Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof.

"Property" means the land, whether leased or in fee simple, the building, all improvements and structures on such land, and all easements, rights, and appurtenances belonging to such land.

"To record" means to record pursuant to the laws of the Commonwealth relating to the recordation of deeds.

§ 55.1-2001. Property taxes assessed on individual apartments.

Property taxes assessed by the Commonwealth or by any locality shall be assessed on and collected on the individual apartments and not on the property as a whole, or on the common elements.

§ 55.1-2002. Chapter additional and supplemental.

The provisions of this chapter shall be in addition and supplemental to all other provisions of law, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail.

Article 2.

Creation and Alteration of Horizontal Property Regimes.

§ 55.1-2003. Establishment of horizontal property regime.

A. A horizontal property regime is established when a developer, the sole owner, or the co-owners of one or more buildings record a master deed or lease, which includes the particulars enumerated in § 55.1-2008.

B. Pursuant to § 55.1-1901, this chapter is superseded by the Virginia Condominium Act (§ 55.1-1900 et seq.) as of July 1, 1974. No new developments may be established under the provisions of this chapter after that date.

§ 55.1-2004. Partition.

A. The common elements, both general and limited, shall remain undivided. No apartment owner, or any other person, shall bring any action or other proceeding for partition or division of the co-ownership of the common elements as provided under § 55.1-2007.

B. Nothing contained in this section shall be construed as a limitation on partition by the owners of one or more apartments in a horizontal property regime as to the individual ownership of such apartment or apartments without terminating the regime or as to the ownership of property outside the regime, provided that upon partition of any such individual apartment it shall be sold as an entity and shall not be partitioned in kind.

Article 3.

Management of Horizontal Property Regimes.

§ 55.1-2005. Apartments subject to individual titles and interests; recording; transfer of garage unit.

Once the property is established as a horizontal property regime, an apartment in the building is a separate parcel of real property and may be individually conveyed and encumbered, independent of the other apartments in the building, and the corresponding individual titles and interests shall be recordable. A garage unit sold to a co-owner as a limited common element may be sold or transferred by him to another co-owner in the same horizontal property regime independently of and separately from his apartment.

§ 55.1-2006. Joint or common ownership.

Any apartment may be jointly or commonly owned by more than one person.

§ 55.1-2007. Exclusive and common rights of owners.

An apartment owner has an exclusive right to his apartment and has a common right to a share, with other co-owners, in the common elements of the property.

§ 55.1-2008. Master deed or lease; recordation; particulars.

A master deed or lease shall be recorded in the same manner and subject to the same provisions of law as are other deeds, provided that no state or local recordation tax upon the value of the property transferred shall apply to any such deed recorded solely for the purpose of complying with the provisions of § 55.1-2003.

The master deed or lease required pursuant to § 55-2003 shall include the following particulars:

1. The description of the land, whether leased or in fee simple, and the building, expressing their respective areas;

2. The general description and the number of each apartment, expressing its area, location, and any other data necessary for its identification;

3. The description of the general common elements of the building; and

4. The provisions requiring the council of co-owners to maintain insurance on the horizontal property regime.

§ 55.1-2009. Deeds of individual apartments.

The deed of each individual apartment shall express the particulars prescribed under subdivisions 1 and 2 of § 55.1-2008 relative to the apartments concerned and shall also express all encumbrances on such apartments.

§ 55.1-2010. Regrouping or merger of estates with principal property.

All of the co-owners or such lesser percentage as may be authorized in the master deed, or the sole owner of a building constituted into a horizontal property regime, may by deed waive this regime and regroup, amend the master deed, or merge the records of the filial estates with the principal property, provided that the filial estates are unencumbered, or if they are encumbered, that the creditors on whose behalf the encumbrances are recorded accept as security the undivided portions of the property owned by the debtors.

§ 55.1-2011. Merger not to bar subsequent condominium.

The merger provided for in § 55.1-2010 shall not bar the subsequent constitution of the property into a condominium whenever so desired, provided that the requirements of the Virginia Condominium Act (§ 55.1-1900 et seq.) are met.

§ 55.1-2012. Bylaws governing administration of buildings.

The administration of every building established as a horizontal property regime shall be governed by bylaws approved and adopted by the council of co-owners. The bylaws may be amended from time to time by the council or the governing board provided for in the council's bylaws.

§ 55.1-2013. Books and records; inspection; audit.

The administrator, board of administration, or person appointed by the bylaws of the regime shall keep a book with a detailed account of the receipts and expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by

or on behalf of the regime. Both the book and vouchers accrediting the entries made in the book shall be available for examination by all the co-owners during business hours that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization.

§ 55.1-2014. Contributions by co-owners.

All co-owners are bound to contribute pro rata toward the expenses of administration and of maintenance and repairs of the general common elements, and, in the appropriate case, of the limited common elements of the building, and toward any other expenses lawfully agreed upon by the council of co-owners.

If a co-owner fails to contribute his share as provided in this section, the manager or board of directors of the council of co-owners, or in a proper case, an aggrieved co-owner, may maintain an action at law on behalf of the council of co-owners to recover sums due for damages or in equity for injunctive relief.

No co-owner shall be exempt from contributing toward such expenses by waiver or nonuse of the use or enjoyment of the common elements, both general and limited, or by abandonment of the apartment belonging to him.

Such contributions may be determined and a lien, as the master deed may provide upon default in the payment of any such contribution, may be perfected by filing in the clerk's office in which the master deed is recorded a memorandum showing the name of the delinquent co-owner, the name of the council of co-owners as claimant of the lien, the amount of the claim, and a description of the property on which a lien is claimed verified by oath of the agent of the council of co-owners. The clerk shall record and index such lien as provided in § 43-4.1 and shall charge such fees as are provided by law. Such lien shall be released as provided in §§ 55.1-339 through 55.1-345 upon payment by the co-owner of his contributions.

§ 55.1-2015. Payment of assessments upon conveyance of apartment; priority.

Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner for his pro rata share in the expenses provided for in § 55.1-2014 shall first be paid out of the sale price or by the purchaser in priority over any other assessments or charges of whatever nature except the following:

1. Assessments, liens, and charges in favor of the Commonwealth or any locality for taxes past due and unpaid on the apartment; and

2. Payments due under mortgages duly recorded.

§ 55.1-2016. Liens or encumbrances.

A. Subsequent to establishment of a horizontal property regime as provided in this chapter, and while the property remains subject to this chapter, no lien shall arise or be effective against the property as a whole or against the common elements. During such period, liens or encumbrances shall arise or be created and enforced only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership, provided that no labor performed or materials furnished with the consent or at the request of an apartment owner or such owner's agent, contractor, or subcontractor shall be the basis for the filing of a mechanic's lien against the apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs to such apartment. Labor performed or materials furnished for the common elements and facilities, if duly authorized by the council of co-owners, the manager, or the board of directors in accordance with this chapter, the master deed, or the bylaws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a mechanic's lien against each of the apartments and shall be subject to the provisions of subsection B. Notice of such lien may be served on the manager or the board of directors of the council of co-owners.

B. If a lien is filed against two or more apartments and their respective percentage interest in the common elements, the apartment owners of the separate apartments may remove their apartments and their percentage interests in the common elements appurtenant to such apartments from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected, or they may file a written undertaking with surety approved by the court. Such individual payment, or amount of bond, shall be computed by reference to the percentage established pursuant to the bylaws of the horizontal property regime. After such partial payment, filing of bond, partial discharge, or release, or other satisfaction, the apartment and its percentage interest in the common elements shall be free and clear of such lien. Such partial payment, indemnity,

satisfaction, or discharge shall not prevent the lienor from proceeding to enforce its rights against any apartment and its percentage interest in the common elements not so paid, indemnified, satisfied, or discharged.

§ 55.1-2017. Rule against perpetuities; rule restricting unreasonable restraints on alienation.

The rules of property law known as the rule against perpetuities and the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this chapter or of any provisions of any master deed or lease, bylaws, or other document executed in accordance with this chapter as to the horizontal property regime. This exemption shall not apply to estates in the individual apartments.

§ 55.1-2018. Liability of owner.

A. The liability of the owner of an apartment for pro rata expenses shall be limited to the amounts assessed from time to time in accordance with this chapter, the master deed or lease, or the bylaws.

B. The owner of an apartment shall not be personally liable with respect to the negligence of any other co-owner except insofar as the negligent co-owner is acting for the council of co-owners.

§ 55.1-2019. Compliance by co-owner with bylaws and administrative rules and regulations.

Each co-owner shall comply with the bylaws of the horizontal property regime and with the administrative rules and regulations adopted pursuant to such bylaws, as may be amended from time to time, and with the covenants, conditions, or restrictions set forth in the deed to the individual apartment. Failure to comply with any such bylaws, rules and regulations, or covenants, conditions, or restrictions is grounds for an action by the manager or board of directors of the council of co-owners, or in a proper case, an aggrieved owner, on behalf of the council of co-owners to recover sums due for damages and for injunctive relief.

Article 4.

Protection of Purchasers.

§ 55.1-2020. Deposits to be held in escrow.

Any deposit made with a reservation to purchase or a contract to purchase shall be held in escrow in a separate fund for such deposits designated as such until the deed for which a deposit was made is delivered to the depositor.

CHAPTER 21.

VIRGINIA REAL ESTATE COOPERATIVE ACT.

Article 1.

General Provisions.

§ 55.1-2100. Definitions.

As used in this chapter or in the declaration and bylaws, unless provided otherwise or unless the context requires a different meaning:

"Affiliate of a declarant" means any person that controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (a) is a general partner, officer, director, or employer of the person; (b) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this definition are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55.1-2132.

"Capital components" means those items, whether or not a part of the common elements, for which the association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of a cooperative other than the units of such cooperative.

"Common expenses" means any expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55.1-2118.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this chapter, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55.1-2118 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert that (i) as part of a common promotional plan, offers to dispose of its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ 55.1-2173 et seq.).

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of subdivision 2 or 4 of § 55.1-2113 for the exclusive use of at least one unit but fewer than all of the units.

"Master association" means an organization described in § 55.1-2130, whether or not it is also an association described in § 55.1-2132.

"Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person that owns a cooperative interest, other than as security for an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55.1-2118 until that cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, that, by means of a voluntary transfer, acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes (i) parcels with or without upper or lower boundaries and (ii) spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, that secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 55.1-2155; (ii) exercise any development right pursuant to § 55.1-2120; (iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate that may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § 55.1-2130; or (vii) appoint or remove any officer of the association, any master association, or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion of such estate or interest.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

§ 55.1-2101. Applicability.

A. This chapter applies to all cooperatives created within the Commonwealth after July 1, 1982. Unless the declaration provides that the entire chapter is applicable, such a cooperative is subject only to §§ 55.1-2104 and 55.1-2105 if the cooperative contains only units restricted to nonresidential use or contains no more than three units and is not subject to any development rights.

B. Except as provided in subsection C, §§ 55.1-2100, 55.1-2104, 55.1-2105, 55.1-2109, 55.1-2114, and 55.1-2131, subdivisions A 1 through 6 and 11 through 17 of § 55.1-2133, and §§ 55.1-2143, 55.1-2148, 55.1-2151, 55.1-2161, 55.1-2169, and 55.1-2170 apply to all cooperatives created in the Commonwealth before July 1, 1982. Those sections apply only with respect to events and circumstances occurring after July 1, 1982, and do not invalidate existing provisions of the cooperative documents of those cooperatives. With regard to any cooperative created before July 1, 1982, § 55.1-2104 applies only to real estate acquired by that cooperative's association on or after that date. For the purposes of this section, a cooperative was created before July 1, 1982, if the cooperative was conveyed to the association before that date.

C. If a cooperative created within the Commonwealth before July 1, 1982, contains no more than three units and is not subject to any development rights, it is subject only to §§ 55.1-2104 and 55.1-2105, unless the declaration is amended to make any or all of the sections enumerated in subsection B apply to that cooperative.

D. This chapter does not apply to cooperatives or cooperative interests located outside the Commonwealth, but the public offering statement provisions as given in §§ 55.1-2153 through 55.1-2160 apply to all contracts for the disposition of cooperative interests signed in the Commonwealth by any party, unless exempt under subsection B of § 55.1-2153. The Common Interest Community Board regulations provisions under Article 5 (§ 55.1-2173 et seq.) apply to any such offering in the Commonwealth.

E. This chapter does not apply to any cooperatives that receive federal funding pursuant to the public housing or Section 8 program under the United States Housing Act of 1937, as amended.

F. This chapter does not apply to any cooperative that, when acquired by an association, is subject to a mortgage or deed of trust securing an indebtedness owed to any government or governmental authority to which the association has contractual obligations in addition to those set forth in such mortgage or deed of trust.

§ 55.1-2102. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter shall not be varied by agreement, and rights conferred by this chapter shall not be waived. A declarant shall not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

§ 55.1-2103. Property classification of cooperative interests; taxation.

A. A cooperative interest is real estate for all purposes. Unless waived by a proprietary lessee, a cooperative interest is subject to the provisions of Title 34 (§ 34-1 et seq.), regarding the homestead exemption.

B. Any portion of the common elements for which the declarant has reserved any development right shall be separately taxed and assessed against the declarant, and the declarant alone is liable for the payment of those taxes.

C. When the highest and best use of any parcel improved by a multi-unit cooperative apartment complex is achieved by sale of the cooperative apartment units as individual units, the fair market value of the parcel shall be determined by aggregating the fair market value of all taxable real estate that is part of the parcel, including each cooperative apartment unit and common elements. The fair market value of each such cooperative apartment unit shall be established by determining its fair market value for sale as an individual unit, determined in the same manner, mutatis mutandis, as the fair market value of condominium units. Tax bills shall be issued for each individual cooperative apartment unit.

No assessment of any parcel improved by a multi-unit cooperative apartment complex, whether the assessment was made before or after the adoption of this subsection, shall be held to be invalid because of the use of the method described in this subsection to determine the assessment.

D. Any duly authorized real estate assessor, board of assessors, or department of real estate assessments may require that all declarants, associations, master associations, and proprietary lessees' associations in the county or city subject to local taxation furnish to such assessor, board, or department on or before a time specified a statement listing all transfers of the cooperative apartment units over a specified period of time and a statement listing all owners and proprietary lessees of the cooperative apartment units as of a specified date. Each such statement shall be certified as to its accuracy by the declarant, association, master association, or proprietary lessees' association for which the statement is furnished or by a duly authorized agent of such declarant or association. Any statement required by this subsection shall be kept confidential in accordance with the provisions of § 58.1-3.

E. Subsections C and D apply to all cooperatives created in the Commonwealth, whether created before, on, or after July 1, 1982. However, subsections C and D do not apply to any multi-unit cooperative apartment complex the cooperative apartment units of which have been continually in use as such since December 31, 1967.

F. Any residential cooperative association the members of which are owners of cooperative interests in a cooperative under this chapter shall not be deemed to be a business for any state and local purposes, including liability for payment of sales, meals, hotel, motel, or gross receipts taxes and business licenses, to the extent that such residential cooperative association collects payments from residents of such cooperative.

G. Any tangible personal property owned by a residential cooperative association that would be considered household goods and personal effects if owned and used by an individual or by a family or household incident to maintaining an abode shall be considered household goods and personal effects owned and used by an individual or by a family or household incident to maintaining an abode for the purposes of § 58.1-3504 and any local ordinance authorized pursuant to § 58.1-3504.

§ 55.1-2104. Applicability of local ordinances, regulations, and building codes; local authority.

A. No zoning or other land use ordinance shall prohibit cooperatives as such by reason of their form of ownership. No cooperative shall be treated differently by any zoning or other land use ordinance that would permit a physically identical project or development under a different form of ownership.

B. Subdivision and site plan ordinances in any locality shall apply to any cooperative in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership. Nevertheless, the declarant need not apply for or obtain subdivision approval to record cooperative instruments against a portion of the land that may be submitted to the cooperative if the site plan approval for the land being submitted to the cooperative has first been obtained.

C. During development of a cooperative containing additional land or withdrawable land, phase lines created by the cooperative instruments shall not be considered property lines for purposes of subdivision. If the cooperative may no longer be expanded by the addition of additional land, the owner of the land not part of the cooperative shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the cooperative, the cooperative and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided that such land is subject to an approved site plan.

D. Localities may provide by ordinance that proposed cooperatives comprising conversion buildings and the use of such conversion buildings that do not conform to the zoning, land use, and site plan regulations of

the respective county or city in which the property is located shall secure a special use permit, a special exception, or variance, as applicable, prior to such property's becoming a cooperative. The local authority shall grant a request for such a special use permit, special exception, or variance filed on or after July 1, 1982, if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. The local authority shall not unreasonably delay action on any such request. In the event of an approved conversion, a locality, sanitary district, or other political subdivision may impose such charges and fees as are lawfully imposed by such locality, sanitary district, or other political subdivision as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the locality, sanitary district, or political subdivision as a result of the conversion.

E. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.), or any local ordinances regulating the design and construction of roads, sewer and water lines, stormwater management facilities, or other public infrastructure, that is not expressly applicable to cooperatives by reason of their form of ownership to a cooperative in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

§ 55.1-2105. Eminent domain.

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the proprietary lessee with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award for such unit shall include compensation to the proprietary lessee for the value of his cooperative interest. Upon acquisition, unless the order otherwise provides, that cooperative interest's allocated interests are automatically reallocated to the remaining cooperative interests in proportion to the respective allocated interests of those cooperative interests before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

B. Except as provided in subsection A, if part of a unit is acquired by eminent domain, the award for such unit shall compensate the proprietary lessee for the reduction in value of his cooperative interest. Unless the order provides otherwise, upon acquisition (i) that cooperative interest's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (ii) the portion of the allocated interests divested from the cooperative interest of which the partially acquired unit is a part is automatically reallocated to that cooperative interest and the remaining units in proportion to the respective allocated interests of those cooperative interests before the taking, with the cooperative interest of which the partially acquired unit is a part participating in the reallocation on the basis of its reduced allocated interests.

C. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be equally divided among the proprietary lessees of the units to which that limited common element was allocated at the time of acquisition.

D. The court order shall be recorded in every county or city in which any portion of the cooperative is located.

§ 55.1-2106. General principles of law applicable.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performances, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

§ 55.1-2107. Construction against implicit repeal.

This chapter, being a general act intended as a unified coverage of its subject matter, shall not be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§ 55.1-2108. Uniformity of application and construction.

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to cooperatives in the Commonwealth.

§ 55.1-2109. Unconscionable agreement or term of contract.

A. The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may (i) refuse to enforce the contract, (ii) enforce the remainder of the contract without the unconscionable clause, or (iii) limit the application of any unconscionable clause in order to avoid an unconscionable result.

B. Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

1. The commercial setting of the negotiations;

2. Whether a party has knowingly taken advantage of the inability of the other party to reasonably protect his interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

3. The effect and purpose of the contract or clause; and

4. If a sale, any gross disparity at the time of contracting between the amount charged for the cooperative interest and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions; however, a disparity between the contract price and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

§ 55.1-2110. Obligation of good faith.

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

§ 55.1-2111. Remedies to be liberally administered.

A. The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in a position as good as its position had the other party fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

B. Any right or obligation declared by this chapter is enforceable by judicial proceeding.

Article 2.

Creation, Alteration, and Termination of Cooperatives.

§ 55.1-2112. Creation of cooperative ownership.

A cooperative may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed and by conveying to the association the real estate subject to that declaration. The declaration shall be recorded in every county or city in which any portion of the cooperative is located, indexed in the grantee's index in the name of the cooperative and the association, and indexed in the grantor's index in the name of each person executing the declaration.

§ 55.1-2113. Unit boundaries.

Except as otherwise provided by the declaration:

1. If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces of such walls, floors, or ceilings are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside of the designated boundaries of a unit, any portion of such fixture serving only that unit is a limited common element allocated solely to that unit, and any portion of such fixture serving more than one unit or any portion of the common elements is a part of the common elements.

3. Subject to the provisions of subdivision 2, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, or patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

§ 55.1-2114. Construction and validity of declaration and bylaws.

A. All provisions of the declaration and bylaws are severable.

B. The rule against perpetuities shall not be applied to defeat any provision of the declaration, bylaws, or rules and regulations adopted pursuant to subdivision A 1 of § 55.1-2133.

C. In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent that the declaration is inconsistent with this chapter.

D. Title to a cooperative interest is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

§ 55.1-2115. Description of units.

A description of a unit that sets forth the name of the cooperative, the recording data for the declaration, the county or city in which the cooperative is located, and the identifying number of the unit is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit that were created by the declaration or bylaws.

§ 55.1-2116. Contents of declaration.

A. The declaration shall contain:

1. The name of the cooperative, which shall include the word "cooperative" or be followed by the words "a cooperative," and the association;

2. The name of every county or city in which any part of the cooperative is situated;

3. A legally sufficient description of the real estate included in the cooperative;

4. A statement of the maximum number of units that the declarant reserves the right to create;

5. A description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

6. A description of any limited common elements, other than those specified in subdivisions 2 and 4 of § 55.1-2113;

7. A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in subdivisions 2 and 4 of § 55.1-2113, together with a statement that they may be so allocated;

8. A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights are required to be exercised;

9. If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right is required to be exercised in all or in any other portion of the remainder of that real estate;

10. Any other conditions or limitations under which the rights described in subdivision 8 may be exercised or will lapse;

11. An allocation to each cooperative interest of the allocated interests in the manner described in § 55.1-2118;

12. Any restrictions on (i) use and occupancy of the units, (ii) alienation of the cooperative interests, and (iii) the amount for which a cooperative interest may be sold or the amount that may be received by a proprietary lessee upon sale of, condemnation of, or casualty loss to the unit or the cooperative or termination of the cooperative;

13. The recording data for recorded easements and licenses appurtenant to, or included in, the cooperative or to which any portion of the cooperative is or may become subject by virtue of a reservation in the declaration; and

14. All matters required by §§ 55.1-2117, 55.1-2118, 55.1-2119, 55.1-2125, and 55.1-2126 and subsection D of § 55.1-2134.

B. The declaration may contain any other matters the declarant deems appropriate.

§ 55.1-2117. Leasehold cooperatives.

A. The expiration or termination of any lease that may terminate the cooperative or reduce its size, or a memorandum of such lease, shall be recorded. The declaration shall state:

1. The recording data for the lease or a statement of where the complete lease may be inspected;

2. The date on which the lease is scheduled to expire;

3. A legally sufficient description of the real estate subject to the lease;

4. Any right of the proprietary lessees to redeem the reversion and how those rights may be exercised, or a statement that they do not have those rights;

5. Any right of the proprietary lessees to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

6. Any rights of the proprietary lessees to renew the lease and the conditions, if any, of any renewal, or a statement that they do not have those rights.

B. Acquisition of the leasehold interest of any proprietary lessee by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all proprietary lessees subject to that reversion or remainder are acquired.

C. If the expiration or termination of a lease decreases the number of units in a cooperative, the allocated interests shall be reallocated in accordance with subsection A of § 55.1-2118 as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

§ 55.1-2118. Allocation of ownership interests, votes, and common expense liabilities.

A. The declaration shall allocate an ownership interest in the association a fraction or percentage of the common expenses of the association and a portion of the votes in the association, or to each cooperative interest in the cooperative, and state the formulas used to establish those allocations. Those allocations shall not discriminate in favor of cooperative interests owned by the declarant or an affiliate of the declarant.

B. If units may be added to or withdrawn from the cooperative, the declaration shall state the formulas to be used to reallocate the allocated interests among all cooperative interests included in the cooperative after the addition or withdrawal.

C. The declaration may provide (i) that different allocations of votes shall be made to the cooperative interests on particular matters specified in the declaration, (ii) for cumulative voting only for the purpose of electing members of the executive board, and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. No declarant shall utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor shall cooperative interests constitute a class because they are owned by a declarant.

D. Except for minor variations due to rounding, the sum of the common expense liabilities allocated at any time to all the cooperative interests must equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

E. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of the ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

§ 55.1-2119. Limited common elements.

A. Except for the limited common elements described in subdivisions 2 and 4 of § 55.1-2113, the declaration shall specify to which of the units each limited common element is allocated. That allocation may not be altered without the consent of the proprietary lessees whose units are affected.

B. Unless the declaration provides otherwise, a limited common element may be reallocated by an amendment to the declaration executed by the proprietary lessees between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy to the association, which shall record it. The amendment shall be recorded in the names of the parties and the cooperative.

C. A common element not previously allocated as a limited common element shall not be so allocated except pursuant to provisions in the declaration made in accordance with subdivision A 7 of § 55.1-2116. The allocations shall be made by amendments to the declaration.

§ 55.1-2120. Exercise of development rights.

A. To exercise any development right reserved under subdivision A 8 of § 55.1-2116, the declarant shall prepare, execute, and record an amendment to the declaration as specified in § 55.1-2127. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection B, reallocate the allocated interests among all cooperative interests. The amendment must describe any common elements and any limited common elements created by such amendment and, in the case of limited common elements, designate to which of the units each is allocated to the extent required by § 55.1-2119.

B. Development rights may be reserved within any real estate added to the cooperative if the amendment adding that real estate includes all matters required by § 55.1-2116 or 55.1-2117, as appropriate. This

provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to subdivision A 8 of § 55.1-2116.

C. Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

1. If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interest of which that unit is a part among the other cooperative interests as if that unit had been taken by eminent domain.

2. If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interest of which that unit is a part among the cooperative interests created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides, pursuant to subdivision A 8 of § 55.1-2116, that all of or a portion of the real estate is subject to the development right of withdrawal:

1. If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a cooperative interest has been conveyed to a purchaser; and

2. If a portion or portions are subject to withdrawal, no portion may be withdrawn after a cooperative interest in that portion has been conveyed to a purchaser.

§ 55.1-2121. Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a proprietary lessee:

1. May make any improvements or alterations to his unit that do not impair the structural integrity or the electrical or mechanical systems of any portion of the cooperative;

2. Shall not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the cooperative, other than the interior of the unit, without permission of the association;

3. After acquiring a cooperative interest of which an adjoining unit or an adjoining part of an adjoining unit is a part, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or electrical or mechanical systems of any portion of the cooperative. Removal of partitions or creation of apertures under this subdivision is not an alteration of boundaries.

§ 55.1-2122. Relocation of boundaries between adjoining units.

A. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the proprietary lessees of those units. If the proprietary lessees of the adjoining units have specified a reallocation between their cooperative interests of their allocated interests, the application shall state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those proprietary lessees, contains words of conveyance between them, and upon recordation is indexed in the name of the grantor and the grantee.

B. The association shall prepare and record amendments to the declaration, including any plans necessary to show or describe the altered boundaries between adjoining units and their sizes and identifying numbers. All costs for such preparation and recordation shall be borne by the proprietary lessees involved.

§ 55.1-2123. Subdivision of units.

A. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a proprietary lessee to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration subdividing that unit. All costs for such preparation, execution, and recordation shall be borne by the proprietary lessees involved.

B. The amendment to the declaration must (i) be executed by the proprietary lessee of the unit to be subdivided, (ii) assign an identifying number to each unit created, and (iii) reallocate the allocated interests formerly allocated to the cooperative interest of which the subdivided unit is a part to the new cooperative interests in any reasonable manner prescribed by the proprietary lessee of the cooperative interest of which the subdivided unit is a part.

§ 55.1-2124. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a proprietary lessee of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any representation in the public offering statement.

§ 55.1-2125. Use for sales purposes.

A declarant may maintain sales offices, management offices, and models in units or on common elements in the cooperative only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation of such offices or models. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to have an ownership interest in the association, he ceases to have any rights with regard to such offices or models, unless it is removed promptly from the cooperative in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the cooperative. The provisions of this section are subject to the provisions of other state law and to local ordinances.

§ 55.1-2126. Easement rights.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

§ 55.1-2127. Amendment of declaration.

A. Except in cases of amendments that may be executed by a declarant under § 55.1-2120, the association under § 55.1-2105, subsection C of § 55.1-2117, subsection C of § 55.1-2119, subsection A of § 55.1-2122, or § 55.1-2123, or certain proprietary lessees under subsection B of § 55.1-2119, subsection A of § 55.1-2122, subsection B of § 55.1-2123, or subsection B of § 55.1-2128 and except as limited by subsection D, the declaration may be amended only by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds of the votes in the association are allocated, or a larger percentage if the declaration so specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

B. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

C. Every amendment to the declaration must be recorded in every county or city in which any portion of the cooperative is located and is effective only upon recordation. An amendment shall be indexed in the grantee's index in the name of the cooperative and the association and in the grantor's index in the name of the parties executing the amendment.

D. The declaration may be amended to extend the time limit within which special declarant rights imposed by the declaration pursuant to subdivision A 8 of § 55.1-2116 may be exercised only by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds of the votes in the association are allocated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies. Except to the extent expressly permitted or required by this subsection or other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a cooperative interest, or the uses to which any unit is restricted, in the absence of unanimous consent of the proprietary lessees.

E. If the time limit specified in the declaration for the creation of cooperative interests or the exercise of special declarant rights has expired, with the approval of the persons entitled to cast at least two-thirds of the votes in the association, other than any votes allocated to cooperative interests owned by the declarant, or any larger percentage as the declaration specifies, the declaration may be amended to (i) revive and reinstate any or all of the expired rights to create additional cooperative interests and any or all of the expired special declarant rights and (ii) vest in any person, including the original declarant, any or all of the powers, rights, privileges, and authority to which a declarant is entitled under this chapter regarding the exercise of the revived and reinstated rights with respect to any parcel of real estate that is a common element or any additional real estate that such amendment permits to be added to the cooperative. In no event, however, shall any such amendment extend or renew a period of declarant control of the association or provide a new period of declarant control.

F. Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of such designation, by the president of the association.

§ 55.1-2128. Termination of cooperative ownership.

A. Except in the case of a taking of all the units by eminent domain, or in the case of foreclosure of a security interest against the entire cooperative that has priority over the declaration, cooperative ownership may be terminated only by agreement of proprietary lessees of cooperative interests to which at least four-fifths of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the cooperative are restricted exclusively to nonresidential uses.

B. An agreement to terminate must be evidenced by the execution of a termination agreement or ratification of such agreement in the same manner as a deed by the requisite number of proprietary lessees. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all such ratifications must be recorded in every county or city in which a portion of the cooperative is situated and is effective only upon recordation.

C. The association, on behalf of the proprietary lessees, may contract for the sale of real estate in the cooperative, but the contract is not binding until approved pursuant to subsections A and B. After such approval, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded, and the proceeds of such sale are distributed, the association continues in existence with all powers it had before termination. Except to the extent that any provisions in the declaration limit the amount that may be received by a proprietary lessee upon termination, as set forth in subdivision A 12 of § 55.1-2116, proceeds of the sale must be distributed to holders of liens against the association and against the cooperative interests and to proprietary lessees, all as their interests may appear, in accordance with subsections D and E. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each proprietary lessee and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of such occupancy, each proprietary lessee and his successors in interest remain liable for all assessments and other obligations imposed on proprietary lessees by this chapter or the declaration.

D. Following termination of the cooperative, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for proprietary lessees and holders of liens against the association and the cooperative interests, as their interests may appear. The declaration may provide that all creditors of the association have priority over any interests of proprietary lessees and creditors of proprietary lessees. Where the declaration provides such a priority, following termination, creditors of the association holding liens on the cooperative that were recorded or docketed before termination may enforce their liens in the same manner as any lienholder, and all other creditors of the association are to be treated as if they had perfected liens against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have such priority:

1. The lien of each creditor of the association that was perfected against the association before termination becomes a lien against each cooperative interest upon termination as of the date the lien was perfected;

2. All other creditors of the association are to be treated as if they had perfected liens against the cooperative interests immediately before termination;

3. The amounts of the liens of the association's creditors described in subdivisions 1 and 2 against each of the cooperative interests must be proportionate to the ratio that that cooperative interest's common expense liability bears to the common expense liability of all the cooperative interests;

4. The lien of each creditor of each proprietary lessee that was perfected before termination continues as a lien against that proprietary lessee's cooperative interest as of the date the lien was perfected; and

5. The assets of the association shall be distributed to all proprietary lessees and all lienholders against their cooperative interests as their interests may appear in the order described in subdivisions 1 through 4, and creditors of the association are not entitled to payment from any proprietary lessee in excess of the amount of the creditor's lien against that proprietary lessee's cooperative interest.

E. The respective interests of proprietary lessees referred to in subsections C and D are as follows:

1. Except as provided in subdivision 2, the respective interests of proprietary lessees are the fair market values of their cooperative interests immediately before the termination, as determined by one or more independent appraisers selected by the association. Appraisers selected shall hold a designation awarded by a

major, nationwide testing or certifying professional appraisal society or association. The decision of the independent appraisers shall be distributed to the proprietary lessees and becomes final unless disapproved within 30 days after distribution by proprietary lessees of cooperative interests to which 25 percent of the votes in the association are allocated. The proportion of any proprietary lessee's interest to that of all proprietary lessees is determined by dividing the fair market value of that proprietary lessee's cooperative interest by the total fair market values of all the cooperative interests.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or limited common element before destruction cannot be made, the interests of all proprietary lessees are their respective ownership interests in the association immediately before the termination.

§ 55.1-2129. Rights of secured lenders.

The declaration may require that all or a specified number or percentage of the lenders holding security interests encumbering the cooperative interests approve specified actions of the proprietary lessees or the association as a condition to the effectiveness of those actions, but no requirement for approval shall operate to (i) deny or delegate control over the general administrative affairs of the association by the proprietary lessees or the executive board; (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding; or (iii) receive and distribute any insurance proceeds except pursuant to § 55.1-2145.

§ 55.1-2130. Master associations.

A. If the declaration provides that any of the powers described in § 55.1-2134 are to be exercised by or may be delegated to a for-profit or nonprofit corporation or unincorporated association that exercises those or other powers on behalf of one or more cooperatives or for the benefit of the proprietary lessees of one or more cooperatives, all provisions of this chapter applicable to associations apply to any such corporation or unincorporated association, except as modified by this section.

B. Unless a master association is acting in the capacity of an association described in § 55.1-2132, it may exercise the powers set forth in subdivision A 2 of § 55.1-2133 only to the extent expressly permitted in the declarations of the cooperatives that are part of the master association or expressly described in the delegations of power from those cooperatives to the master association.

C. If the declaration of any cooperative provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the delegated powers.

D. The rights and responsibilities of proprietary lessees with respect to the association set forth in §§ 55.1-2134, 55.1-2140, 55.1-2141, 55.1-2142, and 55.1-2144 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise proprietary lessees within the meaning of this chapter.

E. Notwithstanding the provisions of subsection F of § 55.1-2134, with respect to the election of the executive board of an association by all proprietary lessees after the period of declarant control ends, and even if a master association is also an association as described in § 55.1-2132, the certificate of incorporation or other instrument creating the master association and the declaration of each cooperative, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

1. All proprietary lessees of all cooperatives subject to the master association may elect all members of that executive board.

2. All members of the executive boards of all cooperatives subject to the master association may elect all members of that executive board.

3. All proprietary lessees of each cooperative subject to the master association may elect specified members of that executive board.

4. All proprietary lessees of the executive board of each cooperative subject to the master association may elect specified members of that executive board.

§ 55.1-2131. Merger or consolidation of cooperatives.

A. Any two or more cooperatives, by agreement of the proprietary lessees as provided in subsection B, may be merged or consolidated into a single cooperative. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant cooperative is, for all purposes, the legal successor of all of the preexisting cooperatives. The operations and activities of all associations of the preexisting cooperatives shall

be merged or consolidated into a single association, which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

B. An agreement of two or more cooperatives to merge or consolidate pursuant to subsection A must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting cooperatives following approval by proprietary lessees of cooperative interests to which are allocated the percentage of votes in each cooperative required to terminate that cooperative. Any such agreement must be recorded in every county or city in which a portion of the cooperative is located and is not effective until recorded.

C. Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the cooperative interests of the resultant cooperative either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interest of the new cooperative that are allocated to all of the cooperative interests comprising each of the preexisting cooperatives and providing that the portion of the percentages allocated to each cooperative interest formerly comprising a part of the preexisting cooperative must be equal to the percentages of allocated interests allocated to that cooperative interest by the declaration of the preexisting cooperative.

Article 3.

Management of Cooperatives.

§ 55.1-2132. Organization of the association.

An association must be organized no later than the date the first cooperative interest in the cooperative is conveyed. The membership of the association at all times shall consist exclusively of all the proprietary lessees or, following termination of the cooperative, of all former proprietary lessees entitled to distributions of proceeds under § 55.1-2128 or their heirs, successors, or assigns. The association shall be organized as a stock or nonstock corporation, trust, trustee, unincorporated association, or partnership.

§ 55.1-2133. Powers of the association.

A. Except as provided in subsection B, and subject to the provisions of the declaration, the association, even if unincorporated, may:

1. Adopt and amend bylaws and rules and regulations;

2. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from proprietary lessees;

3. Hire and discharge managing agents and other employees, agents, and independent contractors;

4. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more proprietary lessees on matters affecting the cooperative;

5. Make contracts and incur liabilities;

6. Regulate the use, maintenance, repair, replacement, and modification of common elements;

7. Cause additional improvements to be made as a part of the common elements;

8. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but part of the cooperative may be conveyed, or all or part of the cooperative may be subjected to, a security interest only pursuant to § 55.1-2144;

9. Grant easements, leases, licenses, and concessions through or over the common elements;

10. Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subdivisions 2 and 4 of § 55.1-2113, and for services provided to proprietary lessees;

11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy fines not to exceed $50 for each instance for violations of the declaration, bylaws, and rules and regulations of the association;

12. Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by § 55.1-2161, or statements of unpaid assessments;

13. Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

15. Exercise any other powers conferred by the declaration or bylaws;

16. Exercise all other powers that may be exercised in the Commonwealth by legal entities of the same type as the association; and

17. Exercise any other powers necessary and proper for the governance and operation of the association.

B. The declaration shall not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

§ 55.1-2134. Executive board members and officers.

A. Except as provided in the declaration, the bylaws, subsection B, or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise (i) the care required of fiduciaries of the proprietary lessees if appointed by the declarant and (ii) ordinary and reasonable care if elected by the proprietary lessees.

B. The executive board may not act on behalf of the association to amend the declaration; to terminate the cooperative; to elect members of the executive board, except as provided in the declaration pursuant to subsection F; or to determine the qualifications, powers, and duties or terms of office of executive board members. The executive board may fill vacancies in its membership for the unexpired portion of any term.

C. Within 30 days after adoption of any proposed budget for the cooperative, the executive board shall provide a summary of the budget to all the proprietary lessees and shall set a date for a meeting of the proprietary lessees to consider ratification of the budget. Such meeting shall be held not less than 14 nor more than 30 days after mailing of the summary. The meeting place, date, and time shall be provided with the budget summary. Unless at that meeting a majority of all the proprietary lessees or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the proprietary lessees shall be continued until such time as the proprietary lessees ratify a subsequent budget proposed by the executive board.

D. Subject to subsection E, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of (i) 60 days after conveyance of 75 percent of the cooperative interests that may be created to proprietary lessees other than a declarant, (ii) two years after all declarants have ceased to offer cooperative interests for sale in the ordinary course of business, or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

E. No later than 60 days after conveyance of 25 percent of the cooperative interests that may be created to proprietary lessees other than a declarant, at least one member and at least 25 percent of the members of the executive board must be elected by proprietary lessees other than the declarant. No later than 60 days after conveyance of 50 percent of the cooperative interests that may be created to proprietary lessees other than a declarant, at least one-third of the members of the executive board must be elected by proprietary lessees other than the declarant.

F. Unless the declaration provides for the selection of one or more independent members of the executive board, no later than the termination of any period of declarant control the proprietary lessees shall elect an executive board of at least three members, at least a majority of whom must be proprietary lessees. To the extent that the declaration so provides, the members of the executive board appointed by the declarant may continue to serve out their terms, and the declarant may continue to appoint a minority of the members of the executive board until all of the development rights reserved by the declarant have been exercised or have expired. In addition, the declaration may provide for the selection of one or more independent members of the executive board, who are neither proprietary lessees nor affiliated directly or indirectly in any way with the declarant, by a vote of two-thirds of the members of the executive board. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

G. Notwithstanding any provision of the declaration or bylaws to the contrary, the proprietary lessees, by a two-thirds vote of all persons entitled to vote at any meeting of the proprietary lessees at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

§ 55.1-2135. Transfer of special declarant rights.

A. No special declarant rights created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county or city in which any portion of the cooperative is located. The instrument is not effective unless executed by the transferee.

B. Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

1. A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this chapter. Lack of privity does not deprive any proprietary lessee of standing to maintain an action to enforce any obligation of the transferor.

2. If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the cooperative.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

4. A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

C. Unless otherwise provided in a security agreement, in case of foreclosure of a security agreement, tax sale, judicial sale, sale by a trustee under a security agreement or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of any cooperative interests owned by a declarant or of real estate in a cooperative subject to development rights:

1. A person acquiring all the cooperative interests or real estate being foreclosed or sold shall succeed, but only upon his request, to all special declarant rights related to that property held by that declarant or only to any rights reserved in the declaration pursuant to § 55.1-2125 and held by that declarant to maintain models, sales offices, and signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

D. Upon foreclosure, tax sale, judicial sale, sale by a trustee under a security agreement, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of all cooperative interests or real estate in a cooperative owned by a declarant:

1. The declarant ceases to have any special declarant rights, and

2. The period of declarant control as provided in subsection D of § 55.1-2134 terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.

2. A successor to any special declarant right, other than a successor described in subdivision 3 or 4, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

a. On a declarant that relate to his exercise or non-exercise of special declarant rights; or

b. On his transferor, other than:

(1) Misrepresentations by any previous declarant;

(2) Warranty obligations on improvements made by any previous declarant or made before the cooperative was created;

(3) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(4) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. A successor to only a right reserved in the declaration to maintain models, sales offices, and signs pursuant to § 55.1-2125, if he is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a current public offering statement, any liability arising as a result of providing a public offering statement, and obligations under Article 5 (§ 55.1-2173 et seq.).

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title to cooperative interests or real estate subject to development rights under subsection C may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. After declaring such an intention in a recorded instrument, until transferring all special declarant rights to any person acquiring title to any cooperative interest or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of subsection D of § 55.1-2134 for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under subsection D of § 55.1-2134.

F. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

§ 55.1-2136. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the proprietary lessees pursuant to subsection F of § 55.1-2134 takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the proprietary lessees at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the proprietary lessees pursuant to subsection F of § 55.1-2134 takes office after giving at least 90 days' notice to the other party. However, a management contract that is not unconscionable between an association directly or indirectly providing assisted living or nursing services to proprietary lessees and a declarant or an affiliate of a declarant may not be terminated while a member of the executive board appointed by the declarant continues to serve unless such termination is approved by a vote of a majority of the members of the executive board and a majority vote of the proprietary lessees, other than the declarant.

This section does not apply to any proprietary lease or any lease the termination of which would terminate the cooperative or reduce its size, unless the real estate subject to that lease was included in the cooperative for the purpose of avoiding the right of the association to terminate a lease under this section. This section does not apply to any contract, incidental to the disposition of a cooperative interest, to provide to a proprietary lessee for the duration of such proprietary lessee's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging, and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the declaration, bylaws, or proprietary leases requiring that the proprietary lessees be parties to such contracts.

§ 55.1-2137. Bylaws.

A. The bylaws of the association shall provide for:

1. The number of members of the executive board and the titles of the officers of the association;

2. Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

3. The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

4. Which, if any, of its powers and responsibilities the executive board or officers may delegate to other persons or to a managing agent;

5. Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

6. The method of amending the bylaws.

B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate, including a provision for the arbitration of disputes or other means of alternative dispute resolution in accordance with subsection B of § 55.1-2169.

§ 55.1-2138. Upkeep of cooperative.

A. Except to the extent otherwise provided by the declaration, by subsection B, or by subsection G of § 55.1-2145, the association is responsible for maintenance, repair, and replacement of the common elements, and each proprietary lessee is responsible for maintenance, repair, and replacement of his unit. Each proprietary lessee shall afford to the association and the other proprietary lessees, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the proprietary lessee responsible for the damage, or the association if it is responsible, is liable for the prompt repair and all costs associated with such repair.

B. In addition to the liability that a declarant as a proprietary lessee has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other proprietary lessee and no other portion of the cooperative is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

§ 55.1-2139. Common elements; notice of pesticide application.

Associations shall post notification of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least 48 hours prior to the application.

§ 55.1-2140. Meetings.

A meeting of the association must be held at least once each year. Special meetings of the association may be called by (i) the president, (ii) a majority of the executive board, or (iii) 20 percent, or any lower percentage if so specified in the bylaws, of the proprietary lessees. No less than 10 or more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the proprietary lessee. The notice of any meeting shall state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

§ 55.1-2141. Quorums.

A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast 20 percent of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

B. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50 percent of the votes on that board are present at the beginning of the meeting.

§ 55.1-2142. Voting; proxies.

A. If only one of the multiple proprietary lessees of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to the cooperative interest of which that unit is a part. If more than one of the multiple proprietary lessees are present, the votes allocated to that cooperative interest may be cast only in accordance with the agreement of a majority in interest of the multiple proprietary lessees, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple proprietary lessees casts the votes allocated to that cooperative interest without protest being made promptly to the person presiding over the meeting by any of the other proprietary lessees of the cooperative interest.

B. Votes allocated to a cooperative interest may be cast pursuant to a proxy duly executed by a proprietary lessee. If there is more than one proprietary lessee of a unit, each proprietary lessee of the unit may vote or register protest to the casting of votes by the other proprietary lessees of the unit through a duly executed proxy. A proprietary lessee may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless a shorter term is specified.

C. If the declaration requires that votes on specified matters affecting the cooperative be cast by lessees other than proprietary lessees of leased units: (i) the provisions of subsections A and B apply to lessees as if they were proprietary lessees; (ii) proprietary lessees who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were proprietary lessees. Proprietary lessees must also be given notice, in the manner provided in § 55.1-2140, of all meetings at which such lessees may be entitled to vote.

D. All votes allocated to a cooperative interest owned by the association shall be deemed present for quorum purposes at all duly called meetings of the association and shall be deemed cast in the same proportions as the votes cast by proprietary lessees, other than the association.

§ 55.1-2143. Tort and contract liability.

Neither the association nor any proprietary lessee except the declarant is liable for that declarant's torts in connection with any part of the cooperative that that declarant has the responsibility to maintain. Otherwise, an action alleging wrongdoing by the association shall be brought against the association and not against any proprietary lessee. If such wrongdoing occurred during any period of declarant control, and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any proprietary lessee (i) for all tort losses not covered by insurance suffered by the association or that proprietary lessee and (ii) for all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

A proprietary lessee is not precluded from bringing an action contemplated by this section because he is a proprietary lessee or a member or officer of the association. Liens resulting from judgments against the association are governed by § 55.1-2151.

§ 55.1-2144. Conveyance or encumbrance of the cooperative.

A. Part of the cooperative may be conveyed, and all or part of the cooperative may be subjected to a security interest, by the association if persons entitled to cast at least 80 percent of the votes in the association, including a simple majority of the votes allocated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies, agree to that action. If fewer than all the units or limited common elements are to be conveyed or subjected to a security interest, then all the proprietary lessees of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

B. An agreement to convey a part of the cooperative or subject it to a security interest must be evidenced by the execution of an agreement, or ratifications of such an agreement, in the same manner as a deed, by the requisite number of proprietary lessees. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and such ratifications must be recorded in every county or city in which a portion of the cooperative is situated and is effective only upon recordation.

C. The association, on behalf of the proprietary lessees, may contract to convey a part of the cooperative or subject it to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections A and B. After such approval, the association has all powers necessary and appropriate to effect the conveyance or encumbrance including the power to execute deeds or other instruments.

D. Any purported conveyance, encumbrance, or other voluntary transfer of the cooperative, unless made pursuant to this section or pursuant to subsection C of § 55.1-2128, is void.

E. A conveyance or encumbrance of the cooperative pursuant to this section does not deprive any unit of its rights of access and support.

§ 55.1-2145. Insurance.

A. Commencing not later than the time of the first conveyance of a cooperative interest to a person other than a declarant, the association shall maintain to the extent reasonably available:

1. Property insurance on the common elements and units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

2. Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and units.

B. If the insurance described in subsection A is not reasonably available, the association shall notify all proprietary lessees by hand delivery or by United States mail, sent prepaid. The declaration may require the association to carry any other insurance, and the association may carry any other insurance it deems appropriate to protect the association or the proprietary lessees.

C. Insurance policies carried pursuant to subsection A must provide that:

1. Each proprietary lessee is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

2. The insurer waives its right to subrogation under the policy against any proprietary lessee or member of his household;

3. No act or omission by any proprietary lessee, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

4. If, at the time of a loss under the policy, there is other insurance in the name of a proprietary lessee covering the same risk covered by the policy, the association's policy provides primary insurance.

D. Any loss covered by the property policy under subdivision A 1 must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, proprietary lessees, and lien holders as their interests may appear. Subject to the provisions of subsection G, the proceeds must be disbursed first for the repair or restoration of the damaged property. The association, proprietary lessees, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the cooperative is terminated.

E. An insurance policy issued to the association does not prevent a proprietary lessee from obtaining insurance for his own benefit.

F. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any proprietary lessee or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each proprietary lessee, and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known address.

G. Any portion of the cooperative for which insurance is required under this section that is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the cooperative is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) 80 percent of the proprietary lessees, including every proprietary lessee of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire cooperative is not repaired or replaced, (a) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the cooperative and (b) except to the extent that other persons will be distributees, the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the proprietary lessees of those units and the proprietary lessees of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the proprietary lessees or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the cooperative interests. If the proprietary lessees vote not to rebuild any unit, the allocated interests of the cooperative interest of which that unit is a part are automatically reallocated upon the vote as if the unit had been condemned under subsection A of § 55.1-2105, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, § 55.1-2128 governs the distribution of insurance proceeds if the cooperative is terminated.

H. The provisions of this section may be varied or waived in the case of a cooperative whose units are all restricted to nonresidential use.

§ 55.1-2146. Assessments for common expenses.

A. Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

B. Except for assessments under subsections C, D, E, and F, all common expenses shall be assessed against all the cooperative interests in accordance with the allocations set forth in the declaration pursuant to subsection A of § 55.1-2118.

Any past-due common expense assessment or installment bears interest at the rate established by the association not exceeding 18 percent per year.

C. To the extent required by the declaration:

1. Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed equally against the cooperative interests for the units to which that limited common element is assigned, or in any other proportion that the declaration provides;

2. Any common expense or portion benefiting fewer than all of the units must be assessed exclusively against the cooperative interests for the units benefited; and

3. The costs of insurance must be assessed in proportion to risk, and the costs of utilities must be assessed in proportion to usage.

D. Assessments to pay a judgment against the association may be made only against the cooperative interests in the cooperative at the time the judgment was entered, in proportion to their common expense liabilities.

E. If any common expense is caused by the negligence or other misconduct of any proprietary lessee, or of his family members, tenants, or other invitees, the association may assess that expense exclusively against his cooperative interest.

F. Notwithstanding any other provision in this section, in any cooperative where permanent residency is, in general, restricted to individuals age 55 and over, and the primary purpose of the association is to provide services and amenities to the residents of the cooperative that are consistent with the services and amenities typically provided to residents of full service senior housing communities in the United States, the declaration may provide, or may be amended to provide by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds of the votes in the association are allocated, or any larger percentage if so specified in the declaration, that:

1. Common expenses may be assessed against all cooperative interests in accordance with the standards in general use from time to time among full-service senior housing communities in the United States for the purpose of fairly and equitably establishing the fees and charges imposed on their residents to pay for all common expenses of such senior housing communities, including the expenses of providing services and amenities, such standards to be determined by the executive board of the association, acting reasonably;

2. Common expenses may be assessed against any cooperative interest that has been created pursuant to the declaration but as to which construction of the unit appurtenant to such cooperative interest has not been completed, provided that nothing contained in this subdivision shall relieve the declarant of its obligations under subsection B of § 55.1-2138; and

3. Common expenses may be assessed against any cooperative interest as to which the unit appurtenant to such cooperative interest has been completed until the unit is initially permanently occupied, provided, however, that all such cooperative interests shall pay all direct expenses of the association related to such cooperative interests and any common expenses that directly benefit such cooperative interest, in each case, determined in accordance with the provisions set forth in the declaration or the association's bylaws, provided, however, that if neither the declaration nor the bylaws contain such provisions, then such expenses shall be paid in accordance with the allocations set forth in the declaration pursuant to subsection A of § 55.1-2118.

G. If common expense liabilities are reallocated, common expense assessments and any installment not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

§ 55.1-2147. Reserves for capital components.

A. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; and

3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect.

§ 55.1-2148. Remedies for nonpayment of assessments.

A. The association has a lien on a cooperative interest for any assessment levied against that cooperative interest or fines imposed against its owner from the time the assessment or fines become due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions A 11 and 12 of § 55.1-2133 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. Upon nonpayment of the assessment, the proprietary lessee may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section. The association's lien may be foreclosed (i) by judicial sale in like manner as a mortgage on real estate or (ii) by power of sale as provided in subsection I.

B. A lien under this section is prior to all other liens and encumbrances on a cooperative interest except (i) liens and encumbrances on the cooperative that the association creates, assumes, or takes subject to; (ii) any first security interest encumbering only the cooperative interest of a proprietary lessee and perfected before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the cooperative or the cooperative interest. The lien is also prior to the security interests described in clause (ii) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection A of § 55.1-2133 that would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to homestead or other exemptions.

C. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

D. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation or filing of any claim of lien for assessment under this section is required.

E. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

F. This section does not prohibit actions to recover sums for which subsection A creates a lien or prohibit an association from taking a transfer in lieu of foreclosure.

G. A judgment in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

H. Upon written request, the association shall furnish to a proprietary lessee a statement setting forth the amount of unpaid assessments against his cooperative interest. The statement shall be in recordable form. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every proprietary lessee.

I. The association, upon nonpayment of assessments and compliance with this subsection, may sell the cooperative interest. Sale may be at a public sale or by private negotiation and at any time and place, but every aspect of the sale, including the method, advertising, time, place, and terms, must be reasonable. The association shall give to the proprietary lessee and any sublessees of the proprietary lessee reasonable written notice of the time and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the cooperative interest that would be cut off by the sale, but only if the interest was on record seven weeks before the date specified in the notice as the date of any public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale

may not be held until five weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

J. The proceeds of a sale under subsection I shall be applied in the following order:

1. The reasonable expenses of sale;

2. The reasonable expenses of securing possession before sale; holding, maintaining, and preparing the cooperative interest for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the proprietary lessee, reasonable attorney fees and other legal expenses incurred by the association;

3. Satisfaction in the order of priority of any prior claims of record;

4. Satisfaction of the association's lien;

5. Satisfaction in the order of priority of any subordinate claim of record; and

6. Remittance of any excess to the proprietary lessee. Unless otherwise agreed, the proprietary lessee is liable for any deficiency.

K. If a cooperative interest is sold under subsection I, a good faith purchaser for value acquires the proprietary lessee's interest in the cooperative interest free of the association's debt that gave rise to the lien under which the sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section. The person conducting the sale under subsection I shall execute a conveyance to the purchaser sufficient to convey the cooperative interest that states that the conveyance is executed by him, after a foreclosure by power of sale of the association's lien and that he has power to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by subsection I are sufficient proof of the facts recited and of his authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

L. At any time before the association has disposed of the cooperative interest or entered into a contract for its disposition under the power of sale, the proprietary lessee or the holder of any subordinate security interest may cure the proprietary lessee's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney fees of the creditor.

§ 55.1-2149. Other liens affecting the cooperative.

A. Regardless of whether his cooperative interest is subject to the claims of the association's creditors, no property of a proprietary lessee other than his cooperative interest is subject to those claims.

B. If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each proprietary lessee of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

§ 55.1-2150. Limitation of assumption of debt and encumbrances.

Unless approved by persons entitled to cast at least 80 percent of the votes in the association, including a simple majority of the votes allocated to cooperative interests not owned by a declarant or any larger percentage the declaration specifies, (i) the association shall not assume or take subject to any debt, inclusive of any principal and interest accrued thereon, incurred in the original acquisition, development, or construction of or the conversion of the cooperative in excess of the amounts disclosed in the public offering statement pursuant to § 55.1-2155 or 55.1-2156, nor shall the cooperative or any proprietary lessee's interest be encumbered by a security interest for any greater amount incurred for such purposes, and (ii) the declarant shall not amend the public offering statement to change the amounts disclosed after conveyance of the first unit to a proprietary lessee. However, the amounts disclosed shall not be subject to adjustment such that the association or the proprietary lessees are subjected to the construction or market risks of the declarant.

§ 55.1-2151. Association records.

The association shall keep financial records sufficiently detailed to enable the association to comply with § 55.1-2161. All financial and other records shall be made reasonably available for examination by any proprietary lessee and his authorized agents.

§ 55.1-2152. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third

person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

Article 4.

Protection of Cooperative Purchasers.

§ 55.1-2153. Applicability; waiver.

A. This article applies to all cooperative interests subject to this chapter, except as provided in subsection B or as modified or waived by agreement of purchasers of cooperative interests in a cooperative in which all units are restricted to nonresidential use.

B. Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

1. A gratuitous disposition of a cooperative interest;

2. A disposition pursuant to court order;

3. A disposition by a government or governmental agency;

4. A disposition by foreclosure or transfer in lieu of foreclosure;

5. A disposition to a person in the business of selling cooperative interests who intends to offer those cooperative interests to purchasers; or

6. A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

§ 55.1-2154. Liability for public offering statement; requirements.

A. Except as provided in subsection B, a declarant, prior to the offering of any cooperative interest to the public, shall prepare a public offering statement conforming to the requirements of §§ 55.1-2155, 55.1-2156, 55.1-2157, and 55.1-2158.

B. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a person in the business of selling cooperative interests who intends to offer cooperative interests in the cooperative for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection A.

C. Any declarant or other person in the business of selling cooperative interests who offers a cooperative interest for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in subsection A of § 55.1-2160. The person who prepared all or a part of the public offering statement is liable under §§ 55.1-2160, 55.1-2169, 55.1-2178, and 55.1-2179 for any false or misleading statement set forth in such public offering statement or for any omission of material fact from such public offering statement with respect to that portion of the public offering statement that he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth in such public offering statement or for any omission of material fact from such public offering statement unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

D. If a unit is part of a cooperative and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of the Commonwealth, a single public offering statement, conforming to the requirements of §§ 55.1-2155, 55.1-2156, 55.1-2157, and 55.1-2158 as those requirements relate to each regime in which the unit is located and to any other requirements imposed under the laws of the Commonwealth, may be prepared and delivered in lieu of providing two or more public offering statements.

§ 55.1-2155. Public offering statement; general provisions.

A. Except as provided in subsection B, a public offering statement shall contain or fully and accurately disclose:

1. The name and principal address of the declarant and of the cooperative;

2. A general description of the cooperative, including to the extent possible the types, number, declarant's schedule of commencement, and completion of construction of buildings and amenities that the declarant anticipates including in the cooperative;

3. The number of units in the cooperative;

4. Copies and a brief narrative description of the significant features of the declaration and any other recorded covenants, conditions, restrictions, and reservations affecting the cooperative; the bylaws and any

rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under § 55.1-2136;

5. Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget shall include:

a. A description of provisions made in the budget for reserves for repairs and replacement;

b. A statement of any other reserves;

c. The projected common expense assessment by category of expenditures for the association;

d. The projected monthly common expense assessment for each type of unit; and

e. The projected debt, inclusive of principal and any accrued interest, loan fees, and other similar charges, assumed or to be assumed by the association and an estimate of the payments necessary to service such debt.

6. Any services not reflected in the budget that the declarant provides, or expenses that he pays and that he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

7. Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

8. A description of any liens, defects, or encumbrances on or affecting the title to the cooperative;

9. A description of any financing offered or arranged by the declarant;

10. The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement of such warranties or on damages;

11. A statement that:

a. Within 10 days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a cooperative interest from a declarant; and

b. If a declarant fails to provide a public offering statement to a purchaser before conveying a cooperative interest, that purchaser may recover from the declarant 10 percent of the sales price of the cooperative interest, plus 10 percent of the share, proportionate to his common expense liability, of the indebtedness of the association secured by mortgages or deeds of trust encumbering the cooperative;

12. A statement of any unsatisfied judgments or pending actions against the association and the status of any pending actions material to the cooperative of which a declarant has actual knowledge;

13. A statement that any deposit made in connection with the purchase of a cooperative interest will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to § 55.1-2160, together with the name and address of the escrow agent;

14. Any restrictions on (i) use and occupancy of the units; (ii) alienation of the cooperative interests; (iii) the amount for which a cooperative interest may be sold; or (iv) the amount that may be received by a proprietary lessee upon sale, condemnation, or casualty loss to the unit or the cooperative or termination of the cooperative;

15. A description of the insurance coverage provided for the benefit of proprietary lessees;

16. Any current or expected fees or charges to be paid by proprietary lessees for the use of the common elements and other facilities related to the cooperative;

17. The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to § 55.1-2171;

18. A brief narrative description of any zoning and other land use requirements affecting the cooperative;

19. A specified or maximum amount, if any, of acquisition, development, or construction debt, inclusive of principal and any accrued interest, loan fees, and other similar charges, assumed or to be assumed by the association and whether there will be a security interest encumbering the cooperative to secure repayment;

20. All unusual and material circumstances, features, and characteristics of the cooperative and the units;

21. Whether the proprietary lessees will be entitled, for federal, state, and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative; and

22. A statement as to the effect on every proprietary lessee if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

B. If a cooperative composed of not more than three units is not subject to any development rights, and no power is reserved to a declarant to make the cooperative part of a larger cooperative, a group of cooperatives, or other real estate, a public offering statement may include the information otherwise required by subdivisions A 9 and 10 and 15 through 19 and the narrative descriptions of documents required by subdivision A 4.

C. A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

D. The declarant shall provide a copy of the public offering statement and all amendments to the association, and the association shall maintain them in its records.

§ 55.1-2156. Public offering statement; cooperatives subject to development rights.

If the declaration provides that a cooperative is subject to any development rights, the public offering statement shall disclose, in addition to the information required by § 55.1-2155:

1. The maximum number of units and the maximum number of units per acre that may be created;

2. A statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;

3. If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use;

4. A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

5. A statement of the maximum extent to which each cooperative interest's allocated interests may be changed by the exercise of any development right described in subdivision 4;

6. A statement of the extent to which any buildings may be erected or other improvements that may be made pursuant to any development right in any part of the cooperative will be compatible with existing buildings and improvements in the cooperative in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

7. General descriptions of all other improvements that may be made, and limited common elements that may be created within any part of the cooperative pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

8. A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the cooperative pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

9. A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the cooperative, a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

10. A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the cooperative, a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

11. A statement that all restrictions in the declaration affecting use and occupancy of units and alienation of cooperative interests will apply to any units and cooperative interests created pursuant to any development right reserved by the declarant, a statement of any differentiations that may be made as to those units and cooperative interests, or a statement that no assurances are made in that regard;

12. A specified or maximum amount, if any, of acquisition, development, or construction debt, inclusive of principal and any accrued interest, loan fees, and other similar charges, assumed or to be assumed by the association for each phase of the development and whether there will be a security interest encumbering the cooperative to secure repayment. If no such amount can be specified, a statement that no amount may be assumed unless approved by persons entitled to cast at least 80 percent of the votes in the association, including a simple majority of the votes allocated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies; and

13. A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

§ 55.1-2157. Public offering statement; time-shares.

If the declaration provides that ownership of cooperative interests or occupancy of any units is or may be in time-shares, the public offering statement shall disclose, in addition to the information required by § 55.1-2155:

1. The number and identity of units in which time-shares may be created;

2. The total number of time-shares that may be created;

3. The minimum duration of any time-shares that may be created; and

4. The extent to which the creation of time-shares will or may affect the enforceability of the association's lien for assessments provided in § 55.1-2149.

§ 55.1-2158. Public offering statement; cooperatives containing conversion building.

A. In addition to the information required by § 55.1-2155, the public offering statement of a cooperative containing any conversion building shall contain:

1. A statement by the declarant, based on a report prepared by an independent, registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

2. A statement by the declarant of the expected useful life of each item reported on in subdivision 1, or a statement that no representations are made in that regard; and

3. A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

B. This section applies only to buildings containing units that may be occupied for residential use.

§ 55.1-2159. Public offering statement; cooperative securities.

If an interest in a cooperative is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. A cooperative interest is not a security under the provisions of the Securities Act, §§ 13.1-501 through 13.1-527.3.

§ 55.1-2160. Purchaser's right to cancel.

A. A person required to deliver a public offering statement pursuant to subsection C of § 55.1-2154 shall provide a purchaser with a copy of the public offering statement and all amendments to the public offering statement before conveyance of that cooperative interest and not later than the date of any contract of sale. The purchaser may cancel the contract within 10 days after signing the contract.

B. If a purchaser elects to cancel a contract pursuant to subsection A, he may do so by hand delivering notice of such cancellation to the offeror or by mailing notice of such cancellation by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

C. If a person required to deliver a public offering statement pursuant to subsection C of § 55.1-2154 fails to provide to a purchaser to whom a cooperative interest is conveyed that public offering statement and all amendments as required by subsection A, the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to 10 percent of the sales price of the cooperative interest, plus 10 percent of the share, proportionate to his common expense liability, of the indebtedness of the association secured by mortgages or deeds of trust encumbering the cooperative. Execution of a purchase agreement for a cooperative interest that makes reference to the public offering statement and in which the purchaser acknowledges receipt of the public offering statement shall be sufficient proof that the declarant has fully satisfied this requirement.

§ 55.1-2161. Resales of cooperative interests.

A. Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under subsection B of § 55.1-2153, a proprietary lessee shall furnish to a purchaser before execution of any contract for sale of a cooperative interest, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules and regulations of the association, and a certificate containing:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the cooperative interest;

2. A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling proprietary lessee;

3. A statement of any other fees payable by proprietary lessees;

4. A statement of any capital expenditures anticipated by the association for the current and next two succeeding fiscal years;

5. The current reserve study report or a summary of such report and a statement of the status and amount of any reserve or replacement fund and of any portions of those reserves designated by the association for any specified projects;

6. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association, including the amount of any debt owed by the association or to be assumed by the association, inclusive of principal and any accrued interest, loan fees, and other similar charges;

7. The current operating budget of the association;

8. A statement of any unsatisfied judgments against the association and the status of any pending actions in which the association is a defendant;

9. A statement describing any insurance coverage provided for the benefit of proprietary lessees;

10. A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned to such unit violate any provision of the declaration;

11. A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned to such unit, or any other portion of the cooperative;

12. A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal of such leasehold;

13. Except where no public offering statement was prepared, a statement that the public offering statement and any amendments to the public offering statement are records of the association available for inspection by the purchaser;

14. An accountant's statement, if any was prepared, as to the deductibility for federal income taxes purposes by the proprietary lessee of real estate taxes and interest paid by the association;

15. A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation, or loss to the unit or the cooperative on termination of the cooperative; and

16. Certification, if applicable, that the proprietary lessees' association has filed with the Common Interest Community Board the annual report required by § 55.1-2182; such certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing.

B. The association, within 10 days after a request by a proprietary lessee, shall furnish a certificate containing the information necessary to enable the proprietary lessee to comply with this section. A proprietary lessee providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until five days after the certificate is provided or until conveyance, whichever occurs first.

§ 55.1-2162. Escrow of deposits.

A. Any deposit made in connection with the purchase or reservation of a cooperative interest from a person required to deliver a public offering statement pursuant to subsection C of § 55.1-2154 shall be placed in escrow and held either in the Commonwealth or in the state in which the unit that is a part of that cooperative interest is located in an account designated solely for that purpose by a title insurance company, attorney, or real estate broker licensed under the laws of the Commonwealth, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing, (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the cooperative interest, or (iii) refunded to the purchaser.

B. Any deposit made in connection with the purchase of a cooperative interest from a person not required to deliver a public offering statement shall be placed in escrow in the same manner as prescribed in subsection A. Upon receipt of the certificate called for in § 55.1-2161, should the purchaser elect to void the contract, the seller may deduct the actual charges by the association for preparation of the certificate. Otherwise, the deposit shall be promptly returned to the purchaser.

§ 55.1-2163. Release of liens.

A. In the case of a sale of a cooperative interest where delivery of a public offering statement is required pursuant to subsection C of § 55.1-2154, a seller shall, before conveying a cooperative interest, record or furnish to the purchaser releases of all liens affecting the unit that is a part of that cooperative interest and any limited common element assigned to such unit, except liens solely against the unit and any limited common element assigned to such unit, that the purchaser expressly agrees to take subject to or assume. Releases of liens shall be made pursuant to §§ 55.1-339 through 55.1-345. This subsection does not apply to any real estate that a declarant has the right to withdraw.

B. Before conveying real estate to the association, the declarant shall have that real estate released from (i) all liens the foreclosure of which would deprive proprietary lessees of any right of access to or easement of support of their units and (ii) all other liens on such real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

§ 55.1-2164. Conversion buildings.

A. For the purposes of this section:

"Disabled" means suffering from a severe, chronic physical or mental impairment that results in substantial functional limitations.

"Elderly" means not less than 62 years of age.

B. A declarant of a cooperative containing conversion buildings shall give each of the tenants of a conversion building formal notice of the conversion at the time the cooperative is registered by the Common Interest Community Board. This notice shall advise each tenant of (i) the offering price of the cooperative interests for the unit he occupies; (ii) the projected common expense assessments against that cooperative interest for at least the first year of the cooperative's operation; (iii) any relocation services, public or private, of which the declarant is aware; (iv) any measure taken or to be taken by the declarant to reduce the incidence of tenant dislocation; and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided in this section and in subsection A of § 55.1-1229 except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations, or improvements, provided that (a) the making of the same does not constitute an actual or constructive eviction of the tenant and (b) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. Failure to give notice as required by this section is a defense to an action for possession. The declarant shall also provide general notice to the tenants of the cooperative or proposed cooperative at the time of application to the Common Interest Community Board, in addition to the formal notice required by this subsection.

C. For 60 days after delivery or mailing of the formal notice described in subsection B, the person required to give the notice shall offer to convey the cooperative interest for each unit or proposed unit occupied for residential use to the tenant who leases the unit associated with that cooperative interest. A specific statement of the purchase price and the amount of any initial or special cooperative fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee shall be given to the tenant. If a tenant fails to purchase the cooperative interest during that 60-day period, the offeror shall not offer to dispose of an interest in that cooperative interest during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any cooperative interest in a conversion building if the unit that is part of that cooperative interest will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

D. If a seller, in violation of subsection C, conveys a cooperative interest to a purchaser for value who has no knowledge of the violation, that conveyance extinguishes any right a tenant may have under subsection C to purchase that cooperative interest if the deed states that the seller has complied with subsection C but does not affect the right of a tenant to recover damages from the seller for a violation of subsection C.

E. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of §§ 55.1-1202 and 55.1-1225, the notice also constitutes a notice to vacate as specified by §§ 55.1-1410, 55.1-1202, and 55.1-1225. The details of the relocation plan, if any is provided by the declarant for assisting tenants in relocating, shall also be provided to the tenant.

F. Any locality may require by ordinance that the declarant of a conversion cooperative file with that governing body all information required by the Common Interest Community Board pursuant to § 55.1-2176 and a copy of the formal notice required by subsection B. Such information shall be filed with that governing body when the application for registration is filed with the Common Interest Community Board, and such copy of the formal notice shall be filed with that governing body whenever it is sent to tenants. No fee shall be imposed for such filings with a governing body.

G. The governing body of any county utilizing the urban county executive form of optional government (§§ 15.2-800 through 15.2-858) or the county manager plan of optional government (§§ 15.2-702 through 15.2-749), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential cooperative containing conversion buildings converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount that the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Highways and Transportation.

H. Any locality may require by ordinance that elderly or disabled tenants, occupying as their residence up to 20 percent of the apartments or units in a cooperative containing conversion buildings at the time of issuance of the general notice required by subsection B, be offered leases or extensions of leases on the apartments or units they occupy or on other apartments or units of at least equal size and overall quality for up to three years beyond the date of such notice.

The terms and conditions of such leases or extensions of leases shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion building.

Such leases or extensions shall not be required, however, in the case of any apartments or units that will, in the course of the conversion, be substantially altered in physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

I. Nothing in this section permits termination of a lease by a declarant in violation of its terms.

§ 55.1-2165. Express warranties of quality.

A. Express warranties made by any seller to a purchaser of a cooperative interest, if relied upon by the purchaser, are created as follows:

1. Any affirmation of fact or promise that relates to the unit, its use, or rights appurtenant to such unit, area improvements to the cooperative that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the cooperative creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

2. Any model or description of the physical characteristics of the cooperative, including plans and specifications of or for improvements, creates an express warranty that the cooperative will conform to the model or description;

3. Any description of the quantity or extent of the real estate comprising the cooperative, including plats or surveys, creates an express warranty that the cooperative will conform to the description, subject to customary tolerances; and

4. A provision that a buyer of a cooperative interest may put a unit that is part of that cooperative interest only to a specified use is an express warranty that the specified use is lawful.

B. Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty is necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

C. Any conveyance of a cooperative interest transfers to the purchaser all express warranties of quality made by previous sellers.

§ 55.1-2166. Implied warranties of quality.

A. A declarant and any person in the business of selling cooperative interests for his own account warrant that a unit will be in at least as good condition at the earlier of the time of the conveyance of a cooperative interest or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

B. A declarant and any person in the business of selling cooperative interests for his own account impliedly warrant that a unit and the common elements in the cooperative are suitable for the ordinary uses of real estate

of its type and that any improvements made or contracted for by him or made by any person before the creation of the cooperative will be:

1. Free from defective materials; and

2. Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

C. In addition, a declarant and any person in the business of selling cooperative interests for his own account warrant to a purchaser of a cooperative interest for a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

D. Warranties imposed by this section may be excluded or modified as specified in § 55.1-2167.

E. For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

F. Any conveyance of a cooperative interest transfers to the purchaser all of the declarant's implied warranties of quality.

§ 55.1-2167. Exclusion or modification of implied warranties of quality.

A. Except as limited by subsection B with respect to a purchaser of a cooperative interest for a unit that may be used for residential use, implied warranties of quality (i) may be excluded or modified by agreement of the parties and (ii) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the buyer's attention to the exclusion of warranties.

B. With respect to a purchaser of a cooperative interest for a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, nor shall any disclaimer of implied warranties of quality be effective as to defects in materials or construction as to any unit, brought to the attention of the declarant within two years from the date of the first conveyance of the cooperative interest associated with such unit, or as to any such defect in the common elements brought to the attention within two years (i) after that common element has been completed or, if later, (ii) after the first cooperative interest has been conveyed in the cooperative. The first conveyance of a cooperative interest associated with a unit situated in real estate subject to development rights shall be treated as the first conveyance of a cooperative interest in the cooperative for the purposes of the preceding sentence as to any such defects in the common elements within that real estate. A declarant, and any person in the business of selling cooperative interests for his own account, may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into became a part of the basis of the bargain.

§ 55.1-2168. Statute of limitations for warranties.

A. A judicial proceeding for breach of any obligation arising under § 55.1-2165 or 55.1-2166 must be commenced within six years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser of the cooperative interest for that unit.

B. Subject to subsection C, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

1. As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed, or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

2. As to each common element, at the time the common element is completed or, if later, (i) as to a common element that may be added to the cooperative or portion of the cooperative, at the time the first cooperative interest for a unit in such cooperative interest is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the cooperative, at the first time a cooperative interest in the cooperative is conveyed to a bona fide purchaser.

C. If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the cooperative, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

§ 55.1-2169. Effect of violation on rights of action; attorney fees; arbitration of disputes.

A. If a declarant or any other person subject to this chapter fails to comply with any provision of this chapter or any provision of the declaration or bylaws, any person or class of persons adversely affected by the

failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this chapter. The court, in an appropriate case, may award reasonable attorney fees.

B. A declaration may provide for the arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be held in the county or city in which the development is located or as mutually agreed by the parties.

§ 55.1-2170. Labeling of promotional material.

No promotional material may be displayed or delivered to prospective purchasers that describes or portrays improvements that are not in existence, unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or "NEED NOT BE BUILT."

§ 55.1-2171. Declarant's obligation to complete and restore.

A. The declarant shall complete all improvements depicted on any site plan or other graphic representation included in the public offering statement or in any promotional material distributed by or for the declarant unless that improvement is labeled "NEED NOT BE BUILT."

B. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the cooperative, of any portion of the cooperative affected by the exercise of rights reserved pursuant to or created by §§ 55.1-2120, 55.1-2121, 55.1-2122, 55.1-2123, 55.1-2125, and 55.1-2126.

§ 55.1-2172. Substantial completion of units.

In the case of a sale of a cooperative interest where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that cooperative interest may be conveyed, except pursuant to subsection B of § 55.1-2176, until the declaration is recorded and the unit that is a part of that cooperative interest is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent, registered architect, surveyor, or engineer or by issuance of a certificate of occupancy authorized by law.

Article 5.

Administration and Registration of Cooperatives.

§ 55.1-2173. Common Interest Community Board.

This chapter shall be administered by the Common Interest Community Board.

§ 55.1-2174. General powers and duties of the Common Interest Community Board.

A. The Common Interest Community Board may adopt, amend, and repeal regulations and issue orders consistent with and in furtherance of the objectives of this chapter, but the Common Interest Community Board shall not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter. The Common Interest Community Board may prescribe forms and procedures for submitting information to the Common Interest Community Board.

B. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter or any of the Common Interest Community Board's regulations or orders, the Common Interest Community Board without prior administrative proceedings may bring an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The Common Interest Community Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Common Interest Community Board may intervene in any action involving the powers or responsibilities of a declarant in connection with any cooperative for which an application for registration is on file.

D. The Common Interest Community Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

E. The Common Interest Community Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices and may develop information that may be useful in the discharge of the agency's duties.

F. In issuing any cease and desist order or order rejecting or revoking registration of a cooperative, the Common Interest Community Board shall state the basis for the adverse determination and the underlying facts.

G. The Common Interest Community Board, in its sound discretion, may require bonding, escrow of portions of sales proceeds, or other safeguards it may prescribe by its regulations to guarantee completion of all improvements labeled "MUST BE BUILT" pursuant to § 55.1-2171.

§ 55.1-2175. Registration required.

A declarant shall not offer or dispose of a cooperative interest intended for residential use unless the cooperative and the cooperative interest are registered with the Common Interest Community Board. A cooperative consisting of no more than three units that is not subject to development rights is exempt from the requirements of this section.

§ 55.1-2176. Application for registration; approval of uncompleted unit.

A. An application for registration must contain the information and be accompanied by any reasonable fees required by the Common Interest Community Board's regulations. A declarant promptly shall file amendments to report any factual or expected material change in any document or information contained in his application.

B. If a declarant files with the Common Interest Community Board a declaration or proposed declaration, or an amendment or proposed amendment to a declaration, creating units for which he proposes to convey cooperative interests before the units are substantially completed in the manner required by § 55.1-2172, the declarant shall also file with the Common Interest Community Board:

1. A verified statement showing all costs involved in completing the buildings containing those units;

2. A verified estimate of the time of completion of construction of the buildings containing those units;

3. Satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;

4. A copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;

5. A 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;

6. Plans for the units;

7. If purchasers' funds are to be utilized for the construction of the cooperative, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state that provides:

a. That disbursements of purchasers' funds may be made from time to time to pay for construction of the cooperative, architectural, and engineering costs, finance and legal fees, and other costs for the completion of the cooperative in proportion to the value of the work completed by the contractor as certified by an independent, registered architect or engineer, on bills submitted and approved by the lender of construction funds or the escrow agent;

b. That disbursement of the balance of purchasers' funds remaining after completion of the cooperative shall be made only when the escrow agent or lender receives satisfactory evidence that the period for filing mechanic's and materialman's liens has expired, or that the right to claim those liens has been waived, or that adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and

c. Any other restriction relative to the retention and disbursement of purchasers' funds required by the Common Interest Community Board; and

8. Any other materials or information the agency may require by its regulations.

The Common Interest Community Board shall not register the units described in the declaration or the amendment unless the Common Interest Community Board determines, on the basis of the material submitted by the declarant and any other information available to the Common Interest Community Board, that there is a reasonable basis to expect that the cooperative interests to be conveyed will be completed by the declarant following conveyance.

§ 55.1-2177. Receipt of application; order or registration.

A. The Common Interest Community Board shall acknowledge receipt of an application for registration within five business days after receiving it. Within 60 days after receiving the application, the Common Interest Community Board shall determine whether:

1. The application and the proposed public offering statement satisfy the requirements of this chapter and the Common Interest Community Board's regulations;

2. The declaration and bylaws comply with this chapter; and

3. It is likely that the improvements the declarant has undertaken to make can be completed as represented.

B. If the Common Interest Community Board makes a favorable determination, it shall issue promptly an order registering the cooperative. Otherwise, unless the declarant has consented in writing to a delay, the Common Interest Community Board shall issue promptly an order rejecting registration.

§ 55.1-2178. Cease and desist order.

If the Common Interest Community Board determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a cooperative or that any person has otherwise violated any provision of this chapter or the Common Interest Community Board's regulations or orders, the Common Interest Community Board may issue an order to cease and desist from that conduct to comply with the provisions of this chapter and the Common Interest Community Board's regulations and orders or to take affirmative action to correct conditions resulting from that conduct or failure to comply.

§ 55.1-2179. Revocation of registration.

A. The Common Interest Community Board, after providing notice stating the deficiency complained of and holding a hearing, may issue an order revoking the registration of a cooperative upon determination that a declarant or any officer or principal of a declarant has:

1. Failed to comply with a cease and desist order issued by the Common Interest Community Board affecting that cooperative;

2. Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of cooperative interests in that cooperative;

3. Failed to perform any stipulation or agreement made to induce the Common Interest Community Board to issue an order relating to that cooperative;

4. Intentionally misrepresented or failed to disclose a material fact in the application for registration; or

5. Failed to meet any of the conditions described in §§ 55.1-2176 and 55.1-2177 necessary to qualify for registration.

B. Without the consent of the Common Interest Community Board, a declarant shall not convey, cause to be conveyed, or contract for the conveyance of any cooperative interest while an order revoking the registration of the cooperative is in effect.

C. In appropriate cases, the Common Interest Community Board may issue a cease and desist order in lieu of an order of revocation.

§ 55.1-2180. Investigative powers of the Common Interest Community Board.

A. The Common Interest Community Board may initiate public or private investigations within or outside the Commonwealth to determine whether any representation in any document or information filed with the Common Interest Community Board is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice.

B. In the course of any investigation or hearing, the Common Interest Community Board may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the Common Interest Community Board may apply to the appropriate court for a contempt order or for injunctive or other appropriate relief to secure compliance.

§ 55.1-2181. Annual report and amendments.

A. A declarant, within 30 days after the anniversary date of the order of registration, shall file annually a report to bring up to date the material contained in the application for registration and the public offering statement. This provision does not relieve the declarant of the obligation to file amendments pursuant to subsection B.

B. A declarant shall file promptly amendments to the public offering statement with the Common Interest Community Board.

C. If an annual report reveals that a declarant owns or controls cooperative interests representing less than 25 percent of the voting power in the association and that a declarant has no power to increase the number of units in the cooperative or to cause a merger or confederation of the cooperative with other cooperatives, the Common Interest Community Board shall issue an order relieving the declarant of any further obligation to file annual reports. After such order is issued, so long as the declarant is offering any cooperative interests for sale, the Common Interest Community Board has jurisdiction over the declarant's activities but has no other authority to regulate the cooperative.

§ 55.1-2182. Annual report by associations.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The filing of the annual report required by this section shall commence upon the termination of any declarant control period reserved pursuant to § 55.1-2134. The annual report shall be accompanied by a fixed fee in an amount established by the Common Interest Community Board.

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the Common Interest Community Board.

C. The association shall also remit to the Common Interest Community Board an annual payment as follows:

1. The lesser of:

a. $1,000 or such other amount as established by Common Interest Community Board regulation; or

b. Five hundredths of one percent (0.05%) of the association's gross assessment income during the preceding year.

2. For the purposes of subdivision 1 b, no minimum payment shall be less than $10.

D. The annual payment shall be remitted to the State Treasurer and shall be credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

§ 55.1-2183. Common Interest Community Board regulation of public offering statement.

A. The Common Interest Community Board at any time may require a declarant to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purpose before registration and shall be used afterwards only if it is used in its entirety. No person shall advertise or represent that the Common Interest Community Board has approved or recommended the cooperative, the disclosure statement, or any of the documents contained in the application for registration.

C. In the case of a cooperative situated wholly outside of the Commonwealth, no application for registration or proposed public offering statement filed with the Common Interest Community Board that has been approved by an agency in the state where the cooperative is located and substantially complies with the requirements of this chapter shall be rejected by the Common Interest Community Board on the grounds of noncompliance with any different or additional requirements imposed by this chapter or by the Common Interest Community Board's regulations. However, the Common Interest Community Board may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.

§ 55.1-2184. Penalties.

Any person who willfully violates § 55.1-2155, 55.1-2158, 55.1-2159, 55.1-2162, 55.1-2164, 55.1-2176, or 55.1-2181 or any regulation adopted under, or order issued pursuant to, § 55.1-2174, or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact, is guilty of a misdemeanor and may be (i) fined not less than $1,000 or double the amount of gain from the transaction, whichever is larger, but not more than $50,000 or (ii) imprisoned for not more than six months, or both, for each offense.

CHAPTER 22.

VIRGINIA REAL ESTATE TIME-SHARE ACT.

Article 1.

General Provisions.

§ 55.1-2200. Definitions.

As used in this chapter, or in a time-share instrument, unless the context requires a different meaning:

"Additional land" means all land that a time-share developer has identified as land that may be added to a time-share project.

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

"Alternative purchase" means anything valued in excess of $100 that is offered to a potential purchaser by the developer during the developer's sales presentation and that is purchased by such potential purchaser for more than $100, even though the purchaser did not purchase a time-share. An alternative purchase is not a time-share. A membership camping contract as defined in § 59.1-313 is not an alternative purchase. An alternative purchase shall be registered with the Board unless it is otherwise registered as a travel service

under the Virginia Travel Club Act (§ 59.1-445 et seq.) and shall include vacation packages, however denominated, and exit programs, however denominated.

"Association" means the association organized under the provisions of § 55.1-2209.

"Board" means the Common Interest Community Board.

"Board of directors" means an executive and administrative entity, by whatever name denominated, designated in a time-share instrument as the governing body of the time-share estate owners' association.

"Common elements" means the real estate, improvements on such real estate, and the personalty situated within the time-share project that are subject to the time-share program. "Common elements" does not include the units and the time-shares.

"Consumer documents" means the aggregate of the following documents: the reverter deed, the note, the deed of trust, and any document that is to be provided to consumers in connection with an offering.

"Contact information" means any information that can be used to contact an owner, including the owner's name, address, telephone number, email address, or user identity on any electronic networking service.

"Contract," "sales contract," "purchase contract," "contract of purchase," or "contract to purchase," which shall be interchangeable throughout this chapter, means any legally binding instrument executed by the developer and a purchaser by which the developer is obligated to sell and the purchaser is obligated to purchase either a time-share and its incidental benefits or an alternative purchase registered under this chapter.

"Conversion time-share project" means a real estate improvement that, prior to the disposition of any time-share, was wholly or partially occupied by persons as their permanent residence or on a transient pay-as-you-go basis other than those who have contracted for the purchase of a time-share and those who occupy with the consent of such purchasers.

"Cost of ownership" means all of the owner's expenses related to a resale time-share due between the date of a resale transfer contract and the transfer of the resale time-share.

"Deed" means the instrument by which title to a time-share estate is transferred from one person to another person.

"Deed of trust" means the instrument conveying the time-share estate that is given as security for the payment of the note.

"Default" means either a failure to have made any payment in full and on time or a violation of a performance obligation required by a consumer document for a period of no less than 60 days.

"Developer" means any person or group of persons acting in concert that (i) offers to dispose of a time-share or its interest in a time-share unit for which there has not been a previous disposition or (ii) applies for registration of the time-share program.

"Developer control period" means a period of time during which the developer or a managing agent selected by the developer manages and controls the time-share project and the common elements and units it comprises.

"Development right" means any right reserved by the developer to create additional units that may be dedicated to the time-share program.

"Dispose" or "disposition" means a transfer of a legal or equitable interest in a time-share, other than a transfer or release of security for a debt.

"Exchange agent" or "exchange company" means a person that exchanges or offers to exchange time-shares in an exchange program with other time-shares.

"Exchange program" means any opportunity or procedure for the assignment or exchange of time-shares among owners in other time-share programs as evidenced by a past or present written agreement executed between an exchange company and the developer or the time-share estate association; however, an "exchange program" shall not be either an incidental benefit or an opportunity or procedure by which a time-share owner can exchange his time-share for another time-share within either the same time-share or another time-share project owned in part by the developer.

"Guest" means (i) a person who is on the project, additional land, or development at the request of an owner, developer, association, or managing agent or (ii) a person otherwise legally entitled to be on such project, additional land, or development. "Guest" includes family members of owners; time-share exchange participants; merchants, purveyors, or vendors; and employees of such merchants, purveyors, and vendors; the developer; or the association.

"Incidental benefit" means anything valued in excess of $100 provided by the developer that is acquired by a purchaser upon acquisition of a time-share and includes exchange rights, travel insurance, bonus weeks,

upgrade entitlements, travel coupons, referral awards, and golf and tennis packages. An incidental benefit is not a time-share or an exchange program. An incidental benefit shall not be registered with the Board.

"Inherent risks of project activity" means those dangers or conditions that are an integral part of a project activity, including certain hazards, such as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and ordinary dangers of structures or equipment ordinarily used in association or time-share operations. "Inherent risks of project activity" also includes the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the project professional or failing to exercise reasonable caution while engaging in the project activity.

"Lead dealer" means a person that sells or otherwise provides to any other person contact information concerning five or more owners to be used for a resale service. "Lead dealer" does not mean developers, managing entities, or exchange companies to the extent that such entities are providing other persons with personal contact information about time-share owners in their own time-share plans or members of their own exchange program.

"Lien holder" means either a person that holds an interest in an encumbrance that is not released of record as to a purchaser or such person's successor in interest that acquires title to the time-share project at foreclosure, by deed in lieu of foreclosure, or by any other instrument however denominated.

"Managing agent" means a person that undertakes the duties, responsibilities, and obligations of the management of a time-share project.

"Managing entity" means the managing agent or, if there is no managing agent, the time-share owners' association in a time-share estate project and the developer in a time-share use project.

"Material change" means a change in any information or document disclosed in or attached to the public offering statement that renders inaccurate, incomplete, or misleading any information or document in such a way as to affect substantially a purchaser's rights or obligations, but does not include a change (i) in the real estate tax assessment or rate, utility charges or deposits, maintenance fees, association dues, assessments, special assessments, or any recurring time-share expense item, provided that such change is made known (a) immediately to the prospective purchaser by a written addendum in the public offering statement and (b) to the Board by filing with the developer's annual report copies of the updated changes occurring over the immediately preceding 12 months; (ii) that is an aspect or result of the orderly development of the time-share project in accordance with the time-share instrument; (iii) resulting from new, updated, or amended information contained in the annual report prepared and distributed pursuant to § 55.1-2213; (iv) correcting spelling, grammar, omissions, or other similar errors not affecting the substance of the public offering statement; or (v) occurring in the issuance of an exchange company's updated annual report or disclosure document, provided that, upon its receipt by the developer, it shall be distributed in lieu of all others in order to satisfy § 55.1-2217.

"Note" means the instrument that evidences the debt occasioned by the deferred purchase of a time-share.

"Offering" or "offer" means any act that originates in the Commonwealth to sell, solicit, induce, or advertise, whether by radio, television, telephone, newspaper, magazine, or mail, during which a person is given an opportunity to acquire a time-share.

"Participant" means any person, other than a project professional, that engages in a project activity.

"Person" means one or more natural persons, corporations, partnerships, associations, trustees of a trust, limited liability companies, or other entities, or any combination thereof, capable of holding title to real property.

"Possibility of reverter" means a provision contained in a reverter deed by which the time-share estate automatically reverts or transfers back to the developer upon satisfaction of the requirements imposed by § 55.1-2222.

"Product" means each time-share and its incidental benefits and all alternative purchases that are registered with the Board pursuant to this chapter.

"Project activity" means any activity carried out or conducted on a common element, within a time-share unit or elsewhere in the project, additional land, or development, that allows owners, their guests, and members of the general public to view, observe, participate, or enjoy activities. "Project activity" includes swimming pools, spas, sporting venues, and cultural, historical, or harvest-your-own activities; other amenities and events; or natural activities and attractions for recreational, entertainment, educational, or social purposes. Such activity is a project activity whether or not the participant paid to participate in the activity.

"Project professional" means any person that is engaged in the business of providing one or more project activities, whether or not for compensation. For the purposes of this definition, the developer, association, and managing entity shall each be deemed a project professional.

"Public offering statement" means the statement required by § 55.1-2217.

"Purchaser" means any person other than a developer or lender that owns or acquires a product or that otherwise enters into a contract for the purchase of a product.

"Resale cost of ownership" means all of the owner's expenses related to a resale time-share due between the date of a resale transfer contract and the transfer of such resale time-share.

"Resale purchase contract" means an agreement negotiated by a reseller by which an owner or a reseller agrees to sell, and a subsequent purchaser agrees to buy, a resale time-share.

"Resale service" means engaging, directly or indirectly, for compensation, in any of the following either in person or by any medium of communication: (i) selling or offering to sell or list for sale for the owner a resale time-share, (ii) buying or offering to buy a resale time-share for transfer to a subsequent purchaser, (iii) transferring a resale time-share acquired from an owner to a subsequent purchaser or offering to assist in such transfer, (iv) invalidating or offering to invalidate for an owner the title of a resale time-share, or (v) advertising or soliciting to advertise or promote the transfer or invalidation of a resale time-share. Resale service does not include an individual's selling or offering to sell his own time-share unit.

"Resale time-share" means a time-share, wherever located, that has previously been sold to an owner who is a natural person for personal, family, or household use and that is transferred, or is intended to be transferred, through a resale service.

"Resale transfer contract" means an agreement between a reseller and the owner by which the reseller agrees to transfer or assist in the transfer of the owner's resale time-share.

"Reseller" means any person who, directly or indirectly, engages in a resale service.

"Reverter deed" means the deed from a developer to a grantee that contains a possibility of reverter.

"Sales person" means a person who sells or offers to sell time-share interests in a time-share program.

"Situs" means the place outside the Commonwealth where a developer's time-share project is located.

"Subsequent purchaser" means the purchaser or transferee of a resale time-share.

"Time-share" means either a time-share estate or a time-share use plus its incidental benefits.

"Time-share estate" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, coupled with a freehold estate or an estate for years in a time-share project or a specified portion of such time-share project.

"Time-share estate occupancy expense" means all costs and expenses incurred in (i) the formation, organization, operation, and administration, including capital contributions thereto, of the association and both its board of directors and its members and (ii) all owners' use and occupancy of the time-share estate project, including without limitation its completed and occupied time-share estate units and common elements available for use. Such costs and expenses include maintenance and housekeeping charges; repairs; refurbishing costs; insurance premiums, including the premium for comprehensive general liability insurance required by subdivision 8 of § 55.1-2209; taxes; properly allocated labor, operational, and overhead costs; general and administrative expenses; the managing agent's fee; utility charges and deposits; the cost of periodic repair and replacement of walls and window treatments and furnishings, including furniture and appliances; filing fees and annual registration charges of the State Corporation Commission and the Board; attorney fees and accountant charges; and reserves for any of the foregoing.

"Time-share estate subject to reverter" means a time-share estate (i) entitling the holder thereof to occupy units not more than four weeks in any one-year period and (ii) for which the down payment is not more than 20 percent of the total purchase price of the time-share estate.

"Time-share expense" means (i) expenditures, fees, charges, or liabilities incurred with respect to the operation, maintenance, administration, or insuring of the time-shares, units, and common elements comprising the entire time-share project, whether or not incurred for the repair, renovation, upgrade, refurbishing, or capital improvements, and (ii) any allocations of reserves.

"Time-share instrument" or "project instrument" means any document, however denominated, that creates the time-share project and program and that may contain restrictions or covenants regulating the use, occupancy, or disposition of time-shares in a project.

"Time-share owner" or "owner" means a person that is an owner or co-owner of a time-share other than as security for an obligation.

"Time-share program" or "program" means any arrangement of time-shares in one or more time-share projects by which the use, occupancy, or possession of real property has been made subject to either a time-share estate or time-share use in which such use, occupancy, or possession circulates among owners of the time-shares according to a fixed or floating time schedule on a periodic basis occurring over any period of time in excess of five years.

"Time-share project" or "project" means all of the real property subject to a time-share program created by the execution of a time-share instrument.

"Time-share unit" or "unit" means the real property or real property improvement in a project that is divided into time-shares and designated for separate occupancy and use.

"Time-share use" means a right to occupy a time-share unit or any of several time-share units during five or more separated time periods over a period of at least five years, including renewal options, not coupled with a freehold estate or an estate for years in a time-share project or a specified portion of such time-share project. "Time-share use" does not mean a right to use that is subject to a first-come, first-served, space-available basis as might exist in a country club, motel, hotel, health spa, campground, or membership or resort facility.

"Transfer" means a voluntary conveyance of a resale time-share to a person other than the developer, association, or managing entity of the time-share program of which the resale time-share is a part or to a person taking ownership by gift, foreclosure, or deed in lieu of foreclosure.

§ 55.1-2201. Applicability.

A. This chapter shall have exclusive jurisdiction and shall apply to any product offering or disposition made within the Commonwealth after July 1, 1985, in a time-share project located within the Commonwealth. Sections 55.1-2200, 55.1-2201, 55.1-2202, 55.1-2203, 55.1-2204, 55.1-2206, 55.1-2210, 55.1-2211, 55.1-2213, 55.1-2215, 55.1-2216, 55.1-2220, 55.1-2227, 55.1-2229, 55.1-2230, 55.1-2232, 55.1-2233, 55.1-2237, and 55.1-2252 shall apply to a time-share project within the Commonwealth that was created prior to July 1, 1985.

B. This chapter shall not affect rights or obligations created by preexisting provisions of any time-share instrument that transfers an estate or interest in real property.

C. This chapter shall apply to any product offering or disposition in a time-share project located outside the Commonwealth and offered for sale in the Commonwealth with the exception that Articles 2 (§ 55.1-2207 et seq.), 3 (§ 55.1-2217 et seq.), and 4 (§ 55.1-2235 et seq.) shall apply only to the extent permitted by the laws of the situs.

§ 55.1-2202. Administrative agency.

The Common Interest Community Board shall administer this chapter.

§ 55.1-2203. Status of time-share estates with respect to real property interests.

A. A document transferring or encumbering a time-share estate shall not be rejected for recordation within the Commonwealth because of the nature or duration of that estate or interest, provided that the document complies with all other recordation requirements.

B. Each time-share estate constitutes for purposes of title a separate estate or interest in a unit.

C. For purposes of local real property taxation, each time-share unit, other than a unit operated for time-share use, shall be valued in the same manner as if such unit were owned by a single taxpayer. The total cumulative purchase price paid by the time-share owners for a unit shall not be utilized by the commissioner of revenue or other local assessing officer as a factor in determining the assessed value of such unit. A unit operated as a time-share use, however, may be assessed the same as other income-producing and investment property. The commissioner of revenue or other local assessing officer shall list in the land book a time-share unit in the name of the association.

§ 55.1-2204. Applicability of local ordinances, regulations, and building codes.

A zoning, subdivision, or other ordinance or regulation shall not impose any requirement upon a time-share project that it would not otherwise impose upon a similar project under a different form of ownership.

§ 55.1-2205. Use of terms.

A developer in its offering or disposition of a time-share may use interchangeably any term recognized in the industry, including "time-share," "time-share interest," "interval ownership," "interval ownership interest," "vacation ownership," "vacation ownership interest," and "product." A developer shall not use the term "incidental benefit" or "alternative purchase" except in the proper context.

§ 55.1-2206. Severability of provisions of time-share instruments.

All provisions of the time-share instruments shall be deemed severable, and any unlawful provision of such instrument shall be void.

Article 2.

Creation, Termination, and Management.

§ 55.1-2207. Time-sharing permitted.

A time-share project shall be permitted on any land or improvement on such land lying within the Commonwealth unless prohibited by zoning then in effect or by the express language of any legally enforceable covenant, condition, or restriction, however denominated, contained in the governing documents of record for such land, including condominium instruments under the Condominium Act (§ 55.1-1900 et seq.), a time-share instrument under this chapter, a declaration under the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or a master deed under the Horizontal Property Act (§ 55.1-2000 et seq.). This chapter shall not be construed to affect the validity of any provision of any time-share program or any expansion of such a program or time-share instrument recorded or in existence prior to July 1, 1981.

§ 55.1-2208. Instruments.

A. In order to create a time-share program for a time-share estate project, the developer shall execute a time-share instrument prepared and executed in accordance with this chapter and record it in the clerk's office where such time-share project is located. The time-share instrument shall contain the following:

1. The name of the time-share project, which shall include or be followed by a qualifying adjective or term outlined in § 55.1-2205;

2. The name of the locality and the state or situs in which the time-share project is situated;

3. The legal description, street address, or other description sufficient to identify the time-share project;

4. A legally sufficient description of the real estate constituting the time-share project;

5. A statement of the form of time-share program, i.e., whether it is a time-share estate or time-share use;

6. Identification of time periods by letter, name, number, or combination thereof;

7. Identification of time-shares and, where applicable, the method by which additional time-shares may be created or withdrawn;

8. The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share;

9. Any restrictions on the use, occupancy, enjoyment, alteration, or alienation of time-shares;

10. The ownership interest, if any, in personal property available to time-share owners;

11. The program by which the managing entity, if any, will provide management of the project;

12. The period for which units are designated and committed to the time-share program and the property classification of the units at the expiration of such period;

13. Any provision for amending the time-share instrument;

14. A description of the events, including condemnation and damage or destruction, upon which the time-share program may or shall be terminated before the expiration of its full term and the consequences of such termination, including the manner in which the time-share project or the proceeds from the disposition of such project shall be held or distributed among owners;

15. A statement of whether or not the developer reserves the right to add to or delete any incidental benefit;

16. A statement of whether or not the developer reserves the right to add to or delete any alternative purchase; and

17. Such other matters as the developer deems appropriate.

B. In order to create a time-share program for a time-share use project, the developer shall (i) execute and record a time-share instrument as required by subsection A or (ii) execute a time-share instrument that takes the form of and is a part of the contract that contains the information required by subsection A.

C. If the developer explicitly reserves the right to develop additional time-shares, the time-share instrument shall also contain the following:

1. A legally sufficient description of all land that may be added to the time-share project, which shall be referred to as "additional land";

2. A statement outlining the order in which portions of the additional land may be subjected to the exercise of each development right or a statement that no assurances are made in that regard;

3. A statement of the time limit upon which the option to develop shall expire, together with a statement of the circumstances, if any, that will terminate that option prior to the expiration of the specified time limit;

4. A statement of the maximum number of units that may be added to the time-share project, if known, or, if the maximum number of units that may be added to the time-share project is not known, a statement to that effect; and

5. A statement of the property classification of the additional land if the developer fails to exercise the development rights as reserved in the time-share instrument.

§ 55.1-2209. Time-share instrument for time-share estate project.

In addition to the requirements of § 55.1-2208, the time-share instrument for a time-share estate project shall outline or prescribe reasonable arrangements for the management and operation of the time-share estate program and for the maintenance, repair, and furnishing of units it comprises, which shall include provisions for the following:

1. Creation of an association, the members of which shall be the time-share estate owners. The association may be formed pursuant to the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.); however, the association shall be formed prior to the time the project and program are registered with the Board. Nothing shall affect the validity of the association, once formed, and the rights applicable to it as granted by this chapter, notwithstanding the time when such association was formed;

2. Payment of costs and expenses of operating the time-share estate program and owning and maintaining the units it comprises;

3. Employment and termination of employment of the managing agent for the project. Any agreement pertaining to the employment of the managing agent and executed during the developer control period shall be voidable by the association at any time after termination of the developer control period for the time-share project, and any provision in such agreement to the contrary is hereby declared to be void;

4. Termination of leases and contracts for goods and services for the time-share estate project that are entered into during the developer control period. Any such lease or contract shall become voidable at the option of the association upon termination of the developer control period for the entire time-share project, or sooner if the provisions of such lease or contract so state;

5. Preparation and dissemination to time-share estate owners of the annual report required by § 55.1-2213;

6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners;

7. Collection of regular assessments, fees or dues, or special assessments from time-share estate owners to defray all time-share expenses;

8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of the project by time-share estate owners, their guests, and other users. The costs associated with securing and maintaining such insurance shall be a time-share expense. Nothing in this subdivision shall be construed to obligate the managing entity to secure insurance on the conduct of the time-share estate owners, their guests, and other users or the personal effects or property of such owners, guests, and users;

9. Methods for providing compensation or alternate use periods or monetary compensation to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate program or time-share project for failure of such owner to comply with provisions of the time-share instrument or the rules and regulations of the association with respect to the use and enjoyment of the units and the time-share project. Under these procedures, a time-share estate owner shall be given reasonable notice and reasonable opportunity to be heard and explain the charges against him in person or in writing to the board of directors of the association before a decision to impose discipline is rendered; and

11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share estate program and the units it comprises.

§ 55.1-2210. Developer control in time-share estate program.

A. The time-share instrument for a time-share estate program shall provide for a developer control period. All costs associated with the control, management, and operation of the time-share estate project during the developer control period shall belong to the developer, except for time-share estate occupancy expenses that shall, if required by the developer in the time-share instrument, be allocated only to and paid by time-share estate owners other than the developer. Nothing shall preclude the developer, during the developer control period and at any time after the lapse of a purchaser's right of cancellation and without regard to the recordation of the deed, provided that the deed has been delivered to the purchaser or the purchaser's agent, from collecting an annual or specially assessed charge from each time-share estate owner for the payment of

the time-share estate occupancy expenses by way of a maintenance fee. However, any such funds received and not spent, or any other funds received and allocated to the benefit of the association, shall be transferred to the association by the developer at the termination of the developer control period.

B. Except to the extent that the purchase contract or time-share instrument expressly provides otherwise, fee simple title to the common elements shall be transferred to the time-share estate owners' association, free of charge, no later than at such time as the developer (i) transfers to purchasers legal or equitable ownership of at least 90 percent of the time-share estates, excluding any reacquisitions by the developer; (ii) is no longer the beneficiary on deeds of trust secured on at least 20 percent of the time-share estates; or (iii) has completed all of the promised common elements and facilities that the time-share estate project comprises, whichever occurs last. The developer may make such transfer when the period has ended for a phase or portion of the time-share estate project. The transfer required of the developer by this subsection shall not exonerate the developer from the responsibility of completion of the promised and incomplete common elements once the transfer occurs. Upon transfer of the time-share project or portion to the association, the developer control period for such project or portion of such project shall terminate.

§ 55.1-2211. Time-share estate owners' association control liens.

A. The board of directors of the association shall have the authority to adopt regular annual assessments and to levy periodic special assessments against each of the time-share estate unit owners and to collect the same from such owners according to law if the purpose in so doing is determined by the board of directors to be in the best interest of the time-share project or time-share program and the proceeds are used to either pay common expenses or fund a reserve. In addition, the board of directors of the association shall have the authority to collect, on behalf of the developer or on its own account, the maintenance fee imposed by the developer pursuant to § 55.1-2210. The authority hereby granted and conferred upon the association shall exist notwithstanding any covenants and restrictions of record applicable to the project stated to the contrary, and any such covenants and restrictions are hereby declared void.

B. The developer may provide that it not be obligated to pay all or a portion of any assessment, dues, or other charges of the association, however denominated, passed, or adopted, pursuant to subsection A, if such developer so provides, in bold type, in the time-share instrument for the time-share estate project. If no such provision exists, the developer shall be responsible to pay the same assessment, dues, or other charges that a time-share estate owner is obligated to pay for each of its unsold time-shares existing at the end of the fiscal year of the association and no more if the board of directors of the association so determines. In no event shall either a time-share expense or the dues, assessment, or charges of the association discriminate against the developer.

C. The association shall have a lien on every time-share estate within its project for unpaid and past due regular or special assessments levied against that estate in accordance with the provisions of this chapter and for all unpaid and past due maintenance fees. The exemption created by § 34-4 shall not be claimed against the debt or lien of the association created by this section.

The association, in order to perfect the lien given by this subsection, shall file, before the expiration of four years from the time such special or regular assessment or maintenance fee became due, in the clerk's office of the county or city in which the project is situated, a memorandum verified by the oath of any officer of the association or its managing agent and containing the following information:

1. The name and location of the project;

2. The name and address of each owner of the time-share on which the lien exists and a description of the unit in which the time-share is situated;

3. The amount of past due special or regular assessments or past due maintenance fees applicable to the time-share, together with the date when each became due;

4. The amount of any other charges owing occasioned by the failure of the owner to pay the assessments or maintenance fees, including late charges, interest, postage and handling, attorney fees, recording costs, and release fees;

5. The name, address, and telephone number of the association's trustee, if known at the time, who will be called upon by the association to foreclose on the lien upon the owner's failure to pay as provided in this subsection; and

6. The date of issuance of the memorandum.

Notwithstanding any other provision of this chapter, or any other provision of law requiring documents to be recorded in the deed books of the clerk's office of any court, from July 1, 1981, all memoranda of liens

arising under this subsection shall be recorded in the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for time-share estate regular or special assessments or maintenance fees.

The clerk in whose office such memorandum is filed as provided in this subsection shall record and index such memorandum as provided in this subsection, in the names of the persons identified in such memorandum as well as in the name of the time-share estates owners' association. The cost of recording such memorandum shall be taxed against the owner of the time-share on which the lien is placed. The filing with the clerk of one memorandum on which is listed two or more delinquent time-share estate unit owners is permitted in order to perfect the lien hereby allowed, and the cost of filing in this event shall be the clerk's fee as prescribed in subdivision A 2 of § 17.1-275.

D. At any time after perfecting the lien pursuant to this section, the association may sell the time-share estate at a public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the time-share estate and shall be deemed the time-share estate owner's statutory agent for the purpose of transferring title to the time-share estate. A nonjudicial foreclosure sale shall be conducted by a trustee and in accordance with the following:

1. The association shall give notice to the time-share estate owner, prior to advertisement, as required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the time-share estate owner, by which the debt secured by the lien shall be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the time-share estate. The notice shall further inform the time-share estate owner of the right to bring a court action in the circuit court of the county or city where the time-share project is located to assert the nonexistence of a debt or any other defenses of the time-share estate owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the time-share project is located. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same, as provided in this subsection, in the names of the persons identified therein as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If, prior to the date of the foreclosure sale, the time-share estate owner (i) satisfies the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pays all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees, the time-share estate owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the time-share estate.

4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, including the name, address, and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the time-share estate to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder that holds a note against the time-share estate secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust, provided that the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by regular mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the county or city wherein the time-share estate to be sold and the time-share project, or any portion of such project, lies pursuant to the following provisions:

a. The association shall advertise once a week for four successive weeks; however, if the time-share estate and the time-share project or some portion of such project is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of time-share estate being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth:

(1) A description of the time-share estate to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the time-share project by street address, if any, or, if none, shall give the general location of such time-share project with reference to streets, routes, or known landmarks with further identification of the time-share estate to be sold. Where available, tax map identification may be used. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address, and telephone number of the representative, agent, or attorney who is authorized to respond to inquiries concerning the sale; or

(2) In lieu of the requirements of subdivision (1), the advertisement shall set forth the date, time, place, and terms of sale and the name of the association; the street address of the time-share estate to be sold, if any, or, if none, the general location of the time-share project; and the name, address, and telephone number of the representative, agent, or attorney who is authorized to respond to inquiries and give additional information concerning the time-share estate to be sold, including providing in hard copy or electronic form a description of the time-share estate to be sold by street address, if any, or, if none, by the general location of the time-share project with reference to streets, routes, or known landmarks, and, where available, tax map identification. The advertisement under this subdivision (2) shall also include a website address where the information contained in subdivision (1) is displayed for the time-share estate to be sold.

c. In addition to the advertisement required by subdivisions 5 a and b, the association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of the sale, which postponement shall be at the discretion of the association, advertisement of the postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court. Such petition shall be filed within 60 days of the sale or the right to do so shall lapse.

8. In the event of a sale, the association shall have the following powers and duties:

a. The association may sell two or more time-share estates at the sale. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person that has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the time-share instrument, the association may bid to purchase the time-share estate at a foreclosure sale. The association may own, lease, encumber, exchange, sell, or convey the time-share estate. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 of this subsection and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the association, its agent, or its attorney.

b. The association may require of any bidder at any sale a cash deposit of as much as one-third of the sale price before his bid is received, which shall be refunded to him if the time-share estate is not sold to him through action of the trustee. The deposit of the successful bidder shall be applied to his credit at settlement; if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the association in connection with that sale.

c. The association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and shall apply such proceeds in the following order: first, to the reasonable expenses of sale, including reasonable attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the time-share estate owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the time-share estate owner or his assigns, provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the time-share estate with special warranty of title. The trustee shall not be required to take possession of the time-share estate prior to the sale of such estate or deliver possession of the time-share estate to the purchaser at the sale.

10. If the sale of a time-share estate is made pursuant to this subsection and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless, within six months from the date of foreclosure, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia and an order is entered requiring such sale to be set aside.

When payment or satisfaction is made of a debt secured by the lien perfected by this subsection, such lien shall be released in accordance with the provisions of § 55.1-339. For the purposes of § 55.1-339, any officer of the time-share estate owners' association or its managing agent shall be deemed the duly authorized agent of the lien creditor.

E. The commissioner of accounts to whom an account of sale is returned in connection with the foreclosure of either a lien under subsection C or a purchase money deed of trust taken back by the developer in the sale of a time-share in order to satisfy § 64.2-1309 shall be entitled to a fee, not to exceed $70, on each foreclosure of a lien under subsection C and not to exceed $125 on each foreclosure of a purchase money deed of trust taken back by the developer.

F. Any time-share owner within the project having executed a contract for the disposition of the time-share shall be entitled, upon request, to a recordable statement setting forth the amount of unpaid regular or special assessments or maintenance fees currently levied against that time-share. Such request shall be in writing, directed to the president of the time-share estate owners' association, and delivered to the principal office of the association. Failure of the association to furnish or make available such statement within 20 days from the actual receipt of such written request shall extinguish the lien created by subsection C as to the time-share involved. Payment of a fee reflecting the reasonable cost of materials and labor, not to exceed the actual cost of such materials and labor, may be required as a prerequisite to the issuance of such a statement.

§ 55.1-2212. Time-share owners' association books and records; meetings; use of email.

A. Subject to the provisions of subsection B, all books and records, or copies of such books and records, kept by or on behalf of the association shall be maintained so that such books and records, or copies of such books and records, are reasonably available for inspection after written request by a member in good standing or his authorized agent. The association may charge such member or his agent a reasonable fee for copying the requested information. No books or records shall be removed from their location by the examining member or his agent. The right of inspection shall exist without reference to the duration of membership and may be exercised only during reasonable business hours and at a mutually convenient time and location, under the supervision of the custodian, and upon 15 days' written notice.

For purposes of this subsection, the requested books and records shall be considered "reasonably available" if copies of such books and records are delivered to the requesting member or his agent within seven business days of the date the association receives the written request. However, the requesting member or his agent shall be permitted to inspect the books and records wherever located at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the records. The custodian shall supply copies of the records where requested and upon payment of the copying fee.

The association shall provide members of the association with the location of the books and records, along with the name and address of the custodian, by any reasonable method, which may include posting in a reasonable location at the situs of the time-share project or in the annual report required by § 55.1-2213.

B. Books and records kept by or on behalf of an association may be withheld from inspection to the extent that they concern:

1. Personnel records;

2. An individual's medical records;

3. Records relating to business transactions that are currently in negotiation;

4. Privileged communications with legal counsel;

5. Complaints against an individual member of the association;

6. Agreements containing confidentiality requirements;

7. Pending litigation;

8. The name, address, phone number, electronic mail address, or other personal information of time-share owners or members of the association, unless such owner or member first approves of the disclosure in writing;

9. Disclosure of information in violation of law; or

10. Meeting minutes or other records of an executive session of the board of directors held in accordance with subsection D.

The association shall be under no obligation to provide requested records to the extent that they are matters of public record or are otherwise readily obtainable from another source.

C. The association shall maintain among its records a complete, up-to-date list of the names and addresses of all current members in good standing who are owners of time-share estates in the time-share project. The association shall not publish such list or provide a copy of it to any time-share owner or to any third party except the board of directors or the developer. However, the association shall mail to those persons named on the list materials provided by any member in good standing, upon written request of that member, if the purpose of the mailing is to advance legitimate association business. The use of any proxies solicited in this manner shall comply with the provisions of the time-share instrument and this chapter. A mailing requested for the purpose of advancing legitimate association business shall occur within 45 days after receipt of a request from a member in good standing. The board of directors of the association shall be responsible for determining the appropriateness of any mailing requested pursuant to this subsection whose decision in this regard shall be final. The association shall be paid in advance for the association's actual costs in performing the mailing, including postage, supplies, reasonable labor, and attorney fees.

D. Meetings of the board of directors shall be open to all members of record who are eligible to vote and who are in good standing. Minutes shall be recorded and shall be available as provided in subsection A. The board of directors may convene in closed session to consider personnel matters; consult with legal counsel; discuss and consider contracts, potential or pending litigation, and matters involving violations of the time-share instrument or rules and regulations adopted pursuant to such instrument for which a member, his family members, tenants, or guests, or other invitees are responsible; or discuss and consider the personal liability of members to the association upon the affirmative vote in open meeting to assemble in closed session. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in closed session shall become effective unless the board of directors, following the closed session, reconvenes in an open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

E. Notwithstanding any provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to the contrary:

1. The bylaws of the association may prescribe different quorum requirements for meetings of its members; and

2. A director of the association may be removed from the office pursuant to any procedure provided in its articles of incorporation and, if none is provided, may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

F. Whenever this chapter requires communication between the board of directors and a member of the association by mail, any electronic means may be used in the alternative, including email, provided that such electronic communication is personal and only between such board and such member.

G. Filings with the board may be made by any electronic means, provided that such board is willing to accept such format.

§ 55.1-2213. Time-share estate owners' association annual report.

A. Commencing with the time-share estate program and within 180 days after the close of each fiscal year thereafter, an annual report shall be prepared and distributed to all time-share estate owners. Such annual report shall be prepared and distributed for each time-share estate project registered with the Board. During the developer control period, the annual report shall be prepared and distributed to all time-share purchasers by the developer or its designated managing entity. After the developer control period, such annual report shall be prepared and distributed by the association.

B. The annual report shall contain the following:

1. The full legal name of the time-share project and its address;

2. The full legal name of the association;

3. A list of the names and mailing addresses of the members of the association's board of directors and the name of the person who prepared the report;

4. The managing entity's name, address, and contact person, if any, for the project;

5. A statement of whether or not the developer control period has terminated for the time-share estate project;

6. Financial statements of the association audited by an independent certified public accounting firm of the association that contain at least the following:

a. A balance sheet as of the end of the fiscal year;

b. An income statement as of the end of the fiscal year; and

c. A statement of the net changes in the financial position of the association for the fiscal year just ended;

7. A statement of the time-share estates occupancy expenses, the regular assessment, and any special assessments or other charges due for the current year from each time-share estate owner;

8. A copy of the current budget reflecting the anticipated time-share estate occupancy expenses along with:

a. A statement as to who prepared the budget;

b. A statement of the budgetary assumptions concerning occupancy factors;

c. A description of any provision made in the budget for reserves for repairs and replacement;

d. A statement of any other reserves;

e. The projected financial liability for each time-share estate owner, including a statement of (i) the nature of all charges, assessments, maintenance fees, and other expenses that may be assessed; (ii) the current amounts assessed; and (iii) the method and formula for changing any such assessments; and

f. A statement of any services not reflected in the budget that the developer provides, or expenses that it pays, that the association expects may become a time-share expense at any subsequent time, and the projected time-share expense assessment attributable to each of those services or expenses for the association and for each time-share; and

9. A statement of the location of the books and records of the association along with the name and contact address of the custodian of such books and records.

C. In lieu of the annual report required by subsection A, during the first 12 months of the time-share program, the developer or the association shall prepare a budget that shall contain the information contained in subdivision B 8.

§ 55.1-2214. Time-share instrument for project.

In addition to the requirements of § 55.1-2208, the time-share instrument for a time-share use program shall prescribe and outline reasonable arrangements for the management and operation of the time-share use program and for the maintenance, repair, and furnishing of time-share use units it comprises. Such arrangements shall include provisions for the following:

1. Standards and procedures for upkeep, repair, and interior furnishing of time-share use units, for the replacements of such furnishings, and for providing maid, cleaning, linen, and similar services to the units during use and occupancy periods;

2. Adoption of standards and rules of conduct governing the use, enjoyment, and occupancy of time-share use units by owners;

3. Payment by the developer of the costs and expenses of operating the time-share use program and owning and maintaining the time-share use units it comprises;

4. Selection of a managing agent to act for and on behalf of the developer should the developer elect not to undertake the duties, responsibilities, and obligations of the management of the time-share use program;

5. Procedures for establishing the rights of time-share use owners to occupancy, use, and enjoyment of time-share use units by prearrangement or under a first-reserved, first-served priority system;

6. Procedures for imposing and collecting regular or special assessments, maintenance fees, or use fees from time-share use owners as necessary to defray all time-share expenses and in providing materials and services to the units, as required of the developer in this chapter;

7. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the occupancy, use, and enjoyment of time-share use units by time-share use owners, their guests, and other users. The costs associated with securing and maintaining such insurance shall be a time-share expense. Nothing in this subdivision shall be construed to obligate the developer to secure insurance on the conduct of the time-share use owners, their guests, and other users or the personal effects or property of such owners, guests, and users;

8. Methods for providing compensating or alternate use periods or monetary compensation to a time-share use owner if a time-share use unit cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation; and

9. Procedures for imposing a monetary penalty or suspension of a time-share use owner's rights and privileges in the time-share use program or project or termination of the time-share use itself for failure of the time-share use owner to (i) comply with the provisions of the time-share use instrument; (ii) comply with the rules and regulations established by the developer with respect to the occupancy, use, and enjoyment of the time-share use units; or (iii) pay the charges imposed by the developer against the time-share use owner for providing the materials and services as required of the developer in this chapter. Except in matters where the time-share use owner has failed to pay the charge imposed by the developer for a period of less than 60 days after it has become due and payable, the owner shall be given notice and the opportunity to be heard.

§ 55.1-2215. Partition.

No action for partition of a unit may be maintained except as permitted by the time-share instrument or by subsection C of § 55.1-2216.

§ 55.1-2216. Termination of certain time-shares.

A. This section applies to all time-share estate programs and, when provided by the time-share instrument, to time-share use programs.

B. A time-share project may be terminated in whole by the developer at any time and for any reason if such developer is the sole owner of all time-shares within the time-share project. Such termination shall be accomplished by the developer executing and recording a termination document where the time-share instrument is recorded. Time-shares subject to this section also may be terminated by written agreement of the time-share owners having at least 51 percent of the time-shares or by written agreement of such larger percentage of the time-share owners as may otherwise be provided in the time-share instrument. The termination agreement shall specify a date upon which it shall become void, unless it is recorded before that date in the clerk's office of the appropriate court where the time-share project is located.

C. If the termination agreement sets forth the material terms of a contract or proposed contract under which an estate or interests equal to the sum of the time-shares are to be sold and designates a trustee to effect the sale, the termination agreement becomes effective upon recordation, and title to that estate or interest vests upon termination in the trustee for the benefit of the time-share owners, to be transferred pursuant to the contract. If the termination agreement does not set forth the material terms of a contract or proposed contract under which an estate or interests equal to the sum of the time-shares are to be sold and designates a trustee to effect the sale, the termination agreement becomes effective upon recordation, and title to an estate or interests equal to the sum of the time-shares therein vests upon termination in the time-share owners in proportion to their respective interests as provided in subsection F. Liens on the time-shares shall accordingly encumber the respective interests; and in this instance, any co-owner of that estate or interest may maintain an action for partition or for allotment or sale in lieu of partition pursuant to the laws of the Commonwealth.

D. Except as otherwise specified in the termination agreement, so long as the former time-share owners or their trustee holds title to the estate or interests equal to the sum of the time-shares, each former time-share owner and his successor in interest have the same rights with respect to the use, enjoyment, and occupancy in the former time-share unit that such former time-share owner and his successor in interest would have had if termination had not occurred, together with the same liabilities and other obligations imposed by this act or the time-share instrument.

E. After termination of all time-shares in a time-share project and adequate provision for payment of the claims of the creditors for time-share expenses, distribution shall be made, in proportion to their respective interests as provided in subsection F, to the former time-share owners and their successors in interest of (i) the proceeds of any sale pursuant to this section, (ii) the proceeds of any personalty held for the use and benefit of the former time-share owners, and (iii) any other funds held for the use and benefit of the former time-share owners.

F. The time-share instrument may specify the respective fractional or percentage interest that will be owned by each former time-share owner after termination, in accordance with the provisions of this section. Otherwise, not more than 180 days prior to the termination, an appraisal shall be made of the fair market value of each time-share by one or more impartial qualified appraisers selected either by the trustee designated in the termination agreement or by the managing entity if no trustee was so designated. The appraisal shall also state the corresponding fractional or percentage interests calculated in proportion to those values and in accordance with this subsection. A notice stating all of those values and corresponding interests and the return address of the sender shall be sent by certified or registered mail, by the managing entity or the trustee designated in the termination agreements, to all of the time-share owners. The appraisal governs the magnitude of each interest

unless (i) at least 25 percent of the time-share owners deliver, within 60 days after the date the notices were mailed, written disapprovals to the return address of the sender of the notice or (ii) the final judgment of a court of competent jurisdiction, entered during or after that period, holds that the appraisal should be set aside. The appraisal and the calculation of interests shall be made in accordance with the following:

1. If the termination agreement sets forth the material terms of a contract or proposed contract for the sale of the estate or interests equal to the sum of the time-shares, each time-share conferring a right of occupancy during a limited number of time periods shall be appraised as if the time until the date specified for the conveyance of the property had already elapsed. Otherwise, each time-share of that kind shall be appraised as if the time until the date specified pursuant to subsection B had already elapsed.

2. The interest of each time-share owner is the value of the time-share he owned divided by the sum of the values of all time-shares in the unit or units to which his time-share applies.

G. Foreclosure or enforcement of a lien or encumbrance against all of the time-shares in a time-share project does not of itself terminate those time-shares.

Article 3.

Protection of Purchasers.

§ 55.1-2217. Public offering statement.

A. Prior to the execution of a contract for the purchase of a time-share, the developer shall prepare and distribute to each prospective purchaser a copy of the current public offering statement regarding the time-share. The public offering statement shall (i) fully and accurately disclose the material characteristics of the time-share project registered under this chapter and such time-share offered and (ii) make known to each prospective purchaser all material circumstances affecting such time-share project. A developer need not make joint disclosures concerning two or more time-share projects owned by the developer or any related entity unless such projects are included in the same time-share program and marketed jointly at any of the time-share projects. The proposed public offering statement shall be filed with the Board and shall be in a form prescribed by its regulations. The public offering statement may limit the information provided for the specific time-share project to which the developer's registration relates. The public offering statement shall include the following only to the extent that a given disclosure is applicable:

1. The name and principal address of the developer and the time-share project registered with the Board about which the public offering statement relates, including:

a. The name, principal occupation, and address of every director, partner, limited liability company manager, or trustee of the developer;

b. The name and address of each person owning or controlling an interest of 20 percent or more in each time-share project registered with the Board;

c. The particulars of any indictment, conviction, judgment, or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local, or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements, or any similar or related activity;

d. The nature of each unsatisfied judgment, if any, against the developer or the managing entity, the status of each pending action involving the sale or management of real estate to which the developer, the managing entity, or any general partner, executive officer, director, limited liability company manager, or majority stockholder thereof is a defending party, and the status of each pending action, if any, of significance to any time-share project registered with the Board; and

e. The name and address of the developer's agent for service of any notice permitted by this chapter.

2. A general description of the time-share project registered with the Board and the units and common elements promised available to purchasers, including the developer's estimated schedule of commencement and completion of all promised and incomplete units and common elements.

3. As to all time-shares offered by the developer:

a. The form of time-share ownership offered in the project registered with the Board;

b. The types, duration, and number of units and time-shares in the project registered with the Board;

c. Identification of units that are subject to the time-share program;

d. The estimated number of units that may become subject to the time-share program;

e. Provisions, if any, that have been made for public utilities in the time-share project including water, electricity, telephone, and sewerage facilities;

f. A statement to the effect of whether or not the developer has reserved the right to add to or delete from the time-share program a time-share project or any incidental benefit or alternative purchase; and

g. If the developer utilizes the possibility of reverter, a statement to that effect referring the purchaser to the reverter deed for an explanation of such possibility of reverter.

4. In a time-share estate program, a copy of the annual report or budget required by § 55.1-2213, which copy may take the form of an exhibit to the public offering statement. In the case where multiple time-share projects are registered with the Board, the copy or exhibit may be in summary form.

5. In a time-share use program where the developer's net worth is no more than $250,000, a current audited balance sheet and, where the developer's net worth exceeds such amount, a statement by such developer that its equity in the time-share program exceeds that amount.

6. Any initial or special fee due from the purchaser at settlement together with a description of the purpose and method of calculating the fee.

7. A description of any liens, defects, or encumbrances affecting the time-share project and in particular the time-share offered to the purchaser.

8. A general description of any financing offered by or available through the developer.

9. A statement that the purchaser has a nonwaivable right of cancellation, referring such purchaser to that portion of the contract in which such right may be found.

10. If the time-share interest in a condominium unit may be conveyed before that unit is certified as substantially complete in accordance with § 55.1-1920, a statement of the developer's obligation to complete the unit. Such statement shall include the approximate date by which the condominium unit shall be completed, together with the form and amount of the bond filed in accordance with subsection B of § 55.1-1921.

11. Any restraints on alienation of any number or portion of any time-shares.

12. A description of the insurance coverage provided for the benefit of time-share owners.

13. The extent to which financial arrangements, if any, have been provided for completion of any incomplete but promised time-share unit or common element being then offered for sale, including a statement of the developer's obligation to complete the promised units and common elements that the time-share project comprises that have not begun or that have begun but have not yet been completed.

14. The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

15. The name and address of the managing entity for the project.

16. Copies of the project instrument and the association's articles of incorporation and bylaws, each of which may be a supplement to the public offering statement.

17. Any services that the developer provides or expense it pays and that it expects may become at any subsequent time a time-share expense of the owners, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.

18. A description of the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.

19. A description of the facilities, if any, provided by the developer to the association in a time-share estate project for the management of the project.

20. Any other information required by the Board to assure full and fair meaningful disclosure to prospective purchasers.

B. If any prospective purchaser is offered the opportunity to subscribe to or participate in any exchange program, the public offering statement shall include, as an exhibit or supplement, the disclosure document prepared by the exchange company in accordance with § 55.1-2219 and a brief narrative description of the exchange program, which shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory;

2. The name and address of the exchange company together with the names of its top three officers and directors;

3. A statement of whether the exchange company or any of its top three officers, directors, or holders of a 10 percent or greater interest in the exchange company has any interest in the developer, the managing entity, or the time-share project;

4. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the developer; and

5. A brief narrative description of the procedure by which exchanges are conducted.

C. The public offering statement of a conversion time-share project shall also include the following, which may take the form of an exhibit to the public offering statement:

1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by the fact that the project is a conversion time-share project;

2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation, or upkeep of any building in the project within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the project. If any such building has not been occupied for a period of three years, the information shall be set forth for the period during which such building was occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves occasioned by the fact that the project is a conversion time-share project, or, if no provision is made for such reserves, a statement to that effect; and

4. A statement of the present condition of all structural components and major utility installations in the building, which statement shall include the approximate dates of construction, installations, and major repairs as well as the expected useful life of each such item, together with the estimated cost, in current dollars, of replacing each such component.

D. In the case of a conversion project, the developer shall give at least 90 days' notice to each of the tenants of any building that the developer intends to submit to the provisions of this chapter. During the first 60 days of such 90-day period, each of these tenants shall have the exclusive right to contract for the purchase of a time-share from the unit he occupies, but only if such unit is to be retained in the conversion project without substantial alteration in its physical layout. Such notice shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the developer's intent to create a conversion project. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55.1-1410, except that, despite the provisions of § 55.1-1410, a tenancy from month to month may only be terminated upon 120 days' notice as set forth in this subsection when such termination is in regard to the creation of a conversion project. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the developer, in order to then terminate the tenancy, such developer shall give the tenant a further notice as provided in § 55.1-1410.

The developer of a conversion project shall, in addition to the requirements of § 55.1-2239, include with the application for registration a copy of the notice required by this subsection and a certified statement that such notice that fully complies with the provisions of this subsection shall be, at the time of the registration of the conversion project, mailed or delivered to each of the tenants in any building for which registration is sought.

E. The developer shall amend the public offering statement to reflect any material change in the time-share program or time-share project. If the developer has reserved in the time-share instrument the right to add to or delete incidental benefits or alternative purchases, the addition or deletion of such benefits or purchases shall not constitute a material change. Prior to distribution, the developer shall file with the Board the public offering statement amended to reflect any material change.

F. The Board may at any time require a developer to alter or supplement the form or substance of the public offering statement to assure full and fair disclosure to prospective purchasers. A developer may prepare and distribute a public offering statement for each product offered or one public offering statement for all products offered.

G. In the case of a time-share project located outside the Commonwealth, (i) the developer may amend the public offering statement to reflect any additions or deletions of a time-share project to the existing time-share program registered in the Commonwealth and (ii) similar disclosure statements required by other situs laws governing time-sharing may be acceptable alternative disclosure statements.

H. The public offering statement may be in any format, including any electronic format, provided that the prospective buyer has available for review, along with ample time for any questions and answers, a copy of the public offering statement prior to his execution of a contract.

§ 55.1-2218. Certain advertising practices regulated.

A. Any offering that includes a gift or prize shall disclose in such offering, with the same prominence as such offer:

1. The retail value of each gift or prize;

2. The approximate odds against any given person obtaining each gift or prize if all persons to whom the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;

3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or prizes to be awarded or, in lieu of such statement, the nature of such limitation;

4. All rules, terms, requirements, and conditions that shall be fulfilled before a prospective purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend a sales presentation in order to receive the gift or prize;

5. The date upon which the offer expires; and

6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of a time-share, time-share interest, interval ownership, interval ownership interest, vacation ownership, vacation ownership interest, or product, as appropriate.

B. Any gift or prize offered in connection with an offering shall be delivered to the prospective purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the day the purchaser appears to claim it, whether or not he purchases a time-share. In the event that the supply of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective purchaser a written, unconditional promise to deliver such gift or prize no later than 30 days from the date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of equal or greater value.

C. The offering or sale of any product registered with the Board is exempt from the Virginia Securities Act (§ 13.1-501 et seq.), Chapter 9 (§ 55.1-900 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Subdivided Land Sales Act (§ 55.1-2300 et seq.), the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), the Prizes and Gifts Act (§ 59.1-415 et seq.), and the Virginia Travel Club Act (§ 59.1-445 et seq.).

§ 55.1-2219. Exchange programs.

A. Any exchange company that offers an exchange program in the Commonwealth shall prepare and register with the Board a disclosure document including the following:

1. The name and address of the exchange company;

2. The names and addresses of the top three officers and all directors of the exchange company and, if the exchange company is privately held, all shareholders owning five percent or more interest in the exchange company;

3. Whether the exchange company or any of its officers or directors has any legal or beneficial interest in any developer or managing agent for any time-share program participating in the exchange program and, if so, the name and location of the time-share project and the nature of the interest;

4. Unless the exchange company is also the developer or an affiliate, a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the sales contract;

5. Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-share project with the exchange program;

6. Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;

7. A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange company and the procedure by which changes in the terms and conditions of the exchange contract may be made;

8. A complete and accurate description of the procedure to qualify for and effectuate exchanges;

9. A complete and accurate description of all limitations, restrictions, or priorities employed in the operation of the exchange program, including limitations on exchanges based on seasonality, unit size, or levels of occupancy, expressed in boldface type, and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the manner in which they are applied;

10. Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

11. Whether and under what circumstances an owner, in dealing with the exchange company, may lose the use of occupancy of his time-share in any properly-applied-for exchange, without being provided with substitute accommodations by the exchange company;

12. The fees or range of fees for participation by owners in the exchange program, a statement of whether any such fees may be altered by the exchange company, and the circumstances under which alterations may be made;

13. The name and address of the site of each time-share property, accommodation, or facility participating in the exchange program;

14. The number of units in each property participating in the exchange program that are available for occupancy and that qualify for participation in the exchange program, expressed within the following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

15. The number of owners with respect to each time-share program or other property who are eligible to participate in the exchange program, expressed within the numerical groupings 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those owners currently eligible to participate in the exchange program;

16. The disposition made by the exchange company of time-shares deposited with the exchange program by owners eligible to participate in the exchange program and not used by the exchange company in effecting exchanges;

17. The following information, which, except as provided in subsection B, shall be independently audited by a certified public accountant or accounting firm in accordance with the standards of the Auditing Standards Board of the American Institute of Certified Public Accountants and reported for each year no later than July 1 of the succeeding year:

a. The number of owners enrolled in the exchange program. Such numbers shall disclose the relationship between the exchange company and owners as being either fee paying or gratuitous in nature;

b. The number of time-share properties, accommodations, or facilities eligible to participate in the exchange program;

c. The percentage of confirmed exchanges, which shall be the number of exchanges confirmed by the exchange company divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

d. The number of time-shares for which the exchange company has an outstanding obligation to provide an exchange to an owner who relinquished a time-share during the year in exchange for a time-share in any future year; and

e. The number of exchanges confirmed by the exchange company during the year.

18. A statement in boldface type to the effect that the percentage described in subdivision 17 c is a summary of the exchange requests entered with the exchange company in the period reported and that the percentage does not indicate a purchaser's or owner's probabilities of being confirmed to any specific choice or range of choices, since availability at individual locations may vary.

B. The information required by subsection A shall be accurate as of a date that is no more than 30 days prior to the date on which the information is delivered to the purchaser, except that the information required by subdivisions A 2, 12, 13, 14, 15, and 16 shall be accurate as of December 31 of the preceding year if the information is delivered between July 1 and December 31 of any year; information delivered between January 1 and June 30 of any year shall be accurate as of December 31 of the year prior to the preceding year. At no time shall such information be accurate as of a date that is more than 18 months prior to the date of delivery. As used in this section, "year" means calendar year.

C. In the event that an exchange company offers an exchange program directly to the purchaser, the exchange company shall deliver to such purchaser, simultaneously with such offering and prior to the execution of any contract between the purchaser and the exchange company, the information set forth in subsection A. The requirements of this subsection shall not apply to any renewal of a contract between a purchaser and an exchange company.

D. Each exchange company shall include the statement set forth in subdivision A 18 on all promotional brochures, pamphlets, advertisements, or other materials disseminated by the exchange company that also contain the percentage of confirmed exchanges described in subdivision A 17 c.

E. An exchange company shall, on or before July 1 of each year, file with the Board and the association for the time-share program in which the time-shares are offered or disposed the information required by this section with respect to the preceding year. If the Board determines that any of the information supplied fails to meet the requirements of this section, the Board may undertake enforcement action against the exchange company in accordance with the provisions of Article 6 (§ 55.1-2247 et seq.). No developer shall have any liability arising out of the use, delivery, or publication by the developer of written information provided to it by the exchange company pursuant to this section. Except for written information provided to the developer by the exchange company, no exchange company shall have any liability with respect to (i) any representation made

by the developer relating to the exchange program or exchange company or (ii) the use, delivery, or publication by the developer of any information relating to the exchange program or exchange company. The failure of the exchange company to observe the requirements of this section, or the use by it of any unfair or deceptive act or practice in connection with the operation of the exchange program, shall be a violation of this section.

F. The Board may establish by regulation reasonable fees for registration of the exchange company disclosure document. All fees shall be remitted by the Board to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

§ 55.1-2220. Escrow of deposits; use of corporate surety bond or irrevocable letter of credit.

A. Any deposit made in connection with the purchase or reservation of a product shall be held in escrow. All deposits shall be held in escrow until (i) delivered to the developer upon expiration of the purchaser's cancellation period provided the purchaser's right of cancellation has not been exercised, (ii) delivered to the developer because of the purchaser's default under a contract to purchase a time-share, or (iii) refunded to the purchaser. Such funds shall be deposited in a separate account designated for this purpose that is federally insured and located in the Commonwealth; except where such deposits are being held by a real estate broker or attorney licensed under the laws of the Commonwealth, such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the developer.

B. In lieu of escrowing deposits as provided in subsection A, the developer of a time-share project consisting of more than 25 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth in subsection C; or

2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth in subsection D.

The surety bond or letter of credit shall be maintained until (i) the expiration of the purchaser's cancellation period, (ii) the purchaser's default under a purchase contract for the time-share estate entitling the developer to retain the deposit, or (iii) the refund of the deposit to the time-share purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The developer shall file the bond with the Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the developer or, if the total amount of the deposits accepted by the developer under this chapter exceeds $10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. More than $10,000 but not more than $75,000, the blanket bond shall be $75,000;

2. More than $75,000 but less than $200,000, the blanket bond shall be $200,000;

3. $200,000 or more but less than $500,000, the blanket bond shall be $500,000;

4. $500,000 or more but less than $1 million, the blanket bond shall be $1 million; and

5. $1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for the use and benefit of every person protected under this chapter. The developer shall file the letter of credit with the Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the developer or, if the total amount of the deposits accepted by the developer under this chapter exceeds $10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. More than $10,000 but not more than $75,000, the blanket letter of credit shall be $75,000;

2. More than $75,000 but less than $200,000, the blanket letter of credit shall be $200,000;

3. $200,000 or more but less than $500,000, the blanket letter of credit shall be $500,000;

4. $500,000 or more but less than $1 million, the blanket letter of credit shall be $1 million; and

5. $1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a developer maintains in any calendar year, the total amount of deposits considered held by the developer shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

E. The developer shall disclose in the contract or in the public offering that the deposit may not be held in escrow or protected by a surety bond or letter of credit after expiration of the cancellation period and that such

deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the developer reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the developer. Both disclosures shall appear in boldface type of a minimum size of 10 points.

§ 55.1-2221. Purchaser's rights of cancellation.

A. A purchaser shall have the right to cancel the contract until midnight of the seventh calendar day following the execution of such contract. If the seventh calendar day falls on a Sunday or legal holiday, then the right to cancel the contract shall expire on the day immediately following that Sunday or legal holiday. Cancellation shall be without penalty, and all payments made by the purchaser before cancellation shall be refunded within 45 days after receipt of the notice of cancellation.

B. If the purchaser elects to cancel a contract pursuant to subsection A, he shall do so only (i) by hand-delivering the notice to the developer at its principal office or at the project or (ii) by mailing the notice by certified United States mail, return receipt requested, to the developer or its agent designated in the contract. Any such notice sent by certified mail shall be effective on the date postmarked.

C. If, because of the occurrence of a material change, the public offering statement is amended between the time of contracting to purchase a time-share and the time of settlement, the developer shall provide the amended public offering statement to the purchaser and the right of cancellation shall renew from the date of delivery of such amended public offering statement. This subsection shall not apply if the public offering statement is amended by the developer because of a change that is not material or to disclose any change that is an aspect or result of the orderly development of the time-share project in accordance with the project instrument.

D. The right to cancel the contract as provided by this section shall not be waivable by the time-share purchaser and any provision in the contract or time-share documents indicating a waiver shall be void.

E. A statement of the purchaser's right of cancellation as set forth in subsections A and B shall appear in the contract above the purchaser's signature line. Such statement shall appear in type no smaller than any other provisions of the contract, and the caption "PURCHASER'S NONWAIVABLE RIGHT TO CANCEL" shall appear immediately preceding it in conspicuous, boldface type.

§ 55.1-2222. Possibility of reverter.

A. A possibility of reverter contained in a reverter deed for a time-share estate subject to reverter is valid, is enforceable in law and in equity, and shall operate to transfer title to the time-share estate from each grantee in such deed back to the developer, provided that the following conditions are satisfied:

1. The reverter deed from the developer contains the possibility of reverter by insertion of the language required by subsection E;

2. A grantee in the reverter deed is in default and has been provided after such default with at least two written notices to this effect with no less than a 10-calendar day right to cure in each notice;

3. A grantee in the reverter deed has been provided with no less than 30 calendar days within which to cure the default before exercise of the possibility of reverter occurs;

4. At the time of exercise of the possibility of reverter, the developer is the sole holder of the note and the sole beneficiary under the deed of trust;

5. The exercise by the developer of the possibility of reverter is evidenced by an affidavit duly recorded where the reverter deed was recorded that contains the following information:

a. A description of the time-share project and time-share estate and a statement that, upon recordation of the affidavit, title to such time-share estate reverts back to the developer;

b. A description and recitation of the reverter deed that contained the possibility of reverter and a reference of when and where such deed was recorded and its recording information;

c. A recitation that the purchaser defaulted in or violated a consumer document and failed to cure such default or violation within a period of no less than 30 calendar days;

d. A description of the note and deed of trust with a recitation that (i) the developer is the sole holder of the note and the sole beneficiary under the deed of trust, (ii) such note is canceled and declared void, and (iii) such deed of trust is automatically released;

e. A recitation that such purchaser's rights and entitlements in the time-share estate, the time-share project, and the time-share program are extinguished effective the date of recordation of the affidavit;

f. The signature of a duly authorized representative of the developer verified under oath as to its truth of the statements contained in such affidavit; and

6. A copy of the recorded affidavit described in subdivision A 5 is sent by the developer to each purchaser at his address as maintained by the developer or the association, along with the statement from the developer explaining the consequences of such affidavit with emphasis on subdivisions A 5 a, d, and e.

B. The recordation of the affidavit referred to in subdivision A 5 shall automatically:

1. Transfer title to the time-share estate from each grantee in the reverter deed to the developer without the need of a deed to the developer or consent from such grantee;

2. Declare null and void and act as an automatic release of the deed of trust or mortgage given by such grantee to finance a portion of the purchase price of the time-share estate with no deficiency resulting;

3. Void and act as an automatic release of any debt from such grantee to the developer arising out of the purchase or financing of the time-share estate as evidenced by the note; and

4. Extinguish any ownership or other property right or entitlements such grantee has in and to the time-share estate, the time-share project, and the time-share program.

C. The clerk of the court shall record such affidavit in the land books where the time-share project is located, indexing the purchaser in the grantor indices and the developer in the grantee indices. For indexing purposes only, the purchaser shall be referred to as the grantor and the developer as the grantee. The cost of recording the affidavit shall be limited to the clerk's fee only.

D. In the exercise of the possibility of reverter, the developer shall be liable to the purchaser for the developer's failure to comply with the provisions of this section; however, such failure shall not operate to defeat or diminish the transfer of title to the time-share estate from each grantee in the reverter deed to the developer upon recordation of the affidavit referred to in subdivision A 5. The developer's liability shall be limited to the amount paid by such purchaser toward the purchase price of the time-share estate, exclusive of interest and closing costs but without offset for the purchaser's utilization of the time-share program. The court shall award court costs and reasonable attorney fees to the prevailing party.

E. The reverter deed shall contain the following statement in order to possess the possibility of reverter. The opening phrase shall be in 10-point boldface type as follows:

"Loss of Time-Share Estate. Developer has inserted into this deed a "possibility of reverter." By this concept, should a grantee of this reverter deed default in or violate an obligation imposed by a consumer document for a period of at least 60 days and fail to cure such violation or default within no less than 30 calendar days thereafter, title to the time-share will revert back to the developer upon the developer recording an affidavit to this effect where this reverter deed is recorded. Only the developer can elect to exercise the possibility of reverter. Each grantee in this reverter deed will be sent at least two notices of default or violation within the 30-day period with no less than 10 days to cure in each instance. The notice will be sent to the address of each grantee maintained at the office of the developer or the association. After the cure period has lapsed and the developer records the affidavit, title to the time-share estate will automatically vest in the developer and any note executed by the grantee will be deemed canceled and any recorded deed of trust securing such note shall be automatically released. The possibility of reverter will itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either the Virginia Real Estate Time-Share Act or the time-share instrument which created such program."

F. The filing of the affidavit referred to in subdivision A 5 shall not result in the requirement of any filing under Chapter 12 (§ 64.2-1200 et seq.) of Title 64.2.

G. Any possibility of reverter not otherwise exercised by the developer pursuant to this section shall itself lapse and become null and void at the soonest to occur of the following: (i) the deed of trust is released of record, (ii) a statement that the deed of trust is released of record is executed and recorded by the developer with a date of when the possibility of reverter was or is to lapse, or (iii) when the time-share program terminates pursuant to either this chapter or the time-share instrument.

H. In exercising the possibility of reverter, the developer shall be entitled to retain as liquidated damages all moneys paid by the purchaser in conformity with any consumer document.

I. The exercise of the possibility of reverter shall not operate to diminish or eliminate (i) any debt of the purchaser to the time-share association or other third party occasioned by ownership of the time-share estate or participation in the time-share program or (ii) any recorded lien junior in priority to the deed of trust lien referred to in this section.

§ 55.1-2223. Recording and delivery of deed.

At such time as the time-share estate purchaser has fulfilled all of his obligations under the contract and is entitled to a deed for his time-share estate, the developer shall file or cause to be filed within 180 days after such date, with the clerk of the circuit court where the time-share project is located, such deed for recordation. Upon receipt of the recorded deed returned from the clerk's office, the developer shall, within 45 days after such receipt, send or cause to be sent the original deed to the time-share estate purchaser.

§ 55.1-2224. Liability limited; liability actions prohibited.

A. Except as provided in subsection B, a project professional is not liable for injury to or death of a participant resulting from the inherent risks of project activity, so long as the warning contained in § 55.1-2225 is posted as required. Except as provided in subsection B, no participant or participant's representative may maintain an action against or recover from a project professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of project activity, provided that in any action for damages against a project professional for a project activity, the project professional shall plead the affirmative defense of assumption of the inherent risks of project activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of a project professional if the project professional does any one or more of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;

2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the project activity, or the dangerous propensity of a particular animal used in such activity, and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or

3. Intentionally injures the participant.

C. Any limitation on legal liability afforded by this section to a project professional is in addition to any other limitations of legal liability otherwise provided by law.

§ 55.1-2225. Warning required.

A. The developer, association, or other project professional shall post and maintain signs that contain the warning notice specified in subsection B. One sign shall be placed in a clearly visible location at the entrance to the project and another at the site of the project activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a project professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves project activities on or off the time-share project or at the site of the project activity, shall contain in clearly readable print the warning notice specified in subsection B.

B. The signs and contracts described in subsection A shall contain the following notice of warning:

"WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in a project activity conducted at this location if such injury or death results from the inherent risks of project activity. Inherent risks of project activity include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the inherent risks of participating in this project activity."

C. Failure to comply with the requirements concerning warning signs and notices provided in this section shall prevent a project professional from invoking the privileges of immunity provided by this chapter.

§ 55.1-2226. Buyer's Acknowledgment.

A. Prior to the execution of a purchase contract, a purchaser shall be given a separate written document, titled "Buyer's Acknowledgment," to be signed by the purchaser and a representative of the developer other than the salesperson for the transaction.

B. The Buyer's Acknowledgment shall contain the following:

1. The name and address of the developer;

2. The name and address of the time-share project;

3. Whether the developer currently offers a resale or rental program or a buy-back program; and

4. The following statement in at least 10-point boldface type:

"There is no assurance that a purchaser may resell a time-share for a certain price or on particular terms. By signing below, purchaser acknowledges that this purchase is (i) for personal use and enjoyment and not for commercial or investment purposes and (ii) not being made based upon any representation that the time-share has any future market value or resale potential."

§ 55.1-2227. Resale of time-shares.

A. In the event of any resale of a time-share by a time-share owner, other than the developer, such owner shall obtain from the developer or managing agent in the case of a time-share use program or from the time-share estate owners' association in the case of a time-share estate program, and furnish to the purchaser prior to settlement on an executed agreement to purchase the time-share, a certificate of resale that shall include the following:

1. A statement disclosing the effect on the proposed transfer of any right of first refusal or other restraint on transfer of the time-share or any portion of such time-share;

2. A copy of the time-share instrument;

3. A copy of the current bylaws and rules and regulations of the time-share estate owners' association, if any, and the amendments to such bylaws, rules, or regulations;

4. A copy of the current annual report prepared pursuant to § 55.1-2213;

5. A statement setting forth the amount of any expense liability and unpaid time-share expense or special assessment currently due and payable from the selling time-share owner, including the disclosures of any liens against the time-share due to the nonpayment of such fees or charges;

6. A statement of the nature and status of any known and pending actions or judgments against the developer, managing entity, or time-share owners' association with reference to the time-share project; and

7. A copy of a Buyer's Acknowledgment form required by § 55.1-2226.

B. The developer, managing agent, or such officer of the time-share owners' association as the bylaws may specify shall furnish the certificate of resale prescribed by subsection A upon the written request of any purchaser within 30 days of the receipt of such request. Payment of the reasonable costs of preparing the certificate may be required as a prerequisite to the issuance of the certificate, but such fee shall not exceed $50.

C. A time-share owner providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information included in the certificate, other than for judgment liens against the time-share being sold.

D. A purchaser is not liable for any unpaid time-share expense liability or fee greater than the amount set forth in the certificate prepared in conformity with subsection A. A time-share owner is not liable to a purchaser for the failure or delay of the provider to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five days after the certificate has been provided or until transfer, whichever occurs first.

E. All rights of redress of a purchaser against a selling time-share owner, the developer, the managing agent, or the association for the failure to obtain or receive the statement required by subsection A are conclusively waived upon settlement on the time-share occurring.

F. The responsibilities imposed by this section on the developer, managing agent, time-share estate owners' association, or selling time-share owner shall not be waived.

§ 55.1-2228. Required resale disclosures.

A. In addition to the requirements of § 55.1-2242, before receiving anything of value for providing or offering to provide a resale service, a reseller shall disclose in writing to the owner of a resale time-share:

1. The name and permanent business address of the reseller;

2. A commencement and transaction date for such resale service;

3. The names and addresses of any affiliates and the primary website address used by the reseller and such affiliates to be used to promote the resale time-share;

4. Whether the reseller's rights are exclusive and, if so, the scope of such rights and length of the exclusivity period;

5. Whether any person, other than the owner, may occupy, rent, exchange, or use the resale time-share during the resale service;

6. The name of any person other than the owner who will receive any rent or other consideration from the use of the resale time-share during the resale service;

7. A description of each resale service to be provided and the fees, costs, or commissions for each;

8. A description sufficient to identify the resale time-share;

9. The jurisdiction issuing the license for any services by a licensed real estate broker or salesperson; and

10. The following in at least 10-point boldface type:

a. The ratio of (i) the number of resale time-shares listed for sale to the number of resale time-shares actually sold by the reseller for each of the past two calendar years or (ii) the total amount of advance fees collected compared with the total amount of fees and commissions received by the reseller upon sale of resale

time-shares for the past two calendar years, followed by this statement: "Do not rely on past performance as an indicator of the likelihood of sale of your time-share."; and

b. If the retail service is limited to the placement of advertisements, this statement: "There is no guarantee that you will sell your time-share at all or within any period of time by placing this advertisement. Our only obligation to you is to post your advertisement on our website for the agreed length of time and forward all inquiries we receive to you."

B. A resale transfer contract shall include the following disclosures by the reseller:

1. The disclosures required by subdivisions A 1 through 7;

2. A description legally sufficient for the transfer of the resale time-share;

3. A description of the document by which the owner is to (i) grant rights in the resale time-share to the reseller or any other person, including a power of attorney or similar document, and (ii) transfer the resale time-share to a subsequent purchaser;

4. Any fees or costs the time-share owner is required to pay or reimburse to the reseller or transfer company to complete the transfer;

5. The date by which the transfer of the resale time-share from the owner to the reseller, a third person, or a subsequent purchaser will be completed, not to exceed 180 days from the effective date of the resale transfer contract;

6. If the resale time-share will be transferred to a transferee other than a subsequent purchaser, the contact information of such transferee;

7. A statement that the reseller will (i) provide the owner written evidence of transfer of the resale time-share to a subsequent purchaser within 30 days of such transfer and (ii) send notice of the transfer to the association and managing entity of the time-share program for the resale transfer and any exchange company in which the resale time-share was enrolled; and

8. The following statements in 10-point boldface type:

a. "No later than 180 days from the date of this agreement, we will transfer your time-share to another person. If transfer does not occur within that period, we will pay or reimburse to you the cost of ownership of your time-share for that period. If we breach our agreement, you will continue to be responsible for such cost of ownership."; and

b. "Your time-share may be sold at any price by us without your approval. If sold for a price in excess of our fee, we have no obligation to send you the excess."

C. A resale purchase contract shall require the reseller to obtain the certificate of resale described in subsection A of § 55.1-2227 and shall also include the following:

1. A description legally sufficient for transfer of the resale time-share;

2. The name and address of the developer or managing agent for a time-share use project or the association for a time-share estate project;

3. Identification of the party responsible for notifying the developer, managing entity, association, or exchange company, as the case may be, of the transfer of the resale time-share;

4. Identification of the first year in which the subsequent purchaser is entitled to use and occupy the resale time-share; and

5. The following statement in 10-point boldface type: "A certificate of resale is required to be provided to you containing important documents concerning the time-share project for your review. Settlement waives the right to receipt of such information."

§ 55.1-2229. Liens.

A. In the case of time-share estate transfers, unless the purchaser expressly agrees to take subject to or assume a lien prior to transferring a time-share estate other than by deed in lieu of foreclosure, the developer shall either (i) record or furnish to the purchaser as part of settlement releases of all liens affecting that time-share estate, or (ii) provide a surety bond or title insurance against the lien, as provided for liens on real estate in the Commonwealth.

B. Unless a time-share owner or his predecessor in title agrees otherwise with the lienor, if a lien other than an underlying mortgage or deed of trust becomes effective against more than one time-share in a time-share project, any time-share owner is entitled to a release of a time-share from the lien upon payment of the amount of the lien attributable to the time-share. The amount of the payment shall be proportionate to the ratio that the time-share owner's liability bears to the liabilities of all time-share owners whose interests are subject to the lien. Upon receipt of payment, the lien-holder shall promptly deliver to the time-share owner a release

of the lien covering that time-share. After payment, the managing entity may not assess or have a lien against that time-share for any portion of the expenses incurred in connection with that lien.

§ 55.1-2230. Effect of violations on rights of action; attorney fees; prior determination of Common Interest Community Board required for certain violations.

A. If a developer or any other person subject to this chapter violates any provision of this chapter or any provision of the time-share instrument, any person or class of persons adversely affected by the violation has a claim for appropriate relief. The court may also award reasonable attorney fees to the prevailing party.

B. Prior to the commencement of any action alleging a failure to comply with the provisions of § 55.1-2220 or 55.1-2234, however, an aggrieved owner shall first seek a determination from the Board as to whether compliance with § 55.1-2220 or 55.1-2234 has occurred. The Board shall make such determination within 120 days of the request for a determination.

§ 55.1-2231. Statute of limitations; actions; limitation on rescission rights.

A. Except as otherwise provided in § 55.1-2237, a judicial proceeding where the sufficiency of the time-share instrument, the accuracy of the public offering statement, or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought shall be commenced within two years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond this period of limitation; however, with respect to the enforcement of provisions in the contract of purchase that require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding shall continue for a period of two years for each breach.

Rescission of the contract shall not be granted by the court unless (i) the inaccuracy of the public offering statement or the insufficiency of the time-share instrument directly and adversely affected the purchaser's right to participate in the time-share program or to own his time-share or (ii) at the time of the contract, the developer has sold more time-shares than there are time-share units that have been completed or bonded to accommodate such sales. Further, if damages are awarded, the amount of the damages shall be limited to actual damages sustained.

B. If a developer has substantially complied in good faith with the provisions of this chapter, a nonmaterial error or omission shall not be actionable. A nonmaterial error or omission shall not be sufficient to permit a purchaser to cancel a contract after the cancellation period provided by § 55.1-2221 has expired.

§ 55.1-2232. Class actions.

A. No time-share owner can bring an action on behalf of other time-share owners unless he has received the written authorization to represent all other time-share owners within the project.

B. Notwithstanding the provisions of subsection A, the association may bring an action on behalf of the time-share owners with the authorization of the time-share owners within the project upon the two-thirds majority vote of the board of directors, if such action is found to be in the best interest of the association.

C. For purposes of this section, the developer shall not be deemed a time-share owner and his written permission shall not be required.

§ 55.1-2233. Financial records.

The person or entity responsible for either making or collecting common expense assessments or maintenance assessments shall keep detailed financial records. All financial and other records shall be made reasonably available at such person's or entity's office for examination by any time-share owner and his authorized agents.

§ 55.1-2234. Developer's obligation to complete.

A. The developer shall complete all promised and incomplete units and common elements being offered and described in the time-share instrument and the public offering statement. The developer shall be excused for any period of delay in the completion of such promised units and common elements when delayed, hindered, or prevented from doing so by causes beyond the developer's control, which shall include (i) labor disputes not caused by the developer; (ii) riots; (iii) civil commotion or insurrection; (iv) war or warlike operations; (v) governmental restrictions, regulations, or control; (vi) inability to obtain any materials or services; (vii) fire or other casualties; (viii) acts of God; or (ix) forces not under the control or supervision of the developer.

B. The developer shall file with the Board a payment and performance bond in the sum equal to 100 percent of the estimated cost of completing all promised and incomplete units and common elements comprising the time-share project described in the time-share instrument and the public offering statement. Such bond shall be conditioned upon the completion of such units and common elements in conformity with the plans and specifications for such improvements. The bond shall be with a surety company authorized to do business in

the Commonwealth. The Board may accept cash or an irrevocable letter of credit in lieu of the bond required by this section. The Board shall be the sole determiner of the form, amount, content, obligee, and conditions of the letter of credit. Should it become necessary for the Board to call upon the letter of credit in order to assure completion of the improvements, the Board shall have the authority to petition a court of competent jurisdiction to appoint a receiver to administer such completion.

Article 4.

Financing.

§ 55.1-2235. Financing of time-share programs.

In the developer's financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made by it to any person or entity that is the holder of an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance.

§ 55.1-2236. Purchaser's rights under developer's foreclosure.

The developer whose project is subject to an underlying blanket lien or encumbrance shall protect a nondefaulting purchaser from foreclosure or cancellation by the lien holder by securing from such lien holder or recording of a nondisturbance clause, subordination agreement, or partial release of the lien as to that time-share sold to such purchaser.

§ 55.1-2237. Protection of lien holder.

Any lien holder of a time-share interest in any time-share program shall have the following rights:

1. The lien holder shall have its lien rights preserved as against any purchaser of a time-share who claims that the time-share instrument is invalid, void, or voidable, 30 days after written notice by certified mail or personal delivery has been given by the developer or lien holder to the purchaser. The notice shall state that the developer has assigned the receivables to the lien holder and that the purchaser has 30 days within which to object and specify the invalidity or defect contained within such time-share instrument. The notice required by this section may be included in the blanket encumbrance, in the contract, or in any note, deed of trust, or mortgage executed by the purchaser in connection with the purchaser's deferred purchase of a time-share.

2. Any purchaser who fails to indicate that the time-share instrument is invalid, void, or voidable as provided in subdivision 1 waives, or is estopped to raise, the same in any subsequent enforcement of the collection of the receivable by the lien holder.

Article 5.

Registration.

§ 55.1-2238. Registration of time-share program required.

A. A developer may not offer or dispose of any interest in a time-share program unless the time-share project and its program have been properly registered with the Board. A developer may accept a nonbinding reservation together with a deposit if the deposit is placed in an escrow account with an institution having trust powers within the Commonwealth and is refundable at any time at the purchaser's option. In all cases, the reservation shall require a subsequent affirmative act by the purchaser via a separate instrument to create a binding obligation. A developer may not dispose of or transfer a time-share while an order revoking or suspending the registration of the time-share program is in effect. In the case of a time-share project located outside the Commonwealth and properly registered in the situs, the Board may accept a substitute application for registration.

B. The developer shall maintain records of names and addresses of current independent contractors employed by it for time-share sales purposes.

§ 55.1-2239. Application for registration.

A. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include the following:

1. An irrevocable appointment to the Board to receive service of process in any proceeding arising under this chapter against the developer or the developer's agent if nonresidents of the Commonwealth;

2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order or judgment entered in connection with the time-share project by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name, address, and the organizational form, including the date and jurisdiction under which the applicant was organized, and the address of its principal office and each of its sales offices in the Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions and the extent and nature of his interest in the applicant or the time-share project as of a specified date within 30 days of the filing of the application;

5. A statement, in a form acceptable to the Board, of the condition of the title to the time-share project, including encumbrances as of a specified date within 30 days of the date of application, by a title opinion of a licensed attorney not a salaried employee, officer, or director of the applicant or owner, or by other evidence of a title acceptable to the Board;

6. A copy of the instruments that will be delivered to a purchaser to evidence his interest in the time-share and copies of the contracts and other agreements that a purchaser will be required to agree or to sign;

7. A copy of any management agreements, employment contracts, or other contracts or agreements affecting the use, maintenance, or access of all or any part of the time-share project;

8. A statement of the zoning and other governmental regulations affecting the use of the time-share, including the site plans and building permits and their status and any existing tax and existing or proposed special taxes or assessments that affect the time-share;

9. A narrative description of the promotional plan for the disposition of the time-shares;

10. The proposed public offering statement and its exhibits;

11. Any bonds required to be posted pursuant to the provisions of this chapter;

12. The time-share owners' annual report or budget required by § 55.1-2213 to the extent available;

13. A description of each product the developer seeks to register with the Board; and

14. Any other information that the Board believes necessary to assure full and fair disclosure.

B. The developer shall immediately report to the Board any material changes in the information contained in an application for registration.

C. Nothing shall prevent a developer from registering with the Board a time-share project where construction is yet to begin or, if construction has begun, where construction is not yet complete.

§ 55.1-2240. Filing fee.

The Board may by regulation establish reasonable fees for registration. All fees shall be remitted by the Board to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

§ 55.1-2241. Receipt of application; effectiveness of registration.

A. Upon receipt of the application for registration in proper form, the Board, within five business days, shall issue a notice of filing to the applicant. Within 20 days after receipt of the application, the Board shall review the application to determine whether the application and supporting documents satisfy the requirements of this chapter and the Board's regulations. Within 60 days from the date of the notice of filing, the Board shall enter an order registering or rejecting the application. If no order of rejection is entered within 60 days from the date of the notice of filing, the time-share project shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the Board determines after review of the application and documents provided by the applicant that the requirements of § 55.1-2239 have been met, it shall issue an order registering the time-share project and shall designate the form of the public offering statement.

C. If the Board determines that any of the requirements of § 55.1-2239 have not been met, the Board shall notify the applicant that the application for registration shall be corrected in the particulars specified within 20 days. If the requirements are not met within the time allowed, the Board shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based. The order rejecting the registration shall become effective 20 days after issuance. During this 20-day period, the applicant may petition for reconsideration and shall be entitled to a hearing or to correct the particulars specified in the Board's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, if requested, is given to the applicant.

§ 55.1-2242. Annual report; amendments.

A. The developer shall file a report in the form prescribed by the Board's regulations by June 30 of each year the registration is effective. The developer of any time-share project initially registered with the Board between January and June shall not be required to file an annual report for the year in which it was initially registered. The report shall reflect any material changes in information contained in the original application for registration or in the immediately preceding annual report, whichever is later, and shall be accompanied by the appropriate fee established by the Board's regulations or pursuant to § 55.1-2240.

B. During the developer control period in a time-share estate program, the developer shall file a copy of the unit owners' association annual report required by § 55.1-2213 along with the annual report required by this section.

C. The developer shall amend or supplement its registration with the Board to report any material change in the information required by §§ 55.1-2217 and 55.1-2239. Such amendments or supplemental information shall be filed with the Board within 20 business days after the occurrence of the material change.

§ 55.1-2243. Termination of registration.

A. In a time-share estate program, if the annual report indicates that the developer has transferred title to the time-share owners' association and that no further development rights exist, the Board shall issue an order terminating the registration of the time-share project.

B. The Board shall issue an order terminating the registration of a time-share project upon application by the developer in which the developer states that no further development right of the project is anticipated and that the developer has ceased sales of time-shares at the project.

C. Notwithstanding any other provisions of this chapter, the Board may administratively terminate the registration of a time-share project if:

1. The developer has not filed an annual report in accordance with § 55.1-2242 for three or more consecutive years; or

2. The developer's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

§ 55.1-2244. Registration required for time-share resellers; exemptions; prohibited practices.

A. A reseller shall not provide or offer to provide any resale service unless he is registered with the Board.

B. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include such information as required by the Board. A reseller shall immediately report to the Board any material changes in the information contained in an application for registration. The Board may by regulation establish reasonable fees for registration under this section. All fees shall be remitted by the Board to the Treasurer of Virginia, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

C. The registration requirements shall not apply to:

1. A person who solely or with affiliates engages in a resale service with respect to an aggregate of no more than 12 resale time-shares per calendar year;

2. A person who owns or acquires more than 12 resale time-shares and who subsequently transfers all such resale time-shares to a single purchaser in a single transaction;

3. The owner, its agents, and employees of a regularly published newspaper, magazine, or other periodical publication of general circulation; broadcast station; website; or billboard, to the extent their activities are limited to solicitation and publication of advertisements and the transmission of responses to the persons who place the advertisements. Any person who would otherwise be exempt from this chapter pursuant to this section shall not be exempt if the person (i) solicits the placement of the advertisement by representing that the advertisement will generate cash, a certain price, or a similar type of representation for the time-share owner's resale time-share; (ii) makes a recommendation as to the sales price for which to advertise the resale time-share; (iii) makes any representations to the person placing the advertisement regarding the success rate for selling resale time-shares advertised with such person; or (iv) makes any misrepresentations as described in this chapter;

4. Sale by a developer or a party acting on its behalf of a resale time-share under a current registration of the time-share program in which the resale time-share is included;

5. Sale by an association, a managing entity, or a party acting on its behalf of a resale time-share owned by the association, provided that the sale is in compliance with subsection C of § 55.1-2228; or

6. Attorneys, title agents, title companies, or escrow companies providing closing services in connection with the transfer of a resale time-share.

D. No reseller shall:

1. Fail to disclose information in writing concerning the marketing, sale, or transfer of resale time-shares required by this chapter prior to accepting any consideration or with the expectation of receiving consideration from any time-share owner, seller, or buyer.

2. Make false or misleading statements concerning offers to buy or rent; the value, pricing, timing, or availability of resale time-shares; or numbers of sellers, renters, or buyers when engaged in time-share resale activities.

3. Misrepresent the likelihood of selling a resale time-share interest.

4. Misrepresent the method by or source from which the reseller or lead dealer obtained the contact information of any time-share owner.

5. Misrepresent price or value increases or decreases, assessments, special assessments, maintenance fees, or taxes.

6. Guarantee sales or rentals in order to obtain money or property.

7. Make false or misleading statements concerning the identity of the reseller or any of its affiliates or the time-share resale entity's or any of its affiliate's experience, performance, guarantees, services, fees, or commissions, availability of refunds, length of time in business, or endorsements by or affiliations with developers, management companies, or any other third parties.

8. Misrepresent whether or not the reseller or its affiliates, employees, or agents hold, in any state or jurisdiction, a current real estate sales or broker's license or other government-required license.

9. Misrepresent how funds will be utilized in any time-share resale activity conducted by the reseller.

10. Misrepresent that the reseller or its affiliates, employees, or agents have specialized education, professional affiliations, expertise, licenses, certifications, or other specialized knowledge or qualifications.

11. Make false or misleading statements concerning the conditions under which a time-share owner, seller, or buyer may exchange or occupy the resale time-share interest.

12. Represent that any gift, prize, membership, or other benefit or service will be provided to any time-share owner, seller, or buyer without providing such gift, prize, membership, or other benefit or service in the manner represented.

13. Misrepresent the nature of any resale time-share interest or the related time-share plan.

14. Misrepresent the amount of the proceeds, or fail to pay the proceeds, of any rental or sale of a resale time-share interest as offered by a potential renter or buyer to the time-share owner who made such resale time-share interest available for rental or sale through the reseller.

15. Fail to transfer any resale time-share interests as represented and required by this chapter or to provide written evidence to the time-share owner of the recording or transfer of such time-share owner's resale time-share interest as required by this chapter.

16. Fail to pay any annual assessments, special assessments, personal property or real estate taxes, or other fees relating to an owner's resale time-share interest as represented or required by this chapter.

17. Misrepresent or misuse the intended purpose of a power of attorney or similar document to the detriment of any grantor of such power of attorney.

§ 55.1-2245. Recordkeeping by resellers.

A. If contact information has been obtained by a reseller from any source, including a lead dealer, the reseller and lead dealer shall maintain the following records for a period of five years from the last date of contact between the reseller and the owner:

1. The name; home address; work address, if different; telephone number; email address, if any; and a copy of a current government-issued photographic identification (e.g., driver's license, passport, or military identification card) of the lead dealer who provided the contact information;

2. The date, time, and place of the transaction at which the contact information was obtained, along with the amount of consideration paid and a signed receipt from the lead dealer or copy of a canceled check; and

3. A copy of the contact information obtained in the exact form and media in which received.

B. A reseller shall maintain records for at least five years after each transaction involving resale service including resale transfer agreements and resale purchase agreements.

C. In any civil or criminal action based on a violation of this section, there shall be a presumption that contact information was wrongfully obtained if a reseller or lead dealer fails to produce the records required by this section.

D. Any person who establishes that a reseller or lead dealer wrongfully obtained or wrongfully used contact information with respect to time-share owners or members of an exchange program shall, in addition to any other remedies that may be available in law or equity, be entitled to recover from such reseller or lead dealer an amount equal to $1,000 for each time-share owner or member about whom contact information was

wrongfully obtained or used. The prevailing person in any such action shall also be entitled to recover reasonable attorney fees and costs.

§ 55.1-2246. Alternative purchase; registration.

A. The application for registration of an alternative purchase shall be filed in a form prescribed by the Board and shall include the following:

1. A general description of the types of alternative purchases offered;

2. A copy of the terms and conditions applicable to the alternative purchases; and

3. The name, address, and contact information of the developer offering the alternative purchases.

B. Any material change to the standard terms and conditions applicable to an alternative purchase shall be filed with the Board within 30 days of such change being effective. Changes to the length of stay, location, or price shall not require an amendment of the registration, provided that the terms and conditions applicable to such alternative purchases are on file with the Board.

C. The provisions of §§ 55.1-2217 and 55.1-2220 shall not apply to alternative purchases registered under this section.

Article 6.

Administration.

§ 55.1-2247. General powers and duties of Board.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter. The Board may prescribe forms and procedures for submitting information to the Board.

B. The Board may accept grants in aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this chapter.

C. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices and may develop information that may be useful in the discharge of the Board's duties.

D. 1. The Board may issue an order requiring the developer or reseller to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this chapter if it determines after legal notice and opportunity for hearing that a developer or reseller or an agent of a developer or reseller has:

a. Made any representation in any document or information filed with the Board that is false or misleading;

b. Engaged or is engaging in any unlawful act or practice;

c. Disseminated or caused to be disseminated orally, or in writing, any false or misleading promotional materials in connection with a time-share program;

d. Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-shares in the time-share program;

e. Failed to perform any stipulation or agreement made to induce the Board to issue an order relating to that time-share program;

f. Otherwise violated any provision of this chapter or any of the Board's rules and regulations or orders; or

g. Disposed of any time-share in a project without first complying with the requirements of this chapter.

2. If the Board makes a finding of fact at a hearing that the public interest will be irreparably harmed by delay in issuing an order, as prescribed in subdivision 1, it may issue a temporary cease and desist order. The Board shall not issue more than one temporary cease and desist order with reference to such finding of fact as prescribed in this subsection. With the issuance of a temporary cease and desist order, the Board, by registered mail or other personal written service, shall give notice of the issuance to the developer or the reseller. Every temporary cease and desist order shall include in its terms:

a. A provision clearly stating the reasons for issuing such cease and desist order, the date of the hearing on its issuance, and the nature and extent of the facts and findings on which the order was based;

b. A provision that a hearing by the Board may be held, after due notice but not more than 15 days from the date such temporary cease and desist order is effective, to determine whether or not a cease and desist order as called for in subdivision 1 shall be issued;

c. A provision that such temporary cease and desist order may remain in full force for a period of not more than 15 days from the date of its issuance or the date on which the Board has determined that an order as prescribed in subdivision 1 is to be issued, whichever shall occur first; and

d. A provision that a failure to comply with such temporary cease and desist order will be a violation of this chapter.

E. The Board may also issue a cease and desist order if the developer has not registered the time-share program as required by this chapter or if a reseller has not registered as required by this chapter.

F. The Board, after notice and hearing, may issue an order revoking the registration of the developer's time-share program or the registration of a reseller upon determination that such developer, reseller, or agent of such developer or reseller has failed to comply with a cease and desist order issued by the Board affecting the developer's time-share program or the reseller.

G. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter or any of the Board's rules, regulations, or orders applicable to this chapter, the Board, without prior administrative proceedings, may bring an action in the circuit court of the county or city in which any portion of the time-share project is located to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

H. Upon request of a time-share owner, the Board shall, in accordance with subsection B of § 55.1-2230, issue its determination whether compliance with § 55.1-2220 or 55.1-2234 has occurred.

§ 55.1-2248. Cancellation of cease and desist order; reinstatement of registration of developer.

A. The Board shall stipulate to the developer or reseller the reason for any cease and desist order, or revocation of registration as outlined in § 55.1-2247, by no later than the time such order or revocation is to become effective.

B. Should the developer or reseller satisfy the Board that it has corrected the reasons for the cease and desist order or revocation of registration, then the Board shall promptly cancel such order or reinstate the registration, and thereafter the developer or reseller may continue its offering or disposition of time-shares.

§ 55.1-2249. Board regulation of public offering statement.

The Board may at any time require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

§ 55.1-2250. Investigations.

A. The Board may:

1. Make necessary public or private investigations within or outside the Commonwealth to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order issued pursuant to this chapter, or to aid in the enforcement of this chapter in prescribing rules, regulations, and forms under this chapter; and

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Board determines, as to all facts and circumstances concerning the matter to be investigated.

B. For the purpose of any investigation or proceeding under the chapter, the Board may administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Board under this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the County of Henrico and such proceeding shall be held before the Board sitting in regular session, but not less frequently than monthly.

D. Upon failure to obey a subpoena or to answer questions propounded by the Board, and upon reasonable notice to all persons affected thereby, the Board may apply to the Circuit Court of the County of Henrico for an order compelling compliance.

E. Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 55.1-2251. Proceedings before the Board.

A. Any proceeding or hearing of the Board under this chapter in which witnesses are subpoenaed and their attendance required for the taking of evidence or the production of documents to ascertain material evidence shall take place in the County of Henrico.

B. Except as otherwise provided in this chapter, all hearings under this chapter shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall be conducted by a hearing officer in accordance with § 2.2-4024.

§ 55.1-2252. Penalties.

A. Any person who willfully violates any of the provisions of § 55.1-2217, 55.1-2218, 55.1-2219, 55.1-2220, 55.1-2221, 55.1-2229, 55.1-2233, or 55.1-2238, or any order issued pursuant to §§ 55.1-2247 through 55.1-2250 is guilty of a Class 5 felony.

Any person who willfully violates any of the provisions of § 55.1-2226, 55.1-2228, or 55.1-2244 or any order issued pursuant to §§ 55.1-2247 through 55.1-2250 regarding a violation of § 55.1-2226, 55.1-2228, or 55.1-2244 is guilty of a Class 1 misdemeanor.

Each violation shall be deemed a separate offense.

B. Any developer, member, agent or affiliate of any developer of time-shares registered pursuant to § 55.1-2241, or any reseller, who violates any provision of this chapter or regulations promulgated pursuant to this chapter, and who is not criminally prosecuted, may be subject to a civil penalty. If it has been determined by the Board upon or after a hearing that a respondent has violated this chapter or the Board's rules and regulations, the Board shall proceed to determine the amount of the civil penalty for such violation, which shall not exceed $2,000 for each violation. Such penalty may be sued for and recovered in the name of the Commonwealth.

CHAPTER 23.

SUBDIVIDED LAND SALES ACT.

§ 55.1-2300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agent" means any person who represents or acts for or on behalf of a developer in the disposition of any lot in a subdivision, but does not include an attorney whose representation of another person consists solely of rendering legal services.

"Blanket encumbrance" means a trust, deed, mortgage, judgment, or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land comprising the subdivision to be offered and sold or leased or affecting more than 10 lots or parcels of such lands, or an agreement affecting more than 10 lots or parcels of such lands by which the developer holds such subdivision under option, contract, sale, or trust agreement. "Blanket encumbrance" does not include mechanics' liens, taxes, or assessments levied by a public authority, or easements granted to public utilities or governmental agencies for the purpose of bringing services to the lot or parcel within the subdivision.

"Developer" means any person who offers, directly or indirectly, for disposition, any lot in a subdivision, but does not include a trustee under a deed of trust securing an indebtedness or other obligation who sells lots within such subdivision under foreclosure proceedings, provided that the purpose in so doing is not to evade the provisions of this chapter.

"Disposition" or "sale" means any lease, assignment, or exchange, or any interest in any lot that is a part of or included in a subdivision.

"Land sales installment contract" means any installment contract for the sale or disposition of land by which the purchaser does not receive a deed conveying the property purchased until some or all installment payments have been made as called for in the contract and record title to such property remains in another pending full performance of the contract.

"Lot" means any unit, parcel, division, piece of land, or interest in land except utility easements if such interest carries with it the exclusive right to use a specific portion of property.

"Offer" means any inducement, solicitation, media advertisement, or attempt performed by or on behalf of a developer that has as its objective the disposition of a lot in a subdivision.

"Person" means any individual, corporation, government or governmental agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Purchaser" means a person who acquires or attempts to acquire any lot in a subdivision.

"Subdivision" means:

1. Any subdivision of land into 100 or more lots, whether contiguous or not, where any such lots are, from July 1, 1978, sold or disposed of by land sales installment contracts and pursuant to a common promotional plan, where lot purchasers within such subdivision have use of and access to the facilities and amenities within

such subdivision for which the lot owners are assessed on a regular or special basis for the use and enjoyment of such lot; and

2. Any existing subdivision of land of 30 or more lots in which the developer has concluded its sales effort for a period of six consecutive months and has transferred to the association described in subdivision A 1 of § 55.1-2305 all the title, control, and maintenance responsibilities of the common areas and common facilities.

§ 55.1-2301. Exemptions.

Unless the method of disposition is adopted for the purposes of evasion of this chapter, the provisions of this chapter shall not apply to:

1. The sale of a subdivision to a single purchaser for his own account in a single or isolated transaction;

2. The disposition of lots in a subdivision if each lot in the subdivision is at least five acres in size;

3. The disposition of a lot on which there is a residential, commercial, or industrial building, or as to a lot upon which there is a legal obligation on the part of the seller to construct such a building within a period of two years from the date of disposition;

4. The disposition of land pursuant to court order, provided that the court reviews and approves the disposition on an individual basis;

5. The disposition of cemetery lots;

6. Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust on real estate;

7. Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

8. Offers or dispositions of any interest in real estate, oil, gas, or other minerals or any royalty interest in such real estate, oil, gas, or other minerals if the offers or dispositions of such interests are regulated as securities by the United States or by the Commonwealth;

9. The disposition of a lot to any person whose purpose in acquiring the land is to engage in the business of constructing residential, commercial, or industrial buildings on such land;

10. The lease of a lot where the right to possession or the rental term does not exceed one year in the aggregate and where the conditions of the lease do not obligate the lessee to renew;

11. The sale or lease of condominium units registered pursuant to the Virginia Condominium Act (§55.1-1900 et seq.); or

12. The disposition of real estate that is zoned or otherwise designated by the appropriate governmental authority for, or restricted by a valid recorded declaration of covenants to, commercial or industrial use.

§ 55.1-2302. Transfer of ownership.

It is unlawful for the developer to transfer fee simple ownership of a lot or parcel within a subdivision to a purchaser by any other means than by a general or special warranty deed or other deed complying with Chapter 3 (§ 55.1-300 et seq.).

§ 55.1-2303. Blanket encumbrances.

A. It is unlawful for any developer or agent to sell or lease a lot in a subdivision that is subject to a blanket encumbrance unless the blanket encumbrance or effective supplemental agreement contains a release provision permitting legal title to individual lots or other interest contracted for to be obtained free and clear of the blanket encumbrance. Nothing in this section shall be construed to limit either the conditions upon which such release may be premise or the modification or amendment of such release provision as to (i) any purchaser other than a purchaser under an installment sales contract or (ii) any purchaser under an installment sales contract that is executed subsequent to the recordation of the amendment or modification.

B. Unless blanket encumbrance release provisions provide that the lien of the blanket encumbrance is subordinate to the rights of persons purchasing from the developer or agent and that those purchasers have the unconditional right to obtain legal title or other interest contracted for free and clear of the blanket encumbrance upon compliance with the terms and conditions of the purchase or lease, it is unlawful for a developer or agent to sell or lease lots except in compliance with one of the following conditions:

1. Any earnest money deposit or advance or other payment made by the purchaser on account of the purchase of a lot is placed in an escrow account that is a trust account maintained in a federally insured depository located in the Commonwealth and that fully protects the interest of the purchaser until:

a. Fee title or other interest contracted for is conveyed to the purchaser free and clear of the blanket encumbrance;

b. Either the developer or purchaser defaults under the contract and a final determination as to the disbursal of sums paid is made by a court of competent jurisdiction; or

c. The developer voluntarily orders the return of the money to the purchaser; or

2. Title to the subdivision is held in trust under a trust agreement until a proper release is obtained and legal title or other interest contracted for is conveyed to the purchaser.

§ 55.1-2304. Restraints on alienation.

Provided that selling or leasing a lot is not specifically prohibited by recorded covenant, it is unlawful to restrain the owner of a lot in a subdivision from offering such lot for sale or lease or from selling or leasing such lot. Any deed restriction or recorded covenant that creates a right of first refusal in excess of 30 days or creates a sales restraint that denies lot owners the right to post for-sale signs of reasonable size is null and void.

§ 55.1-2305. Management, regulation, and control of subdivisions with common facilities or property owners' associations.

A. The covenants, deed restrictions, articles of incorporation, bylaws, or other instruments for the management, regulation, and control of subdivisions that include facilities or amenities for which the lot owners are assessed on a regular or special basis for the use, enjoyment, and maintenance of such facilities or amenities shall provide for at a minimum:

1. Formation of an association to be composed of lot owners within the subdivision, such formation occurring prior to the sale of the first lot within the subdivision by the developer;

2. A description of the areas or interests to be owned or controlled by the association, including those facilities or amenities for which the lot owners are subject to regular or special assessments;

3. The transfer of title, control, and maintenance responsibilities of common areas and common facilities to the association, which transfer is to take place no later than at such time as the developer transfers legal or equitable ownership of at least 75 percent of the lots within the subdivision to purchasers of such lots or when all of the amenities and facilities are completed, whichever occurs first, but in no event any sooner than two years from the date the developer sells his first lot within the subdivision should the developer elect to retain title to the common areas and common facilities for such period. The transfer of such title, control, and maintenance responsibilities required of the developer shall not exonerate the developer from the responsibility of completion of the common areas and facilities once the transfer takes place.

Nothing in this section shall preclude the developer from transferring the common areas and common facilities for consideration, provided that (i) such consideration does not exceed the lesser of the fair market value of such common areas and common facilities at the time of transfer or the actual cost expended by the developer for such common areas and common facilities and (ii) the developer affirmatively discloses the following information to the purchaser, in writing, at the time the initial contract of purchase is signed:

a. That the common areas and common facilities will be transferred only upon payment of consideration by the association;

b. The terms upon which such transfer will be made; and

c. An estimate of the amount of consideration to be paid by the association.

In the event the developer seeks payment for the areas or facilities transferred, the association shall have the option of deferring such payment, evidence by a deed of trust note covering a period of not less than five years at the legal rate of interest allowed in the Commonwealth and secured by a deed of trust covering the areas or facilities transferred;

4. Procedures for determining and collecting regular assessments to defray expenses attributable to the ownership, use, enjoyment, and operation of common areas and facilities transferred to the association;

5. Procedures for establishing and collecting special assessments for capital improvements or other purposes;

6. Procedures to be employed upon the annexation of additional land to the existing subdivision that shall disclose whether or not per capita assessments on account of such annexation shall be subject to an increase, in the event additional amenities or common facilities are provided lot owners within the subdivision;

7. Such procedures and restrictions, if any, that apply to the voluntary or involuntary resale of a lot within a subdivision by a purchaser or his agent, which shall be established prior to the sale of the first lot by the developer within the subdivision;

8. Monetary penalties or use privilege and voting suspension of members for breaches of the restrictions, bylaws, or other instruments for management and control of the subdivision, or for nonpayment of regular or special assessments, with procedures for hearings for the disciplined members;

9. Creation of a board of directors or other governing body for the association with the members of the board or body to be elected by a vote of members of the association in good standing at an annual meeting or special meeting to be held not later than six months after the transfer of the areas of facilities provided for in subdivision 3;

10. Enumeration of the power of the board of directors or governing body that is consistent with and not otherwise provided by law;

11. The preparation of an annual balance sheet and operating statement for each fiscal year with provision for distribution of a copy of the reports to each member of the association in good standing within 90 days after the end of the fiscal year;

12. Quorum requirements for meetings of members of the association who are in good standing; and

13. Such other provisions as may be required by the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) if the association is a Virginia nonstock corporation.

B. Any developer of a subdivision, successor or otherwise, when such subdivision is subject to the provisions of this chapter, shall be obligated to complete the facilities and amenities as promised and outlined in subsection A by the initial developer of the subdivision subject to the transfer of title, control, and maintenance responsibilities of common areas and common facilities to the lot owners' association. The foregoing shall not be deemed to apply to any purchaser at foreclosure or grantee in a deed in lieu of foreclosure, provided that the purchaser or grantee is a financial institution and the mortgagee, creditor, or beneficiary under the instrument being foreclosed or giving rise to the deed in lieu of foreclosure. For the purposes of this subsection, "financial institution" means a bank, savings institution, real estate investment trust, insurance company, pension or profit sharing trust, or other institution regularly engaged in the business of making real estate loans. For purposes of this subsection, the lot owners' association shall not be deemed a developer if at a meeting of its members in good standing a vote is taken and at least 50 percent of the members vote to be exempt from the requirements of this subsection.

C. The association, once formed and in existence, and the title owner of the common areas and common facilities within the subdivision and which has been in existence for a period of at least five years shall have the authority to pass special assessments against and raise the annual assessments of the members of the association and to collect such assessments from such members according to law, if the purpose in so doing is for the maintenance of such common areas and common facilities. The authority granted and conferred upon the association by this subsection exists only where the restrictions and covenants of record do not contain specific language that precludes the adoption of special assessments or increases the annual dues or assessments.

D. The association shall have a lien on every lot within its subdivision for unpaid regular or special assessments levied against such lot in accordance with the provisions of this chapter. The lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on such lot, (ii) liens and encumbrances recorded prior to the perfected lien, and (iii) any sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of the lien for regular or special assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

Notwithstanding any other provision of this chapter, or any other provisions of law requiring documents to be recorded in the miscellaneous lien books or the deed books of the clerk's office of any court, from July 1, 1978, all memoranda of liens arising under this subsection shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for subdivision regular or special assessments.

The association, in order to perfect the lien given by this subsection, shall file before the expiration of 90 days from the time such regular or special assessment became due and payable in the clerk's office of the county or city in which the subdivision is situated a memorandum, verified by the oath of the president of the association, which shall contain:

1. A description of the subdivision;

2. The name or names of the owners of the lot;

3. The amount of unpaid regular or special assessments currently due or past due applicable to the lot, together with the date when each fell due; and

4. The date of issuance of the memorandum.

The clerk in whose office the memorandum is filed shall record and index such memorandum as provided in this subsection, in the names of the persons identified in such memorandum, as well as in the name of the association. The cost of recording the memorandum shall be taxed against the person found liable for any judgment or order enforcing such lien. It is lawful for the memorandum to be filed as one statement listing the information required in subdivisions 1 through 4 and each of the lot owners whose property within the subdivision is liened. The cost of filing shall be as provided in subdivision A 2 of § 17.1-275.

No action to enforce any lien perfected under this subsection shall be brought after one year from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any action in which such petition may be properly filed shall be regarded as the institution of an action under this subsection. Nothing in this subsection shall be construed to extend the time within which any such lien may be perfected. Nothing shall preclude the association from filing a single action listing all unpaid delinquent and enumerated lot owners as defendants and obtaining judgment against those so adjudicated by the court hearing the action.

The judgment in an action brought pursuant to this subsection shall include, without limitation, reimbursement for costs and attorney fees, together with the interest at the maximum lawful rate for the sums secured by the lien from the time each sum became due and payable.

When payment or satisfaction is made of a debt secured by the lien perfected by this subsection, the lien shall be released in accordance with the provisions of § 55.1-339. For the purposes of § 55.1-339, the president or secretary of the association is the duly authorized agent of the lien creditor.

Nothing in this subsection shall be construed to prohibit the recovery of sums for which this subsection creates a lien.

Any lot owner within the subdivision having executed a contract for the disposition of the lot is entitled, upon request, to a recordable statement setting forth the amount of unpaid regular or special assessments currently levied against that lot. Such request shall be in writing, directed to the president of the association, and delivered to the principal office of the association. Failure of the association to furnish or make available such a statement within five business days from the receipt of such written request shall extinguish the lien created by this subsection as to the lot involved. Payment of a fee not exceeding $15 may be required as a prerequisite to the issuance of such a statement if the bylaws of the association so provide.

E. If, upon July 1, 1978, and a subdivision becoming subject to the terms and requirements outlined in subdivisions A 1 through 8 have not been performed, then the requirements shall have to be fully complied with within a period of 90 days from July 1, 1978, and upon failure to fully perform all of such requirements within the 90-day period the failure so to do shall constitute a violation of this subsection.

F. Each lot owner within a subdivision that falls within the scope of this chapter shall be responsible for his pro rata share of the cost of maintaining the common facilities and common areas owned by the association. For purposes of this subsection, "common facilities and common areas" means only the roads and lakes within the subdivision, and "maintaining" includes any orderly program for the continued upkeep and improvement of such roads and lakes. The association has the responsibility of determining the pro rata share assessed against each lot owner, and such amount assessed shall be in addition to the annual or special assessment otherwise obligated by each member of the association.

G. If a subdivision of land meets the requirement in subdivision 2 of the definition of subdivision as provided in § 55.1-2300, then the property owners' association of the subject subdivision has the powers and duties enumerated in subsections C, D, and F as well as the rights and authority to establish those procedures outlined in subdivisions A 4, 5, and 6 and the penalties in subdivision A 8, and also has the obligations imposed by such subdivisions and those of subdivisions A 9 through 12.

§ 55.1-2306. Penalties.

Any person violating any of the provisions of §§ 55.1-2302 through 55.1-2305 is guilty of a Class 2 misdemeanor. At the discretion of the court, any imprisonment may run concurrently with imprisonment imposed by any court for violation of any law similar to the provisions of this chapter.

SUBTITLE V.

MISCELLANEOUS.

CHAPTER 24.

ESCHEATS.

§ 55.1-2400. Definition.

As used in this chapter, "known" in terms of determining whether an owner is "known" includes inspection of tax records and any other inquiry deemed to be reasonable. It need not include inspection of the premises or inspection of title records in the clerk's office in the county or city in which the land is located.

§ 55.1-2401. Appointment of escheators.

The Governor shall appoint one escheator for every judicial circuit as set forth in § 17.1-506, to serve at the pleasure of the Governor. Such escheator shall reside within the circuit to which he is appointed.

§ 55.1-2402. Bond of escheator.

Each escheator shall give bond for the judicial circuit for which he is appointed in the circuit court for the locality in which he resides, in the penalty of $3,000, without surety, and may continue in office until removed or until a successor is duly appointed and qualified. If property in another locality within the appointed judicial circuit escheats to the Commonwealth at the inquest hearing, the escheator shall give bond within that locality as determined by the clerk of the circuit court in the locality and in a penalty of a percentage of the assessed value of the property according to the records of the commissioner of the revenue. The bond shall be obtained within 10 days following the inquest hearing.

§ 55.1-2403. Increase or reduction of penalty of escheator's bond; effect.

The court may, at any time, with reasonable notice to the escheator, increase or reduce the penalty of the bond, provided that in no case shall such penalty be reduced to less than $1,000. Upon bond being given under an order increasing or reducing the penalty of a former bond, the sureties in such former bond and their estates shall be discharged from all liability for any breach of official duty committed by such escheator after that time.

§ 55.1-2404. Annual report to escheator; lands not liable.

Each treasurer shall, every May, furnish to the escheator of his county or city a list of all lands within his district owned by any person who has died in possession of an estate of inheritance (i) intestate and without any known heir or (ii) testate without disposing of all property by will and without leaving any surviving heir to inherit the property. No land shall be liable to escheat that has been held for 15 years under adverse possession as at common law by the person claiming such land, or those under whom he holds, but only if taxes were paid throughout that period by the claimant or those under whom he holds.

§ 55.1-2405. Escheator to hold inquest; notice of inquest.

On receiving a list compiled pursuant to § 55.1-2404, or upon information from any person, in writing and under oath, that any of the conditions described in § 55.1-2404 exists, the escheator shall proceed to hold his inquest to determine whether any land identified has escheated to the Commonwealth. He shall (i) post notice of the time of taking such inquest at the front door of the courthouse for 30 days prior to the inquest and (ii) advertise once in a newspaper of general circulation within the county or city at least seven but not more than 30 days prior to the inquest. Notice shall also be mailed to the last owner of record, if any, as it appears in the tax records of the local treasurer. The escheator shall send a copy of the newspaper advertisement to the State Treasurer prior to the date of the inquest. The inquest shall be held in the same calendar year in which the list or information is received by the escheator. The attorney for the Commonwealth shall act as attorney for this proceeding.

§ 55.1-2406. Jury of inquest; presentation of evidence.

The sheriff of the county or city shall summon and return 10 qualified jurors for the inquest, of whom at least seven shall be impaneled as a jury. They shall meet at the courthouse and sit in public and may be adjourned by the escheator from day to day. Every person competent to testify as a witness shall be required to give evidence openly in the presence of the jurors.

§ 55.1-2407. Attendance of jurors; compensation.

If any person summoned or adjourned as a juror fails to attend according to the summons or adjournment, the escheator shall report such failure to the circuit court having jurisdiction over the county or city in which the land that is the subject of the inquest is located. Such court may fine such person an amount not to exceed $50.

Jurors shall be compensated as provided for jurors in civil cases.

§ 55.1-2408. How verdict signed; where returned and recorded.

When the inquest is concluded and the verdict concurred in by at least seven of the jurors impaneled such verdict shall be signed by those so concurring and by the escheator. The escheator shall, within 10 days, return the verdict to the clerk's office of the circuit court. After receiving the verdict, the clerk of such court shall record it in accordance with § 17.1-266 and shall provide copies within 10 days to the commissioner of the

revenue and the local treasurer or the person performing those duties. This escheat verdict shall be recorded in the grantor index of the record books in the clerk's office.

§ 55.1-2409. Proceedings to claim land escheated.

When the verdict on an inquest is for the Commonwealth, any person claiming any interest in the lands, whether legal or equitable, may, before the sale of such land, petition the circuit court for redress. The petition shall be accompanied by a bond with good security to pay the Commonwealth all past due real estate taxes, penalties, and interest on such lands. The escheator shall be the sole defendant on behalf of the Commonwealth, and may appear on his own behalf. The escheator shall file an answer stating the objections to the claim. The cause shall be heard, without any unnecessary delay, upon the petition and answer and the evidence. Upon a judgment in favor of the claimant, he shall pay all past due taxes, penalties, and interest. Upon entry of such judgment, the court may award attorney fees to the escheator. For real estate assessment purposes, the commissioner of the revenue or assessor shall continue to assess any escheated property.

§ 55.1-2410. Trial by jury; judgment of court.

Upon a petition filed pursuant to § 55.1-2409, the court may impanel a jury to ascertain any facts that may be disputed and may set aside the verdict. The escheator may initiate a new inquest in accordance with § 55.1-2405.

§ 55.1-2411. Facts or evidence to be certified.

If witnesses are sworn before the court or jury, the court shall, upon request of either party, certify what facts are proved by such witnesses. If the facts cannot be certified, the court shall then certify the evidence of the witnesses. In either case, such certificate shall be a part of the record.

§ 55.1-2412. Lands may be committed to claimant while claim pending.

Pending the petition, the court may commit the lands, or any part thereof, to the claimant, after he has given bond with good security to pay the Commonwealth the rents and profits of such land, if judgment is subsequently entered for the Commonwealth.

§ 55.1-2413. Disposition of lands while claim is pending, if not committed to claimant.

If the escheator leases property remaining in his hands, he shall notify and transmit a copy of such lease, if in written form, to the State Treasurer within 30 days and remit the rent proceeds to the State Treasurer as they are received. The escheator shall be answerable to the claimant or to the Commonwealth, as determined by the court, for the rents and profits of such land and the escheator shall ensure that such land be kept free from waste and destruction. Where the escheator deems that reasonable business practice would require that insurance be obtained on such income-producing property, he shall obtain insurance coverage on the escheated property after having first obtained the approval of the State Treasurer.

§ 55.1-2414. Escheator to notify State Treasurer of claim and decision.

The escheator shall certify to the State Treasurer, within 60 days after the end of a year from the date of such inquest, whether any petition has been filed claiming an interest in the property pursuant to § 55.1-2409, and if such claim is made, he shall certify the decision on such petition within 60 days after such decision.

§ 55.1-2415. Escheators to certify lands escheated.

Every escheator shall, within 60 days after an inquest that finds on behalf of the Commonwealth, transmit to the State Treasurer a certificate showing the number of tracts or lots escheated, the reputed quantity of each parcel, a description sufficient to identify each parcel, and the names of the persons found to have died in possession of such parcel, or from whom the land escheated.

§ 55.1-2416. Removal of parcels from the certificate.

If the escheator finds that the escheat of a parcel was improper, for whatever reason, he shall remove the parcel from the certificate transmitted to the State Treasurer pursuant to § 55.1-2415 at any time prior to sale pursuant to § 55.1-2419. The escheator shall state in writing his reasons for such removal to the satisfaction of the State Treasurer. Thereafter, unless a petition has been filed in accordance with § 55.1-2409, the escheator shall petition the circuit court to correct the verdict returned to the clerk of court pursuant to § 55.1-2408. A copy of this petition shall be sent to the State Treasurer. The escheator shall notify in writing the local treasurer or the local official performing these duties of any such error and improper escheat. The escheator shall be reimbursed the costs incurred by him for filing such a petition with the circuit court. The escheator shall file, and the clerk of court shall record, any such corrected verdict in the appropriate deed books.

§ 55.1-2417. Escheat of property with hazardous materials.

In addition to any other remedy provided by law, the Virginia Waste Management Board, pursuant to its authority granted in § 10.1-1402, or the Department of Environmental Quality, shall have recourse against any

prior owner or the estate of any prior owner for the costs of cleanup of escheated property in or upon which any hazardous material as defined in § 44-146.34 is found.

§ 55.1-2418. Publication of escheator's certificate.

The State Treasurer shall cause the contents of the certificate transmitted pursuant to § 55.1-2415 to be published once each week for four consecutive weeks in a newspaper of general circulation in the county or city where the inquest was held.

§ 55.1-2419. Order of sale by Governor.

Not less than six months after the publication of the escheator's certificate pursuant to § 55.1-2418, the State Treasurer shall present to the Governor the escheator's certificate and proof of publication, and, if a claim has not been made pursuant to § 55.1-2409, or, if made, has been decided in favor of the Commonwealth, the Governor shall order the escheated land to be sold upon such terms, at such time, and at such place within the county or city in which the property is located, or if the property is located within a city that is located wholly within a county, then the sale may take place in the city, or a contiguous county or city as he deems proper. The order of sale shall be delivered to the State Treasurer, to be transmitted to the escheator, who shall proceed to sell according to such order.

§ 55.1-2420. Form of sale agreement; notice of right to refund.

A sale agreement for the purchase of escheated property shall include a statement of the purchaser's right to claim a refund pursuant to § 55.1-2438 upon submission to the State Treasurer within 120 days of the sale of satisfactory evidence that the escheated property does not exist or was improperly escheated. The following form may be used:

Sale Agreement of Escheated Property

This agreement of sale made in triplicate this _____ day of _____, 20_____, between _____, Escheator (hereinafter known as Seller), and _____ (hereinafter known as Purchaser) and _____ (hereinafter known as Agent).

WITNESS

That for and in consideration of the full purchase price of $_____ by cash/check in hand paid, receipt of which is hereby acknowledged, the Seller agrees to sell and the Purchaser agrees to buy all that certain lot or parcel of land with all the appurtenances (if any) thereunto belonging and described as follows:

_____

_____

_____

The Seller agrees to obtain a state grant. It is hereby understood that GRANTS for lots, parcels and acreage sold pursuant to this agreement shall be WITHOUT WARRANTY and in accordance with § 55.1-2422 of the Code of Virginia. The recovery of proceeds of each sale from the Commonwealth, less the expenses of sale and the escheator's commission, may be obtained if the Purchaser, pursuant to § 55.1-2438 of the Code of Virginia, submits satisfactory evidence to the State Treasurer within 120 days of the sale that the escheated property does not exist or was improperly escheated.

WITNESS the following signatures and seals made this _____ day of _____, 20_____.

_____ *(SEAL)*

_____ *(SEAL)*

Agent

_____ *(SEAL)*

Purchaser

_____ *(SEAL)*

Escheator for

_____*, Virginia,*

Seller

§ 55.1-2421. When grant to issue to purchaser; reimbursable expenses.

A. When the escheator sells for cash, he shall certify the purchase and the price to the State Treasurer, who, after determining that such price, deducting the expenses, has been paid into the state treasury and that the expenses of the inquest and sale have been paid to the escheator, shall have a grant issued and executed for the lands so sold. At the time of sale, the escheator shall require the purchaser to sign an authorization for recordation prior to distribution. A clerk's fee per parcel purchased in accordance with subdivision A 2 of § 17.1-275 shall be collected by the escheator in addition to the purchase price. The fee shall be forwarded to the

State Treasurer, together with the names and addresses of the purchasers of the escheated property and the sale proceeds as required in § 55.1-2426, who shall send the fee with the grants to the local clerk's office for recording. The fee in effect at the time of sale shall be in lieu of all fees and costs. Grants of escheated property shall be exempt from all recording taxes. After recording the grants, the local clerk shall forward the grants to the escheator, who shall be responsible for notifying the purchasers of the recordation and the distribution of the grants to the purchaser.

B. Expenses reimbursable by the State Treasurer under subsection A shall include an auctioneer's fee, which shall not exceed five percent of the sale proceeds. The State Treasurer, by regulation, shall detail other appropriate reimbursable expenses.

§ 55.1-2422. Form of grant of escheated property.

A grant of escheated property shall be without warranty and to the following effect:

"In consideration of the sum of $_____ paid by _____, the Purchaser, into the treasury of the Commonwealth, etc., there is granted without warranty by the Commonwealth to _____, the Purchaser, a certain tract or parcel of land, containing _____ acres, lying in the county (or city) of _____, etc., (describing the bounds of the land and date of the survey or other description sufficient to identify the parcel) with its appurtenances, to _____, the Purchaser, and his heirs forever. In witness whereof, _____, the Governor of the Commonwealth, has set his hand and caused the lesser seal of the Commonwealth to be affixed hereunto, at _____, on the _____ day of _____, in the year _____."

§ 55.1-2423. Governor to sign and seal grant; Librarian of Virginia to record it; delivery to and by State Treasurer.

The State Treasurer shall deliver such grant of escheated property to the Governor, by whom it shall be signed and caused to be affixed with the lesser seal of the Commonwealth. The grant shall then be delivered by the Governor to the Librarian of Virginia, who shall record it, and the plat and certificate of survey, if provided, or other description sufficient to identify the parcel on which the grant is founded, by a procedural microphotographic process that meets archival standards. The Librarian of Virginia shall certify to the State Treasurer that the grant has been recorded and then deliver the grant to the State Treasurer, who shall in turn mail it to the party to whom it is made, or another person, as directed by such party.

§ 55.1-2424. Recordation of certified copy of grant.

The clerk shall accept for recordation a copy of the grant of escheated property from the Commonwealth that is certified as a true copy by the Librarian of Virginia under § 55.1-2423.

§ 55.1-2425. Resale in case of default.

If the purchaser does not pay the purchase money into the state treasury within a reasonable time, any deposit is forfeited, and the State Treasurer may rescind the contract and order a new sale.

§ 55.1-2426. Reports by escheators to State Treasurer.

The escheator shall file reports with the State Treasurer as required by the State Treasurer by agency directive.

§ 55.1-2427. Reports by State Treasurer to the Governor; penalty on escheators for failure of duty.

The State Treasurer shall, every May 1, file a report with the Governor containing the name of any escheator who fails to perform any duty required of him by this chapter. If any escheator fails to report to and account with the State Treasurer, or fails to pay into the state treasury the proceeds of any sale made by him, or any such rents and profits, in the manner and within the time prescribed by law, he shall be fined no more than $200 for every 60 days such failure continues. If any escheator fails to perform any other duty required of him by this chapter and no specific penalty for such failure is provided, he shall be fined no more than $50. Any action for any fine under this chapter may be instituted, at the discretion of the State Treasurer or of the Attorney General, in the Circuit Court of the City of Richmond, after 15 days' notice.

§ 55.1-2428. State Treasurer may examine records of any escheator, commissioner of the revenue, or treasurer.

The State Treasurer may at reasonable times and upon reasonable notice examine the records of any escheator, commissioner of the revenue, treasurer, or other person charged with his duties.

§ 55.1-2429. When State Treasurer to issue grant to purchaser.

The State Treasurer shall not request that the Governor issue a grant for the lands sold to the purchaser, or his heirs or assigns, until the purchase money has been fully paid.

§ 55.1-2430. Escheator's pay.

Except as otherwise provided in this section, the escheator shall be entitled to a commission of 10 percent on all proceeds of sales made by him of escheated lands that are paid to him or into the state treasury. Where an escheator is replaced by the appointment and qualification of a successor and where such escheator held an inquest provided for in § 55.1-2405 but the sale provided for in § 55.1-2419 has not been held, the 10 percent commission on the proceeds of the sales of the escheated lands so advertised shall be divided equally between such escheator and his successor. For each parcel that escheats, the escheator shall be paid $10 out of any money in the state treasury belonging to the Literary Fund.

§ 55.1-2431. Escheat of estates in trust and equitable titles.

An estate vested in a person solely by mortgage or deed of trust shall not escheat or be forfeited to the Commonwealth by reason of the mortgagee or trustee dying without heirs, but any equitable title to lands shall escheat or be forfeited, as the case may be, if the person having the equitable title also had the legal title.

§ 55.1-2432. Provision in favor of tenant of escheated land.

If any person holds any escheated land under a lease or has right to any rent or other profit out of such land, he shall hold and enjoy his lease, rent, or other profit, whether such lease or right to rent or other profit is found in the inquest or not.

§ 55.1-2433. In favor of creditor of decedent.

If any debt of a person who died in possession of such lands that escheated to the Commonwealth, remains unpaid after all the personal estate of such person has been applied to the payment of his debts, the creditor may file his complaint, accompanied with an affidavit that the debt is bona fide due, to recover such debt in the circuit court to which the inquest of escheat was returned and make the escheator defendant. If the court orders that the debt or any part thereof is due, the amount ordered to be due shall be paid by the escheator, if the escheator has enough of the proceeds of sale remaining to cover the amount, or out of the state treasury, if enough of the proceeds that have been paid into the state treasury still remain in the state treasury, or to the credit of the Literary Fund.

§ 55.1-2434. Escheators to defend on behalf of Commonwealth.

The escheator shall answer and defend on the part of the Commonwealth any action against him or any petition filed under § 55.1-2409 and shall be allowed the costs incurred by him in such defense.

§ 55.1-2435. Recovery by escheator of decedent's escheated residue and of property abandoned or derelict; fee.

The residue of a decedent's estate consisting of real property belonging to the Commonwealth, or subject to escheat to the Commonwealth, and any such property abandoned or derelict, or having no rightful owner, may be recovered from any person in possession thereof by an escheator by a complaint in the name of the Commonwealth. For his services in such recovery, the escheator shall be entitled to such fee as may be approved by the State Treasurer, but in no event shall such fee exceed 10 percent of the value of such recovered property.

§ 55.1-2436. Publication of action; what to state and require.

When any action is instituted pursuant to § 55.1-2435, the court shall cause a publication to be made once each week for four consecutive weeks in a newspaper of general circulation in the county or city in which the proceedings are held, setting forth the nature of the claim, the name and place of birth, when known, of the deceased person, or of the former owner of the property, if known, as the case may be, and a description of the property or estate claimed and requiring all persons claiming an interest in such property to appear and assert their interests in such property.

§ 55.1-2437. Order of the court.

If no person appears and shows that he has title to the property, the court shall order that the residue or other property belongs to the Commonwealth and enforce the collection thereof or of the proceeds of the sale of such property, provided, however, that if the residue or other property was given, bequeathed, or devised by will to a charitable institution in the Commonwealth and such gift, bequest, or devise failed by reason of insufficient witnessing of such will and would otherwise escheat to the Commonwealth, and the court finds that it is in the public interest, the court may order such residue or other property, or so much thereof as was subject to such gift, bequest, or devise, to be paid to such charitable institution.

§ 55.1-2438. How money paid into state treasury from escheats may be recovered.

A. If within 120 days from the date of sale, a purchaser submits evidence satisfactory to the State Treasurer that the property described in the grant does not exist or was improperly escheated, the State Treasurer may refund the purchase price, less the expenses of sale and the escheator's fee. Before any such refund is made,

the purchaser shall return the grant to the State Treasurer, who shall inform the Librarian of Virginia of its return. Both of these officials shall note the grant's return in their records. When the Commonwealth has recorded the grant, the purchaser shall record a quitclaim deed and send proof thereof to the State Treasurer prior to the issuance of any refund.

B. After any sale of escheated lands and upon certification verified by oath of the local treasurer or other officer charged with the collection of local real estate taxes that the land so sold was, at the time of escheat to the Commonwealth, subject to the lien of unpaid local real estate taxes or that the land so sold was, at any time prior to sale, subject to other assessments, including liens for demolition, cutting or removing weeds, or abating any nuisance on the escheated land, all of which assessments were validly assessed, levied, or imposed by the locality on the lands within 20 years preceding the date of the escheat or inquest, the State Treasurer shall, upon receipt of the proceeds of sale, deduct the escheator's commission and costs of the inquest and sale. The State Treasurer shall then pay to the local treasurer out of the net proceeds of such sale, if any, the amount of the local real estate taxes and assessments, including accrued penalties and interest, up to but not exceeding the amount of the funds remaining in the hands of the State Treasurer from the proceeds of the sale. To the extent that local taxes and other appropriate local charges exceed the proceeds obtained for such escheated land at the escheat sale, such local taxes and other charges are exonerated. Any other liens on property that was escheated and sold shall shift to the proceeds of the sale and shall no longer remain a lien on the property.

C. Any person who had not asserted a claim before the sale of escheated property, being entitled to any property so escheated and sold, may recover so much of the net proceeds as remain after deduction of the escheator's commission, costs of the inquest and sale, and allowance of claims for unpaid real estate taxes and assessments due on the land or from any creditors of the decedent. The same may be allowed by the State Treasurer or, if a claim in any such case is rejected by him, a petition for recovery may be made in the manner provided in § 8.01-192 for recovering claims against the Commonwealth, but subject to the limitation in § 8.01-255.

§ 55.1-2439. Regulations of the State Treasurer.

The State Treasurer shall adopt any necessary regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to carry out the provisions of this chapter.

§ 55.1-2440. Continuation of certain statutes.

The first section of Chapter 114 of the Code of 1849, and the sections following that to the seventeenth section, inclusive, of such chapter; the act passed April 12, 1852 (Chapter 18, Acts 1852); the act passed April 7, 1858 (Chapter 39, Acts 1858); and the Acts of 1857-8, as amended by the act passed March 30, 1860 (Acts of 1859-60) are continued in force.

§ 55.1-2441. Pendency of escheat proceedings no bar to condemnation proceedings.

Notwithstanding any provision contained in this chapter, the Commissioner of Highways or any locality or other political subdivision or agency of the Commonwealth possessing the power of eminent domain, for a public purpose in accordance with the law and notwithstanding the pendency of any proceeding brought for the escheat of any land wanted and needed by such Commissioner of Highways or such locality or other political subdivision or agency of the Commonwealth for such purpose, may institute, maintain, and conduct to final judgment condemnation proceedings to acquire in fee simple such land or such lesser estate, title, or interest therein as is wanted and needed for such public purpose, provided, however, that the escheator in whose name such escheat proceedings is pending and the Commonwealth are made codefendants to such condemnation proceedings, together with the owner, if known, of the land proposed to be condemned in such proceeding. The pendency of such escheat proceedings shall not constitute a bar or defense to such condemnation proceedings, nor to any proceeding therein seeking a right of entry as provided in § 25.1-223, in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, or in Article 1 (§ 33.2-1000 et seq.) of Chapter 10 of Title 33.2. No escheator, after being served with notice of the filing of any such condemnation proceeding, shall sell or dispose of any land sought to be acquired in such condemnation proceeding except upon order entered by the court in which such condemnation proceeding is pending. The funds paid into court as compensation or damages for the land so taken or damaged shall, after payment of taxes and other claims constituting valid liens against the land so taken, be ordered distributed to the party entitled thereto or be ordered paid to the escheator of such land, or to the State Treasurer, as the court may direct.

CHAPTER 25.

VIRGINIA DISPOSITION OF UNCLAIMED PROPERTY ACT.

Article 1.

Definitions; Property Abandoned or Assumed Abandoned.

§ 55.1-2500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.).

"Administrator" means the State Treasurer or his designee.

"Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

"Banking organization" means any bank, trust company, savings bank (industrial bank, land bank, safe deposit company), or private banker or any other organization defined by law as a bank or banking organization.

"Business association" means any corporation, joint-stock company, investment company, business trust, partnership, limited liability company, cooperative, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

"Credit balance" means an item of intangible property resulting from or attributable to the sale of goods or services, including an overpayment, credit memo, refund, discount, rebate, unidentified remittance, or deposit.

"Domicile" means (i) the state of incorporation, in the case of a corporation incorporated under the laws of a state; (ii) the state of organization, in the case of an unincorporated business association formed under the laws of a state; (iii) the state of the principal place of business, in the case of a nonnatural person not incorporated or formed under the laws of a state; and (iv) the state of principal residency, in the case of a natural person.

"Due diligence" includes the mailing of a letter by first-class mail to the last known address of the owner as indicated on the records of the holder.

"Financial organization" means any savings and loan association (cooperative bank), building and loan association, or credit union.

"Gift certificate" means a certificate, electronic card, or other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of an equal value.

"Holder" means a person, wherever organized or domiciled, that is (i) in possession of property belonging to another; (ii) a trustee, in the case of a trust; or (iii) indebted to another on an obligation.

"Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, that is engaged in providing insurance coverage, including accident, burial, casualty, contract performance, credit life, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

"Intangible property" includes (i) moneys, checks, drafts, deposits, interest, and dividend income; (ii) credits, customer overpayments, gift certificates, security deposits, refunds, unpaid wages, and unidentified remittances; (iii) stocks and other intangible ownership interests in business associations; (iv) moneys deposited to redeem stocks, bonds, coupons, and other securities or to make distributions; (v) amounts due and payable under the terms of insurance policies; and (vi) amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit.

"Last known address" means a description of the location of the apparent owner sufficient to identify the state of residence of the apparent owner for the purpose of the delivery of mail.

"Owner" means (i) a depositor, in the case of a deposit; (ii) a beneficiary, in the case of a trust, other than a deposit in trust; (iii) a creditor, claimant, or payee, in the case of other intangible property; or (iv) a person having a legal or equitable interest in property subject to this chapter or his legal representative.

"Payable" means the earliest date upon which the owner of property could become entitled to the payments, possession, delivery, or distribution of such property from a holder.

"Person" means an individual; a business association; a government or governmental subdivision or agency, public corporation, or public authority; an estate; a trust; two or more persons having a joint or common interest; or any other legal or commercial entity.

"Promotional incentive" means a coupon, rebate, or other promotional device offered to induce a consumer to purchase goods, food, or services and for which (i) no direct consideration is given by the consumer or (ii) the consideration given is less than the value of the goods, food, or services to be received.

"State," when applied to a part of the United States, includes any state, district, commonwealth, territory, and insular possession and any other area subject to the legislative authority of the United States.

"Unclaimed property" means property for which the owner, as shown by the records of the holder of his property, has ceased, failed, or neglected, within the times provided in this chapter, to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property. As used in this definition, "act" excludes any act of a holder of unclaimed property not done at the express request or authorization of the owner.

"Utility" means a person that owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

§ 55.1-2501. Property presumed abandoned; general rule.

All tangible and intangible property, including any income or increment thereon, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable is presumed abandoned, except as otherwise provided by this chapter. Property is payable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

§ 55.1-2502. Taking custody of intangible unclaimed property; general rules.

Unless otherwise provided in this chapter or by other law of the Commonwealth, intangible property is subject to the custody of the Commonwealth as unclaimed property if the conditions leading to a presumption of abandonment as described in §§ 55.1-2501, 55.1-2503, and 55.1-2505 through 55.1-2521 are satisfied and:

1. The last known address, as shown on the records of the holder, of the apparent owner is in the Commonwealth;

2. The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in the Commonwealth;

3. The records of the holder do not reflect the last known address of the apparent owner, and it is established that (i) the last known address of the person entitled to the property is in the Commonwealth or (ii) the holder is a domiciliary or a government or governmental subdivision or agency of the Commonwealth and has not previously paid the property to the state of the last known address of the apparent owner or other person entitled to the property;

4. The last known address, as shown on the records of the holder, of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary or a government or governmental subdivision or agency of the Commonwealth;

5. The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation, and the holder is a domiciliary or a government or governmental subdivision or agency of the Commonwealth; or

6. a. The transaction out of which the property arose occurred in the Commonwealth, and (i) the last known address of the apparent owner or other person entitled to the property is unknown or (ii) the last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property; and

b. The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property.

§ 55.1-2503. Bank deposits and funds in financial organizations.

A. Any demand, savings, or matured time deposit with a banking or financial organization, including deposits that are automatically renewable, and any funds paid toward the purchase of shares, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner has, within five years:

1. In the case of a deposit or ownership of shares, increased or decreased the amount of the deposit or the number of shares owned, or presented the passbook or other similar evidence of the deposit or ownership of

shares for the crediting of interest or dividends, or negotiated a check in payment of interest or dividends on a time deposit or ownership of shares;

2. Communicated in writing with the banking or financial organization concerning the property;

3. Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

4. Owned other property to which subdivision 1, 2, or 3 is applicable if the banking or financial organization communicated in writing with the owner with regard to the property that would otherwise be presumed abandoned under this section at the address to which communications regarding the other property regularly are sent;

5. Had another relationship with the banking or financial organization concerning which the owner has (i) communicated in writing with the banking or financial organization, or (ii) otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this section at the address to which communications regarding the other relationship regularly are sent; or

6. A deposit made with or purchase of shares in a banking or financial organization by a court or by a guardian pursuant to an order of a court or by any other person for the benefit of a person who was an infant at the time of the making of such deposit or purchase of shares, which deposit or ownership of shares is subject to withdrawal or transfer only upon the further order of such court or such guardian or other person, shall not be subject to the provisions of this chapter until one year after such infant attains the age of 18 years or until one year after the death of such infant, whichever occurs sooner. These accounts are not subject to dormant service charges.

B. Notwithstanding any other provision of this section, share accounts of a member of a state or federally chartered credit union that is subject to or covered by life savings insurance provided by the credit union at no additional charge to the member shall be presumed abandoned five years after the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or five years after the date the credit union discontinued the mailings to the member, whichever occurs earlier. Funds held or owing under the life savings insurance policy are presumed abandoned pursuant to § 55.1-2507.

C. For purposes of this section, "property" includes any interest or dividends thereon. No banking or financial organization may deduct any service charge or cease to accrue interest on any account from the date the account is declared dormant or inactive by such organization except in conformity with cessation of interest or service charges generally assessed upon active accounts and except as provided in this section. With respect to any property described in this section, a holder may not impose any charges due to dormancy or inactivity that differ from charges imposed on active accounts or cease to pay interest due to dormancy or inactivity that differs from the cessation of payment of interest on active accounts unless:

1. There is an enforceable contract between the holder and the owner of the property pursuant to which the holder may impose those charges or cease payment of interest;

2. For property in excess of $100, the holder, no more than three months prior to the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease; however, such notice need not be given with respect to charges imposed or interest ceased before July 1, 1984;

3. When the holder receives a request from the owner of the property to reverse or cancel dormancy charges or retroactively credit interest with respect to such property, the holder may at its option either:

a. Reverse or cancel dormancy charges or retroactively credit interest with respect to any such property, in which event the holder shall reverse or cancel dormancy charges or retroactively credit interest for all such property that becomes subject to the reporting requirements in § 55.1-2524 for the Department of the Treasury; or

b. Not reverse or cancel dormancy charges or retroactively credit interest with respect to any such property, in which event the holder shall not be required to reverse or cancel dormancy charges or retroactively credit interest for any such property that becomes subject to the reporting requirements in § 55.1-2524 for the Department of the Treasury; and

4. The holder may at its option reverse or cancel dormancy charges or retroactively credit interest with respect to any or all such property to correct a documented internal error without becoming required to reverse

or cancel dormancy charges or retroactively credit interest for all such property that becomes subject to the reporting requirements in § 55.1-2524 for the Department of the Treasury.

Notwithstanding any provision of this subsection to the contrary, a holder that is a state-chartered credit union may refund charges or reverse or cancel those charges or retroactively credit interest with respect to such property to the same extent that a federally chartered credit union is authorized to do so pursuant to applicable provisions of federal law.

D. Any automatically renewable property to which this section applies is matured upon the expiration of its initial time period. However, in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicates consent as specified in subsection A, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in subsection D of § 55.1-2524, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. Notwithstanding any other provision of this section to the contrary, any automatically renewable time deposit that has matured shall be presumed abandoned five years after the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or five years after the date the holder discontinued the mailings to the apparent owner, whichever occurs earlier. However, any automatically renewable time deposit for which no such statement or other notification or mailing is required to be sent by the banking or financial organization shall be presumed abandoned as otherwise provided in this section.

§ 55.1-2504. Traveler's checks and money orders.

A. Except as otherwise provided in this section, any sum payable on a traveler's check that has been outstanding for more than 15 years after its issuance is presumed abandoned unless the owner, within 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

Except as otherwise provided in this section, any sum payable on a money order or similar written instrument, other than a third-party bank check, that has been outstanding for more than seven years after its issuance is presumed abandoned unless the owner, within seven years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

B. No holder may deduct from the amount of any traveler's check or money order any charges imposed by reason of the failure to present those instruments for payment unless (i) there is a valid and enforceable written contract between the issuer and the owner of the property pursuant to which the issuer may impose those charges and (ii) the issuer regularly imposes those charges and does not regularly reverse or otherwise cancel those charges with respect to such property.

C. Any sum payable on a traveler's check, money order, or similar written instrument, other than a third-party bank check, described in this section shall not be subjected to the custody of the Commonwealth as unclaimed property unless:

1. The records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in the Commonwealth;

2. The issuer has its principal place of business in the Commonwealth, and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or

3. The issuer has its principal place of business in the Commonwealth, the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property.

D. Notwithstanding any other provision of this chapter, the provisions of subsection C relating to the requirements for subjecting certain written instruments to the custody of the Commonwealth apply to sums payable on traveler's checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

§ 55.1-2505. Checks, drafts, and similar instruments issued or certified by banking and financial organizations.

Any sum payable on a check, draft, or similar instrument, except money orders, traveler's checks, and other similar instruments subject to § 55.1-2504, on which a banking or financial organization is directly liable, including cashier's checks and certified checks, that has been outstanding for more than five years after it was

payable, or after its issuance if payable on demand, is presumed abandoned unless the owner, within five years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization.

A holder may not deduct from the amount of any instrument subject to this section any charges imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose those charges and the holder regularly imposes those charges and does not regularly reverse or otherwise cancel those charges with respect to such instruments.

§ 55.1-2506. Contents of safe deposit box or other safekeeping repository.

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in the Commonwealth in the ordinary course of the holder's business and all proceeds resulting from the lawful sale of this property shall be presumed abandoned if unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired.

§ 55.1-2507. Funds owing under life insurance policies.

A. Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, except that property described in subdivision C 2 is presumed abandoned if unclaimed for more than two years.

B. If a person other than the insured or annuitant is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

C. For purposes of this section, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is deemed matured and the proceeds due and payable if:

1. The company knows that the insured or annuitant has died; or

2. (i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based; (ii) the policy was in force at the time the insured attained, or would have attained, the limiting age specified in clause (i); and (iii) neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

D. For purposes of this section, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection A if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of the policy by the application of those provisions.

E. Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to locate the beneficiary and pay the proceeds to the beneficiary.

F. Commencing July 1, 1986, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of the Commonwealth shall request the following information:

1. The name of each beneficiary or, if the class of beneficiaries is named, the name of each current beneficiary in the class;

2. The address of each beneficiary; and

3. The relationship of each beneficiary to the insured.

§ 55.1-2508. Intangible personal property held by insurance corporation subject to § 55.1-2501.

An insurance corporation holding any other intangible personal property not covered by subsection A of § 55.1-2507 or § 55.1-2509 shall be otherwise subject to § 55.1-2501.

§ 55.1-2509. Unclaimed demutualization proceeds.

Unclaimed property payable or distributable in the course of the demutualization of an insurance company is presumed abandoned five years after the earlier of (i) the date of last contact with the policyholder or (ii) the date the property became payable or distributable. The report filed on November 1, 2003 will include demutualization distribution property for which there has been no policyholder contact for the five years prior to June 30, 2003.

§ 55.1-2510. Deposits held by utilities.

Any deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

§ 55.1-2511. Intangible interest in business association.

A. Any intangible interest in a business association, as evidenced by the stock records or membership records of the association, is presumed abandoned five years after the date of the most recent dividend or other distribution unclaimed by the apparent owner with respect to the stock or other interest or, if a dividend or other distribution has not been paid on the stock or other interest, or the stock or other interest is held pursuant to a plan that provides for the automatic reinvestment of dividends or other distributions, five years after the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverable or five years after the date the holder discontinued the mailings to the apparent owner, whichever occurs earlier. With respect to such interest, the business association shall be deemed the holder.

B. Any dividend or other distribution held for or owing to a person at the time the stock or other security to which such dividend or other distribution attaches is considered abandoned at the same time.

§ 55.1-2512. Refunds held by business associations.

Except to the extent otherwise ordered by a court or administrative agency of competent jurisdiction, any sum that a business association has been ordered to refund by a court or administrative agency that has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.

§ 55.1-2513. Property of business associations held in course of dissolution.

All intangible property distributable in the course of a voluntary or involuntary dissolution of a business association that remains unclaimed by the owner for more than one year after the date for specified final distribution is presumed abandoned.

§ 55.1-2514. Intangible personal property held in fiduciary capacity.

A. All intangible personal property, and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within five years after it became payable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with and prepared by the fiduciary or an employee of the fiduciary.

B. Funds in an individual retirement account, a retirement plan for self-employed individuals, or a similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable under this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

C. For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless such person's agreement with the business association provides otherwise. A person who is so deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

§ 55.1-2515. Gift certificates and credit balances.

A. Except as described in subsection B, a gift certificate or credit balance issued in the ordinary course of the issuer's business that has remained unclaimed by the owner for more than five years after such gift certificate or credit balance became payable is presumed abandoned.

B. The following property is exempt from the provisions of this chapter and shall not be assessed by the administrator as unclaimed property: (i) credit balances payable to a business association; (ii) outstanding checks resulting from or attributable to the sale of goods or services to a business association; (iii) promotional

incentives; and (iv) credits, gift certificates, coupons, layaways, and similar items, provided that such credits, gift certificates, coupons, layaways, and similar items are redeemable in merchandise, in services, or through future purchases.

§ 55.1-2516. Wages.

Unpaid wages, including wages represented by unpresented payroll checks owing in the ordinary course of the holder's business, that have remained unclaimed by the owner for more than one year after such unpaid wages became payable are presumed abandoned.

§ 55.1-2517. Intangible property held for owner by public agency.

All intangible property held for the owner by any government or governmental subdivision or agency, public corporation, or public authority that has remained unclaimed by the owner for more than one year after it became payable is presumed abandoned.

§ 55.1-2518. Property held by courts.

All intangible property held for the owner by any state or federal court that has remained unclaimed by the owner for more than one year after it became payable is presumed abandoned.

§ 55.1-2519. Responsibilities of general receiver and clerk.

The general receiver, if one has been appointed, and the clerk of each circuit court shall be responsible for identifying moneys held by them in their respective accounts that have remained unclaimed by the owner for more than one year after such moneys became payable and for petitioning the court to remit such money to the administrator. There shall be no obligation to report or remit funds deposited as compensation and damages in condemnation proceedings pursuant to § 25.1-237 prior to a final court order or pursuant to § 33.2-1019.

§ 55.1-2520. Employee benefit trust distribution.

A. All employee benefit trust distributions and any income or other increment thereon are abandoned to the Commonwealth under the provisions of this chapter if the owner has not, within 10 years after it became payable, accepted such distribution, corresponded in writing concerning such distribution, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary of the trust or custodial fund or administrator of the plan under which such trust or fund is established.

B. An employee benefit trust distribution and any income or other increment thereon shall not be presumed abandoned to the Commonwealth under the provisions of this chapter if, at the time such distribution becomes payable to a participant in an employee benefit plan, (i) such plan contains a provision for forfeiture or expressly authorizes the trustee to declare a forfeiture of a distribution to a beneficiary thereof who cannot be found after a period of time specified in such plan and (ii) the trust or fund established under the plan has not terminated prior to the date on which such distribution would become forfeitable in accordance with such provision.

§ 55.1-2521. Holder of tangible or intangible personal property may voluntarily report such property.

Any holder of tangible or intangible personal property the owner of which is unlocatable may voluntarily report the property to the administrator, prior to the statutory due dates, whereupon the property shall be presumed abandoned under this chapter.

Article 2.

Reciprocity for Property Presumed Abandoned or Escheated under Laws of Another State.

§ 55.1-2522. Certain property not presumed abandoned in the Commonwealth.

If specific property that is subject to the provisions of §§ 55.1-2501, 55.1-2503, 55.1-2507, 55.1-2511, 55.1-2513, 55.1-2514, 55.1-2520, and 55.1-2521 is payable to an owner whose last known address is in another state by a holder that is subject to the jurisdiction of that state, the specific property is not presumed abandoned in the Commonwealth and subject to this chapter if:

1. It may be claimed as abandoned or escheated under the laws of such other state; and

2. The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when payable to an owner whose last known address is within the Commonwealth by a holder that is subject to the jurisdiction of the Commonwealth.

§ 55.1-2523. Interstate agreements and cooperation.

A. The administrator may enter into agreements with other states to exchange information needed to enable the Commonwealth or another state to audit or otherwise determine unclaimed property to which the Commonwealth or another state may be entitled subject to a claim of custody. The administrator may by rule require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

B. To avoid conflicts between the administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the administrator shall, so far as is consistent with the purposes, policies, and provisions of this chapter, before adopting, amending, or repealing rules, advise and consult with administrators in other jurisdictions that enact substantially the Act and take into consideration the rules of administrators in other jurisdictions that enact the Act.

C. The administrator may join with other states to seek enforcement of the Act against any person who is or may be holding property reportable under the Act. At the request of another state, the Attorney General of the Commonwealth may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in the Commonwealth of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in bringing the action.

Similarly, the administrator may request that the Attorney General of another state, or any other person, bring an action in the other state in the name of the administrator. The Commonwealth shall pay all expenses, including attorney fees, in any such action, and such expenses shall not be deducted from the amount that is subject to the claim by the owner under this chapter.

Article 3.

Procedural and Administrative Matters.

§ 55.1-2524. Report and remittance to be made by holder of funds or property presumed abandoned; holder to exercise due diligence to locate owner.

A. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report and remit to the administrator with respect to the property as provided in this article. Reports containing 25 or more items shall be remitted in an electronic format as prescribed by the administrator. The administrator may waive this requirement when he determines that it creates an undue hardship.

B. The report shall be verified and shall include:

1. The name and social security or federal identification number, if known, and last known address, including zip code, if any, of each person appearing from the records of the holder to be the owner of any property of the value of $100 or more presumed abandoned under this chapter;

2. In the case of unclaimed funds of insurance corporations, the full name of the insured or annuitant and any beneficiary, if known, and the last known address according to the insurance corporation's records;

3. In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the administrator and any amounts owing to the holder;

4. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under $100 each may be reported in aggregate;

5. The date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

6. Other information that the administrator prescribes by rule as reasonably necessary for the administration of this chapter.

C. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

D. The report and remittance, including the remittance of unclaimed demutualization proceeds made pursuant to § 55.1-2509, shall be filed before November 1 of each year for the period ending June 30 of such year, but the report and remittance of insurance corporations shall be filed before May 1 of each year for the period ending December 31 of the previous year. When property is evidenced by certificate of ownership as set forth in § 55.1-2511, the holder shall deliver to the administrator a duplicate of any such certificate registered in the name "Treasurer of Virginia" or the Treasurer's designated nominee at the time of report and remittance. The administrator may postpone the reporting and remittance date upon written request by any person required to file a report.

E. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. All holders shall exercise due diligence, as defined in § 55.1-2500, at least 60 days prior to the submission of the report to ascertain the whereabouts of the owner if (i) the holder

has in its records an address for the apparent owner that the holder's records do not disclose to be inaccurate and (ii) the property has a value of $100 or more.

F. Verification shall be executed (i) if made by a partnership, by a partner; (ii) if made by an unincorporated association or private corporation, by an officer; and (iii) if made by a public corporation, by its chief fiscal officer.

§ 55.1-2525. Notices to be published by administrator.

A. The administrator shall cause to be published notice of the report filed under subsection D of § 55.1-2524 once each year in a newspaper of general circulation in the area in which the last known address of any person to be named in the notice is located. If no address is listed or if the address is outside of the Commonwealth, the notice shall be published in the area in which the holder of the abandoned property has his principal place of business.

B. The published notice shall be entitled "Commonwealth of Virginia Unclaimed Property List" and shall contain:

1. The names in alphabetical order and account numbers of persons listed in the report and entitled to notice within the area as specified in subsection A; and

2. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the administrator.

C. The administrator is not required to publish in such notice any item of less than $100 unless he deems such publication to be in the public interest.

§ 55.1-2526. Holder relieved of liability for property paid or delivered to administrator; payment to owner by holder; proceedings against prior holder; notice to administrator and Attorney General; reimbursement of holder.

A. Upon the payment or delivery of abandoned property to the administrator, the Commonwealth shall assume custody and shall be responsible for the safekeeping of such property. Any person who pays or delivers abandoned property to the administrator under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim that then exists or that thereafter may arise or be made in respect to the property. Any holder that has paid moneys to the administrator pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the administrator shall forthwith reimburse the holder for the payment.

B. In the event that legal proceedings are instituted against a prior holder in a court of the Commonwealth, or in any other state or federal court, by any other state claiming to be entitled to unclaimed funds or abandoned property previously paid or delivered to the administrator, such holder shall give written notice to the administrator and the Attorney General of the Commonwealth of such proceedings (i) within 10 days after service of process or (ii) at least 10 days before the return date on which an answer or similar pleading is required to be filed. The Attorney General may intervene or take such other action as he deems appropriate or necessary to protect the interests of the Commonwealth.

C. If the notice provided in subsection B is given by the holder and thereafter a judgment is entered against the holder for any amount paid to the administrator pursuant to the terms of this chapter, the administrator shall, upon being furnished with proof thereof, return to the holder the amount of such judgment, not to exceed, however, the amount of the abandoned property paid to the administrator.

D. Property removed from a safe deposit box or other safekeeping repository that is received by the administrator shall be subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The administrator shall make the reimbursement to the holder out of the proceeds remaining after the deduction of the administrator's selling cost.

§ 55.1-2527. Crediting of dividends, interest, or increments to owner's account.

Whenever property other than money is paid or delivered to the administrator under this chapter, the owner is entitled to receive from the administrator any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion of such property into money.

§ 55.1-2528. Periods of limitation.

A. The expiration of any period of time specified by statute or court order during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property

shall not prevent the money or property from being presumed abandoned property or affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the administrator.

B. Except as provided in subsection C, an action or proceeding shall not be maintained by the administrator to enforce this chapter more than five years after the earlier of (i) the date on which the holder identified the property on a report filed with the administrator, (ii) the date on which the holder first filed a report with the administrator wherein the holder should have but failed to report the property, or (iii) the date on which the holder filed a report with the administrator giving reasonable notice to the administrator of a dispute regarding the property.

C. An action or proceeding shall not be maintained by the administrator to enforce this chapter with respect to any property more than 10 years following the date on which such property first became reportable if the holder (i) filed a materially false or fraudulent report with the intent to evade delivery of property otherwise subject to this chapter or (ii) failed to file a report with the administrator.

§ 55.1-2529. Sale of abandoned property by administrator.

A. Except as provided in subsection C, all abandoned property other than money or other certificate of ownership delivered to the administrator under this chapter shall be sold by him to the highest bidder at public sale (i) in such city, within or outside the Commonwealth, as affords in his judgment the most favorable market for the property involved or (ii) through the use of electronic media in a format approved by the administrator. The administrator may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

B. Any sale held under this section within the Commonwealth shall be preceded by a single publication of notice of such sale at least three weeks in advance of the sale. Such notice shall be published in a newspaper of general circulation in the county or city where the property is to be sold. If any sale is to occur outside the Commonwealth, then the administrator may use such forms of notice or advertising as he deems necessary to constitute reasonable notice, including post, print, visual, telecommunications, electronic media, or any combination thereof. For the purposes of this section, any sale through the use of electronic media, including the Internet, shall be deemed to be a sale outside of the Commonwealth.

C. Securities listed on an established stock exchange shall be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the administrator deems advisable.

Unless the administrator deems it to be in the best interest of the Commonwealth to do otherwise, all securities delivered to the administrator shall be held for at least one year before the securities may be sold. If the administrator sells any securities before the expiration of the one-year period, any person making a claim pursuant to this chapter before the end of the one-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater. Any person making a claim pursuant to this chapter after the expiration of the one-year period is entitled to receive either the securities delivered to the administrator by the holder, if they still remain in the hands of the administrator, or the proceeds of the sale, but no person has any claim under this chapter against the Commonwealth, the holder, or any transfer agent, registrar, or other person acting for or on behalf of the holder for any appreciation in the value of the property occurring after delivery by the holder to the Commonwealth.

D. The purchaser of property at any sale conducted by the administrator pursuant to this chapter shall receive title to property purchased pursuant to subsections A or B and is entitled to ownership of property purchased pursuant to subsection C, free from all claims of the owner or previous holder thereof and of all persons claiming through or under such owner or previous holder. The administrator shall execute all documents necessary to complete the transfer of ownership.

E. If the administrator determines after investigation that any property delivered to him pursuant to this chapter has insubstantial commercial value, he may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the Commonwealth or any officer or against the holder for or on account of any action taken by the administrator with respect to the property pursuant to this subsection.

§ 55.1-2530. Securities received in name of owner.

Whenever the administrator receives securities under this chapter in the name of the owner, he shall take appropriate action to transfer the record of ownership of such securities into the title of the State Treasurer of the Commonwealth of Virginia as soon as practical.

§ 55.1-2531. Disposition of funds received under chapter; records to be kept by administrator.

A. All funds received under this chapter, including the proceeds from the sale of abandoned property under § 55.1-2529, shall be deposited by the administrator in the Literary Fund of the Commonwealth as soon as practical, except that the administrator shall retain in a separate trust fund a sum sufficient from which he shall make prompt payment of claims duly allowed by him as provided by subsection B. Before making the deposit, he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property, the name and last known address of each insured person or annuitant, and, with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due.

B. Before making any deposit to the credit of the Literary Fund, the administrator may deduct (i) any costs in connection with the sale of abandoned property, (ii) any costs of mailing and publication in connection with any abandoned property, (iii) operating expenses, and (iv) amounts required to make payments to other states, during the next fiscal year, through reciprocity agreements.

§ 55.1-2532. Filing claim to property or proceeds of sale of such property.

A. Any person claiming an interest in any property delivered to the Commonwealth under this chapter may file a claim to such property or to the proceeds from the sale of such property on a form prescribed by the administrator.

B. Notwithstanding any other provision of law, any person claiming an interest in any property delivered to the Commonwealth under this chapter for a reported owner who is deceased shall submit evidence of the claimant's entitlement to payment together with a form prescribed by the administrator. In order of preference, such evidence may include (i) a certificate of qualification as the executor or an order of appointment as the administrator or personal representative of the decedent's estate under the laws of the state of the decedent's domicile; (ii) if applicable, an affidavit authorizing the claimant to be the designated successor under the Virginia Small Estate Act (§ 64.2-600 et seq.), or its equivalent under the laws of the state of the decedent's domicile that names the claimant as the designated successor; or (iii) the order of distribution or the final accounting for a closed estate that reflects payment due in whole or in part to the claimant. When, in the absence of any such evidence, (a) the death of the reported owner occurred at least one year prior to filing the claim and (b) the amount claimed is $25,000 or less, exclusive of any interest owed pursuant to subsection C of § 55.1-2533, the administrator may allow the claimant to submit an affidavit stating the claimant's entitlement to payment in the absence of sufficient documentation, and the administrator may approve the claim in his discretion, returning or paying all or the appropriate share of the deceased owner's property to the claimant. The administrator may pay or deliver all of the deceased owner's property to a claimant who submits the prescribed affidavit evidencing his agreement to receive and distribute the property to the other rightful heirs or beneficiaries and acknowledging his assumption of liability to those beneficiaries or heirs for failure to do so.

C. Notwithstanding any other provision of law, when paying or delivering unclaimed property under subsection B to a claimant who is not authorized to represent the decedent's estate as the personal representative or the designated successor or the equivalent, the administrator is discharged and released to the same extent as if the administrator dealt with the authorized representative or designated successor for the decedent's estate. The administrator shall deny any subsequent claim to the same property. Any person subsequently claiming an equal or superior right to the deceased owner's property whose claim is denied by the administrator for this reason may seek redress from the claimant to whom payment was made.

D. The administrator shall develop and make available a plain English explanation of a person's right to make a claim, in accordance with the provisions of this section, for property delivered to the Commonwealth in cases where the reported owner of the property is deceased. The administrator shall also post such document on the Department of the Treasury's website.

§ 55.1-2533. Consideration of and hearing on claim by administrator; payment; interest.

A. The administrator shall consider any claim for property held by the administrator pursuant to the provisions of this chapter that is filed under this chapter and may hold a hearing and receive evidence concerning such claim. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

B. If the claim is allowed, the administrator shall make payment as soon as practical. The administrator is authorized to deduct from the claim the costs for notices, sales, and other related incurred expenses.

C. The administrator shall add interest at the rate of five percent or such lesser rate as the property earned while in the possession of the holder, compounded annually, to the amount of any claim paid to the owner, if the property claimed was interest-bearing to the owner while in the possession of the holder. If the holder fails to report an applicable rate of interest, the interest rate will be set at five percent or such lesser rate as determined by the one-year Treasury Constant Maturity Rate as published by the Board of Governors of the Federal Reserve System as of November 1 of the report year. Such interest shall begin to accumulate on the date the property is delivered to the administrator and shall cease on the date on which payment is made to the owner. No interest shall be payable for any period prior to July 1, 1981.

§ 55.1-2534. Judicial review of decision of administrator.

Any person aggrieved by an act or decision of the administrator with respect to a claim for property held by the administrator pursuant to the provisions of this chapter may commence an action in the circuit court of the county or city in which the property claimed is situated to establish his claim. The proceeding shall be brought within three years after the decision of the administrator or, if the administrator fails to act, within three years from the filing of the claim.

§ 55.1-2535. Election of administrator not to receive property or to postpone taking possession of funds.

The administrator, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported that he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within 120 days after filing the report required under § 55.1-2524, the administrator shall be deemed to have elected to receive the custody of the property.

§ 55.1-2536. Requests for verified reports and examinations of records.

A. Except as otherwise provided in this chapter, the administrator may require any person that has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

B. Except as otherwise provided in this chapter, the administrator may at reasonable times and upon reasonable notice examine the records of any person to determine whether the person has complied with the provisions of this chapter. The administrator may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this chapter. The administrator may examine all necessary records to determine the amount, if any, of property that would have been reportable or deliverable under this chapter for the 10 years prior to the fiscal year end preceding the opening of the examination; however, for any holder that has not previously filed any report under this chapter, the administrator may examine property presumed abandoned for report year 1985 and subsequent years.

C. If a holder fails to maintain the records required by § 55.1-2537 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the holder shall be required to report and pay such amounts as may reasonably be estimated from any available records.

D. The administrator may contract with a person who is not an employee of the Commonwealth to perform an audit or examination under this article; however, with respect to any holder that is domiciled in the Commonwealth or that maintains its principal place of business in the Commonwealth, no such contract shall (i) be on a contingency fee basis or (ii) permit statistical estimation without the consent of the holder.

§ 55.1-2537. Retention of records.

A. Every holder required to file a report under § 55.1-2524, shall retain all books, records, and documents necessary to establish the accuracy and compliance of such report for five years after the report is filed pursuant to subsection B of § 55.1-2524. If no report is filed, the holder shall retain such books, records, and documents for 10 years after the property becomes reportable, except to the extent that shorter time is provided in accordance with the Virginia Public Records Act (§ 42.1-76 et seq.), in accordance with subsection B, or by rule of the administrator. As to any property for which it has obtained the last known address of the owner, the holder shall maintain a record of the name and last known address of the owner for the same retention period.

B. Any business association that sells in the Commonwealth its traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in the Commonwealth, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

§ 55.1-2538. Confidentiality of information and records.

Any information or records required to be furnished to the Division of Unclaimed Property shall be confidential except as is otherwise necessary in the proper administration of this chapter.

§ 55.1-2539. Enforcement of chapter.

The administrator may bring an action in a court of competent jurisdiction to enforce this chapter. The administrator shall commence enforcement for compliance with the provisions of this chapter within the period specified in § 55.1-2528. The holder may waive in writing the protection of this section.

§ 55.1-2540. Interest and penalties.

A. Any person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the administrator interest at the same annual rate as is applicable to delinquent taxes under § 58.1-1812 on the property or value thereof from the date the property should have been paid or delivered. Such interest rate shall vary with the rate specified in § 58.1-1812.

B. Any person who does not exercise due diligence as defined in § 55.1-2500 shall pay a civil penalty not to exceed $50 for each account upon which due diligence was not performed.

C. Except as otherwise provided in subsection D, a holder that (i) fails to report, pay, or deliver property within the time prescribed by this chapter; (ii) files a false report; or (iii) fails to perform other duties imposed by this chapter without good cause shall pay to the administrator, in addition to interest as provided in subsection A, a civil penalty of $100 for each day the report, payment, or delivery is withheld or the duty is not performed, up to a maximum of the lesser of $10,000 or 25 percent of the value of the property that should have been but was not reported.

D. A holder that (i) willfully fails to report, pay, or deliver property within the time prescribed by this chapter; (ii) willfully fails to perform other duties imposed by this chapter without good cause; or (iii) makes a fraudulent report to the administrator shall pay to the administrator, in addition to interest as provided in subsection A, a civil penalty of $1,000 for each day the report, payment, or delivery is withheld or the duty is not performed, up to a maximum of the lesser of $50,000 or 100 percent of the value of the property that should have been but was not reported.

E. The administrator for good cause may waive, in whole or in part, interest under subsection A and penalties under subsections B, C, and D. All civil penalties shall be payable to the State Treasurer and credited to the Literary Fund.

§ 55.1-2541. Determinations; appeal procedures; regulations of administrator.

A. For the purposes of this section, "jeopardized by delay" means a finding that the applicant intends to undertake a wrongful act with the intent to prejudice, or to render ineffectual, future proceedings to enforce this chapter.

B. The administrator may adopt necessary regulations to carry out the provisions of this chapter.

C. If the administrator ascertains that any person has failed to pay or deliver abandoned property in accordance with the provisions of this chapter, he shall issue a written notice to such person demanding remittance of the property and payment of any penalties and interest prescribed by law. Every such notice shall be accompanied by a detailed explanation of the holder's right to secure an administrative or judicial review. The abandoned property, together with penalties and interest, if any, shall be remitted to the administrator within 90 days from the date notice is received by the holder unless the holder requests (i) an administrative review in accordance with regulations promulgated pursuant to subsection D or (ii) a judicial review in accordance with § 55.1-2534.

D. The administrator shall promulgate regulations pursuant to which any person (i) asserting ownership of property remitted to the Commonwealth under this chapter, (ii) required to pay or deliver abandoned property pursuant to this chapter, or (iii) otherwise aggrieved by a decision of the administrator may file an application for administrative appeal and correction of the administrator's determination.

E. On receipt of the application as provided in regulations promulgated pursuant to subsection D, or if regulations promulgated thereunder are not in effect, on receipt of an application requesting an administrative review by the State Treasurer, the administrator shall suspend collection activity until a final determination is issued by the State Treasurer, unless the administrator determines that collection would be jeopardized by delay. Interest shall continue to accrue in accordance with the provisions of § 55.1-2540, but no further penalty shall be imposed while collection activity is suspended.

F. If the State Treasurer is satisfied, by evidence submitted or otherwise, that there has been an erroneous or improper demand for the remittance of property, the State Treasurer shall order that the applicant be exonerated from the remittance of such portion as is erroneously or improperly demanded, if not already

collected, and that it be returned or refunded to the applicant, if already collected. The State Treasurer shall refrain from collecting a contested charge until he has made a final determination under this section unless he determines that collection may be jeopardized by delay.

G. Except as otherwise provided in regulations promulgated pursuant to subsection D, the State Treasurer shall issue a written determination to the applicant within 90 days of receipt of an application for correction, unless the applicant is notified that a longer period will be required. All determinations of the State Treasurer shall include a written finding of fact and supporting law, and all such determinations shall be publicly reported.

H. Following a determination by the State Treasurer, the applicant may apply (i) in the case of a claim for property by a purported owner, to the appropriate circuit court pursuant to § 55.1-2534 and (ii) in the case of a dispute between a holder and the State Treasurer, to the Circuit Court of the City of Richmond, within the time period established in § 55.1-2534.

§ 55.1-2542. Agreements to locate reported property; penalty.

A. It is unlawful for any person to seek or receive from another person or contract with another person for a fee or compensation for locating property that he knows has been reported or paid or delivered to the administrator pursuant to this chapter prior to 36 months after the date of delivery of the property by the holder to the administrator as required by this chapter.

B. No agreement entered into after 36 months from the required date of delivery of the property by the holder to the administrator is valid if a person thereby undertakes to locate property included in a report for a fee or other compensation exceeding 10 percent of the value of the recoverable property. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

C. State warrants that may be issued in payment and redemption of previously abandoned property or the liquidation proceeds of previously abandoned property may be issued in the discretion of the administrator directly to the person entitled to the money as the owner, heir, or legatee, or as fiduciary of the estate of the deceased owner, heir, or legatee, and not to a named attorney-in-fact, agent, or assignee or any other person regardless of a written instruction to the contrary. The administrator need not recognize nor is the administrator bound by any terms of a purported power of attorney or assignment that may be presented as having been executed by a person as the purported owner, heir, legatee, or fiduciary of the estate of a deceased owner of such abandoned property.

D. A person who violates subsection A or B is guilty of a misdemeanor, punishable by a fine not to exceed $1,000.

§ 55.1-2543. Property presumed abandoned or escheated under laws of another state.

This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to January 1, 1961.

§ 55.1-2544. Property held or payable pursuant to Title 51.1.

This chapter shall not apply to any funds or other property, tangible or intangible, held or payable pursuant to Title 51.1.

§ 55.1-2545. Construction of chapter.

This chapter shall be construed so as to effectuate its general purpose to make uniform the law of those states that enact it.

CHAPTER 26.

PROPERTY LOANED TO MUSEUMS.

§ 55.1-2600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Loaned property" means all museum property deposited on or after July 1, 2002, with a museum not accompanied by a transfer of title to the property.

"Museum" means an institution located in the Commonwealth and operated by a nonprofit corporation or public agency whose primary purpose is educational, scientific, or aesthetic and that owns, borrows, or cares for and studies, archives, or exhibits museum property.

"Museum property" means all tangible objects, animate and inanimate, under a museum's care that have intrinsic value to science, history, art, or culture, except for botanical or zoological specimens loaned to a museum for scientific research.

§ 55.1-2601. Status of loaned property; statute of limitations on recovery.

A. Except as may be otherwise provided in a written agreement between a lender and a museum, no action shall be brought against a museum to recover loaned property when more than five years have passed from (i) the receipt by the museum of written communication concerning the loaned property or (ii) any display of interest in the property by the lender as evidenced by a memorandum or other record on file prepared by an employee of the museum.

B. Loaned property shall be deemed to have been donated to the museum if no action to recover the property is initiated within one year after the museum gives notice of termination of the loan as provided in §§ 55.1-2604 and 55.1-2605.

C. Loaned property shall not be delivered to the Commonwealth, and shall be exempt from the provisions of Chapter 25 (§ 55.1-2500 et seq.), but shall pass to the museum if no person takes action under Chapter 2 (§ 64.2-200 et seq.) of Title 64.2.

§ 55.1-2602. Notice to lenders of the provisions of this chapter.

When a museum accepts a loan of property, the museum shall inform the lender in writing of the provisions of this chapter.

§ 55.1-2603. Status of title to property acquired from museum.

Any person who purchases property from a museum acquires good title to the property if the museum represents that it has acquired title to the property pursuant to § 55.1-2601.

§ 55.1-2604. Notice of termination of loan; content of notice.

A. If the property was loaned to the museum for an indefinite time, the museum may provide notice of termination of a loan of property at any time on the museum's website or by providing written notice of such termination to the lender, if known. If the property was loaned to the museum for a specified term, the museum may provide notice of termination of the loan in the same manner at any time after the expiration of the specified term.

B. Notices given under this section shall contain:

1. The name and address, if known, of the lender;

2. The date of the loan;

3. The name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan; and

4. Any other information deemed necessary by the museum.

§ 55.1-2605. Procedure for giving notice of termination of a loan of property; responsibility of owner of loaned property.

A. To give notice of termination of a loan of property, the museum shall mail a notice to the lender at the most recent address of the lender as shown on the museum's records pertaining to the loaned property. If the museum has no address in its records, or the museum does not receive written proof of receipt of the mailed notice within 30 days of the date the notice was mailed, the museum shall cause to be published notice at least once a week for three consecutive weeks in a newspaper of general circulation in the county or city in which the museum is located and in a newspaper of general circulation in the county or city of the lender's last known address if different from the county or city in which the museum is located.

B. For purposes of this section, if the loan of property was made to a branch of the museum, the museum shall be deemed to be located in the county or city where the branch is located. In all other cases, the museum shall be deemed to be located in the county or city in which its principal place of business is located.

C. The owner of property loaned to a museum shall notify the museum promptly in writing of any change of address or change in ownership of the property.

§ 55.1-2606. Acquiring title to undocumented property.

A. A museum shall have the authority to acquire legal title to undocumented property if the museum can verify through written records that it has held such property for five years or longer, during which period no valid claim to the property has been asserted and no person has contacted the museum regarding the property, by complying with the following procedure:

1. The museum shall cause to be published a notice once a week for two consecutive weeks in a newspaper of general circulation in the county or city in which the museum is located and in a newspaper of general circulation in the county or city of the lender's last known address if different from the county or city in which the museum is located. The notice shall include:

a. A brief and general description of the undocumented property;

b. The date or approximate date of the loan or acquisition of the property by the museum, if known;

c. Notice of the museum's intent to claim title to the property if no valid claims are made within 65 days following the date of the first publication of the notice under this subdivision 1;

d. The name, address, and telephone number of the representative of the museum to contact for more information or to make a claim; and

e. If known, the name and last known address of the lender.

2. If no valid claims have been made by the end of the 65-day period following the date of the first publication of the notice under subdivision 1 c, the museum shall cause to be published a second notice once a week for two consecutive weeks in a newspaper of general circulation in the county or city in which the museum is located and in a newspaper of general circulation in the county or city of the lender's last known address if different from the county or city in which the museum is located. The second notice shall include:

a. A brief and general description of the undocumented property;

b. The date or approximate date of the loan or acquisition of the property by the museum, if known;

c. Notice that the museum claims title to the property as of the date of the end of the 65-day period following the date of the first publication of the notice under subdivision 1; and

d. If known, the name and last known address of the lender.

B. Upon compliance with the requirements set forth in subsection A, clear and unrestricted title is transferred, as of the date specified in subdivision A 1 c, to the museum and not to the Commonwealth.

§ 55.1-2607. Status of property loaned to or deposited with museum prior to July 1, 2002.

Except as otherwise provided in a written agreement between a lender and a museum, property loaned to or deposited with a museum prior to July 1, 2002, may be discarded or transferred to another museum located in Virginia, provided that (i) the notice provisions of §§ 55.1-2604 and 55.1-2605 have been complied with and (ii) such property is held by the museum receiving the transfer for at least three years before it sells or disposes of such property.

CHAPTER 27.

DRIFT PROPERTY.

§ 55.1-2700. Who is entitled to drift property.

When any property other than abandoned watercraft has drifted on any of the waters of the Commonwealth and is deposited and left on the lands of any person other than the owner of such property, and there is no indicia of ownership, the owner of such land shall, as against all persons other than the owner of such property, be deemed and treated, and have the same rights and remedies relating thereto, as such owner of such property.

§ 55.1-2701. Conditions on which owner may remove drift property.

The owner of property described in § 55.1-2700, after he has paid to the owner of the land a just compensation for any proper care, labor, or expense bestowed, done, or incurred by him for such property, may enter upon the land and, doing as little injury as possible, remove the property, but shall pay the owner of the land for any damage caused to him by such entry and removal.

§ 55.1-2702. When owner of land may sell drift property; owner of property entitled to proceeds after payment of expenses, etc.

If the owner of drift property described in § 55.1-2700 does not, within three months from the time the property was so deposited, remove or demand the property from the owner of the land, the owner of the land may sell the property or otherwise convert it to his own use, provided that the owner of the land, after deducting a just compensation for any proper care, labor, or expense bestowed, done, or incurred by him for the property from the amount received by him as the price thereof, or the actual value thereof at the time of such sale or other conversion, shall pay to the owner of the property, if he elects to receive it, the residue of the price or of the actual value, as the case may be. The owner of the property, after he has demanded such residue and proved by the affidavit of some other person, or by a competent witness, his right thereto, or offered to prove such right, and if the owner of the land has refused or declined to inspect or hear the evidence thereof, (i) may recover such residue, when the property has been sold, as money received for his use; (ii) may recover such residue, when the property has not been sold, as the price of goods sold by the owner of the property to the owner of the land; or (iii) may have his action of trover to the extent of such residue.

§ 55.1-2703. Right of property to be proved.

In any action relating to the ownership of any property described in § 55.1-2700, the person, other than the owner of such land, claiming to be the owner of the property must prove his ownership in order to sustain his claim.

CHAPTER 28.

TRESPASSES; FENCES.

Article 1.

Electric Fences.

§ 55.1-2800. Definition.

As used in this article, "electric fence" means a fence designed to conduct electric current along one or more wires of such fence so that a person or animal touching any such wire or wires will receive an electric shock.

§ 55.1-2801. Unlawful to sell, distribute, construct, install, maintain, or use certain electric fences upon agricultural land.

A. It is unlawful for any person to sell, distribute, construct, install, maintain, or use upon any land used for agricultural purposes or, for any person exercising supervision or control over any such land, to permit any other person to construct, install, maintain, or use any electric fence energized with an electric charge unless the charge is regulated by a controlling device. Except as otherwise provided in this article, such controlling device shall display the approved label of and shall conform to the safety standards promulgated by the Underwriters Laboratories, Inc., in its publication number UL69, dated June 30, 2009, and entitled "Standard for Safety for Electric-Fence Controllers," as the same may from time to time be supplemented, or shall display the approved label of and meet the safety standards promulgated by the International Electrotechnical Commission in its publication IEC 60335-2-76, second edition (BS EN 69335-2-76), as the same may from time to time be supplemented.

B. No metallically continuous fence or set of electrically connected fences shall be supplied by more than one controlling device.

C. Any controlling device shall be suitably grounded when placed in service.

§ 55.1-2802. Unlawful to sell other controlling devices unless they meet certain standards.

A. A controlling device that does not conform to the requirements of § 55.1-2801 shall not be sold, distributed, constructed, installed, maintained, or used unless it meets the following standards:

1. A peak-discharge-output type controlling device that delivers intermittent current of a value not in excess of four milliampere-seconds for a maximum "on" period of two-tenths second and a minimum "off" period of three-quarters second. The mean value of the peak output from such device shall progressively decrease from four milliampere-seconds at maximum "on" periods of both two-tenths and one-tenth second to three and two-tenths milliampere-seconds at six-hundredths second, one and nine-tenths milliampere-seconds at three-hundredths second, and consequently to shorter "on" periods as output current increases.

2. A sinusoidal-output type controlling device that delivers an intermittent current of a value not in excess of five milliamperes for a maximum "on" period of two-tenths second and a minimum "off" period of nine-tenths second. The effective value of the output from such device may increase as the "on" period decreases, increasing from 40 milliamperes for one-tenth second to 57 milliamperes for five-hundredths second, and 65 milliamperes for twenty-seven thousandths second.

3. Any other type of controlling device that delivers a maximum intermittent current output of a value not in excess of four milliampere-seconds for a maximum "on" period of two-tenths second and a minimum "off" period of nine-tenths second.

B. Notwithstanding the provisions of subsection A, no electric fence controlling device shall be sold, distributed, constructed, installed, maintained, or used that will permit for longer than one second an uninterrupted electric current on the fence with an effective value in excess of five milliamperes when the load, including the measuring device, is not less than 450 ohms nor more than 550 ohms.

§ 55.1-2803. Penalty.

Any person who violates any provision of this article is guilty of a Class 1 misdemeanor.

Article 2.

What Constitutes Lawful Fence.

§ 55.1-2804. Description of lawful fence.

Every fence shall be deemed a lawful fence as to any domesticated livestock that could not creep through such fence, if it is:

1. At least five feet high, including, if the fence is on a mound, the mound to the bottom of the ditch;

2. Made of barbed wire, at least 42 inches high, consisting of at least four strands of barbed wire, firmly fixed to posts, trees, or other supports substantially set in the ground, spaced no farther than 12 feet apart

unless a substantial stay or brace is installed halfway between such posts, trees, or other supports to which such wires are also fixed;

3. Made of boards, planks, or rails, at least 42 inches high, consisting of at least three boards firmly attached to posts, trees, or other supports substantially set in the ground;

4. At least three feet high, if such fence is within the limits of any town whose charter neither prescribes, nor gives to the town council power to prescribe, what shall constitute a lawful fence within such corporate limits; or

5. Any other fence, except as otherwise described in this section, if it is:

a. At least 42 inches high;

b. Constructed from materials sold for fencing or consisting of systems or devices based on technology generally accepted as appropriate for the confinement or restriction of domesticated livestock; and

c. Installed pursuant to generally acceptable standards so that applicable domesticated livestock cannot creep through the same.

A cattle guard reasonably sufficient to turn all kinds of livestock shall also be deemed a lawful fence as to any domesticated livestock.

Nothing contained in this section shall affect the right of any such town to regulate or forbid the running at large of cattle and other domestic animals within its corporate limits.

The Board of Agriculture and Consumer Services may adopt regulations regarding lawful fencing consistent with this section to provide greater specificity as to the requirements of lawful fencing. The absence of any such regulation shall not affect the validity or applicability of this section as it relates to what constitutes lawful fencing.

§ 55.1-2805. Proceeding to declare stream of water or canal a lawful fence.

A. The circuit court of any county, upon a petition of any owner or tenant of lands on any stream of water or canal, may declare and establish such stream or canal, or any part of either within the limits and jurisdiction of the county, a lawful fence as to any domesticated livestock. Notice of the application shall be given by posting a copy of the petition at the front door of the courthouse and at two or more public places at or near the stream or canal to which the petition applies, for 30 days, and by publishing such notice once a week for four successive weeks in a newspaper of general circulation in such county. At or before the trial of the cause, any person interested may enter himself a defendant.

B. The court may, upon petition and notice of any person interested, revoke or alter any order made under subsection A, but such order shall not be made within one year from the date of the original and shall not take effect until six months after it is made.

§ 55.1-2806. Boundary lines of certain low grounds on James River a lawful fence.

The owners and occupants of low grounds on either side of the James River in Albemarle, Buckingham, and Goochland Counties, enclosed by lawful fences on the back and hill lands, need not keep up any fence on the boundary lines running across the low grounds to the river, and such boundary lines shall be deemed a lawful fence, except where public roads cross the river or run parallel with its banks.

§ 55.1-2807. Statutes declaring watercourses lawful fences continued.

All acts declaring any river, stream, or watercourse, or any part thereof, or any boundary in any county, a lawful fence, or authorizing any court so to declare the same, or enacting a special fence law for any county or any part thereof, and all acts relating to the making or repairing of division fences in any county or in any part thereof that may be in force on the day before the Code of 1887 took effect, shall continue in force.

Article 3.

Cattle Guards and Gates Across Rights-of-Way.

§ 55.1-2808. Property owner may place cattle guards or gates across right-of-way.

Any owner of property on which there is a road or way, not a public road, a highway, a street, or an alley, over which an easement exists for ingress and egress of others may place cattle guards or gates across such way when required for the protection of livestock.

§ 55.1-2809. Persons having easement may replace gate with cattle guard; maintenance and use thereof; deemed lawful gate.

Any person having an easement of right-of-way across the lands of another may, at his own expense, replace any gate thereon with a substantial cattle guard sufficient to turn livestock. Such cattle guards shall be maintained by the owner of the easement, who shall be responsible for keeping such cattle guards at all times in sufficient condition to turn livestock. If a cattle guard is rendered inoperative by inclement weather, the

easement owner shall utilize and maintain any reasonable alternative method sufficient to turn livestock from the inoperative cattle guard until such cattle guard is rendered operative again. If the gate to be replaced is needed or used for the orderly ingress and egress of equipment or animals thereover, then such persons acting under the authority of this section shall construct such cattle guards so as to allow such ingress and egress or, if such easement is of sufficient width, may place such cattle guard adjacent to such gate.

Such a cattle guard shall be deemed a lawful gate and not an interference with such easement.

Article 4.

Trespass in Crossing Lawful Fence.

§ 55.1-2810. Damages for trespass by animals; punitive and double damages.

A. If any domesticated livestock enters into any grounds enclosed by a lawful fence, as defined in §§ 55.1-2804 through 55.1-2807, the owner or manager of any such animal shall be liable for the actual damages sustained.

B. Punitive damages may be awarded but shall not exceed $20 in any case.

C. For every second and subsequent trespass, the owner or manager of such animal shall be liable for double damages, both actual and punitive.

§ 55.1-2811. Lien on animals.

If the court enters judgment for the owner or tenant of the grounds enclosed by a lawful fence pursuant to § 55.1-2810, the landowner shall have a lien upon such animal. Upon entry of the judgment, the court shall issue a writ of fieri facias pursuant to § 8.01-478, and the animal found to have trespassed shall be levied upon by the officer to whom such execution was issued, who shall sell such animal, as provided in Chapter 18 (§ 8.01-466 et seq.) of Title 8.01.

§ 55.1-2812. Impounding animals.

Whenever any animal is found trespassing upon any grounds enclosed by a lawful fence, the owner or tenant of such enclosed grounds shall have the right to take up and impound such animal until the damages provided for pursuant to this article have been paid, or until such animal is taken under execution by the officer as provided by § 55.1-2811. The costs of taking up and impounding such animal shall be estimated as a part of the actual damage.

§ 55.1-2813. Duty to issue warrant when animal impounded.

An owner or tenant of lands trespassed upon by any domesticated livestock, within three days after the taking up and impounding such animal unless the damages are otherwise settled, shall apply to a person authorized to issue warrants of the county or city in which such land is situated for a warrant for the amount of damages claimed by him. The court, or the clerk thereof, shall issue such warrant, to be made returnable at as early a date, but not less than three days after such issuance, as shall be deemed best by him; and upon the hearing of the case the judge shall give such judgment as is deemed just and right.

Article 5.

No-Fence Law.

§ 55.1-2814. How governing body of county may make local fence law.

The board of supervisors or other governing body in any county, after publishing notice as required by subsection F of § 15.2-1427, may, by ordinance, declare the boundary line of each lot or tract of land or any stream in such county, any magisterial district of such county, or any selected portion of such county, to be a lawful fence as to any or all domesticated livestock, or may declare any other kind of fence for such county, magisterial district, or selected portion of the county than as prescribed by § 55.1-2804 to be a lawful fence, as to any or all of such animals.

§ 55.1-2815. Effect of such law on certain fences.

A declaration made by ordinance adopted pursuant to § 55.1-2814 shall not apply to relieve the adjoining landowners from making and maintaining their division fences, as defined by § 55.1-2804; however, Article 6 (§ 55.1-2821 et seq.) shall apply to such division fences.

§ 55.1-2816. Application to railroad companies.

No action taken under the provisions of § 55.1-2814 shall relieve any railroad company of any duty or obligation imposed on every such company by § 56-429, or imposed by any other statute now in force, in reference to fencing their lines of railway and rights-of-way.

§ 55.1-2817. No authority to adopt more stringent fence laws.

Nothing in § 55.1-2814 shall authorize or require the boards of supervisors or other governing bodies of counties to declare a more stringent fence as a lawful fence for any county, magisterial district, or selected portion of any county than as prescribed by § 55.1-2804.

§ 55.1-2818. Effect on existing fence laws or no-fence laws.

Nothing in § 55.1-2814 shall repeal the existing fence laws in any county, magisterial district, or selected portion of any county, until changed by the board of supervisors or other governing body, by ordinance and in accordance with the provisions thereof, nor shall the provisions of § 55.1-2814 apply to any county, magisterial district, or selected portion of any county in which the no-fence law is now in force, if such no-fence law exists otherwise than in an ordinance adopted by the board of supervisors or other governing body of such county entered pursuant to § 55.1-2814.

§ 55.1-2819. Lands under quarantine.

The boundary line of each lot or tract of land in any county in the Commonwealth that is under quarantine shall be a lawful fence as to any and all domesticated livestock.

§ 55.1-2820. When unlawful for animals to run at large.

It is unlawful for the owner or manager of any domesticated livestock to permit any such animal, as to which the boundaries of lots or tracts of land have been or may be constituted a lawful fence, to run at large beyond the limits of his own lands within the county, magisterial district, or portion of such county in which such boundaries have been constituted and are a lawful fence.

Article 6.

Division Fences.

§ 55.1-2821. Obligation to provide division fences.

Adjoining landowners shall build and maintain, at their joint and equal expense, division fences between their lands, unless one of them chooses to let his land lie open or unless they agree otherwise.

§ 55.1-2822. When no division fence has been built.

If no division fence has been built, either one of the adjoining landowners may give notice in writing of his desire and intention to build such fence to the landowner of the adjoining land, or to his agent, and require him to build his half of such fence. The landowner so notified may, within 10 days after receiving such notice, give notice in writing to the person so desiring to build such fence, or to his agent, of his intention to let his land lie open. If the landowner giving the original notice subsequently builds such division fence and the landowner who has so chosen to let his land lie open, or his successors in title, subsequently encloses his land, he, or his successors, shall be liable to the landowner who built such fence, or to his successors in title, for one-half of the value of such fence at the time such land was so enclosed, and such fence shall thereafter be deemed a division fence between such lands.

If, however, the person so notified fails to give notice of his intention to let his land lie open, and fails to agree, within 30 days after being so notified, to build his half of such fence, he shall be liable to the person who builds the fence for one-half of the expense, and such fence shall thereafter be deemed a division fence between such lands.

Notwithstanding the provisions of this section, no successor in title shall be liable for any amount prior to the recordation and proper recordation of the notice in the clerk's office of the county in which the land is located.

§ 55.1-2823. When division fence already built.

When any fence (i) that has been built and used by adjoining landowners as a division fence, or any fence that has been built by one landowner and the other landowner is afterwards required to pay half of the value or expense of such fence under the provisions contained in this article, and (ii) that has thereby become a division fence between such lands, becomes out of repair to the extent that it is no longer a lawful fence, either one of such adjoining landowners may give written notice to the other, or to his agent, of his desire and intention to repair such fence and require him to repair his half of such fence. If the landowner receiving written notice fails to repair his half within 30 days after being so notified, the one giving such notice may then repair the entire fence so as to make it a lawful fence, and the other shall be liable to him for one-half of the expense of such repairs.

§ 55.1-2824. Recovery of amount due in connection with division fence.

Any sum that may be due and payable by one adjoining landowner to another in pursuance of any of the provisions of §§ 55.1-2822 and 55.1-2823 may be recovered by action or warrant in debt, according to the jurisdictional amount.

§ 55.1-2825. Requirements for agreement to bind successors in title; subsequent owners.

No agreement made between adjoining landowners, with respect to the construction or maintenance of the division fence between their lands, shall be binding on their successors in title unless it (i) is in writing and specifically so state, (ii) is recorded in the deed book in the clerk's office of the county in which the land is located, and (iii) is properly indexed as deeds are required by law to be indexed.

If any notice, as required by § 55.1-2822 or 55.1-2823 is recorded in the deed book in the clerk's office of the county in which the land is located and is properly indexed as deeds are required by law to be indexed, then any subsequent owners of such land shall be liable for any sum that may be due pursuant to § 55.1-2824.

§ 55.1-2826. How notice given.

Any notice required to be given pursuant to this article shall be given to the landowner, if he resides in the county in which the land lies; otherwise, it may be given to such person as, under the laws of the Commonwealth, would be his agent or to any person occupying such land as tenant of the landowner, who shall, for the purposes of this article, be deemed the agent of such landowner.

Article 7.

Special Provisions for Unincorporated Communities.

§ 55.1-2827. Courts to fix boundaries of villages to prevent animals from running at large.

The circuit court of any county in which is situated any village or unincorporated community having within defined boundaries a population of 300 or more shall have jurisdiction to fix the boundaries of such village or unincorporated community for the purpose of preventing domesticated livestock from running at large within such boundaries.

§ 55.1-2828. Petition for action to fix boundaries of village or unincorporated community.

Twenty or more landowners residing within the boundaries referred to in § 55.1-2827 may file a petition signed by them requesting that the boundaries of such village or unincorporated community be fixed for the purposes of § 55.1-2827. Notice of the intention to file such petition, stating the date on which the petition will be filed, and such notice shall be (i) posted at the front door of the courthouse of such county, and at three or more conspicuous places within such boundaries and (ii) published once a week for two successive weeks in a newspaper having a general circulation in the county where the village or unincorporated community is located, at least 10 days before the day on which such petition is to be presented. Such petition shall state with reasonable certainty the boundaries within which it is desired to prohibit such animals from running at large, that at least 300 persons reside within such boundaries, and that a majority of the landowners residing therein are in favor of prohibiting such animals from running at large.

§ 55.1-2829. Entry of order if petition not contested.

A petition filed pursuant to § 55.1-2828, if verified by the oath of one or more of the petitioners, shall be prima facie evidence of the facts stated therein, and the court without further evidence shall proceed to enter the order fixing the boundaries of the village or unincorporated community unless such petition is contested.

§ 55.1-2830. Procedure in case of contest.

Any person having a lawful interest in any land within the boundaries referred to in any petition to fix the boundaries of a village or unincorporated community who wishes to contest such petition may intervene in such action as a defendant. In case of such contest, the judge shall hear the evidence and, if in doubt as to the facts, may appoint one or more persons to canvass such community and report to the court the number of persons residing within such boundaries, the names of all the landowners residing therein, and whether such landowners are for or against the petition.

§ 55.1-2831. Order of court.

The court shall enter an order fixing the boundaries of any village or unincorporated community having within defined boundaries a population of 300 or more for the purpose of preventing domesticated livestock from running at large within such boundaries if (i) in the case of a contested petition, it appears from the evidence or from a report, if any is required pursuant to § 55.1-2830, that at least 300 persons reside within the boundaries referred to in a petition filed pursuant to § 55.1-2828 and that a majority of the landowners residing therein are in favor of prohibiting domesticated livestock from running at large or (ii) in the case of an uncontested petition, on the basis of the evidence presented in the petition itself.

§ 55.1-2832. Animals shall not run at large after entry of order.

After the expiration of 10 days from the date of entering an order pursuant to § 55.1-2831, it is unlawful for any domesticated livestock to run at large within such boundaries, and any person owning or having charge of any such animal who permits such livestock to run at large within such boundaries is guilty of a Class 4

misdemeanor. Each day such animal is permitted to run at large constitutes a separate offense, and any such animal found running at large upon any street, alley, road, or other public ground within such boundaries may be taken up and impounded by any person who may retain such animal in his custody until the expense of keeping such animal is paid.

§ 55.1-2833. Costs.

If the petition is uncontested, the costs shall be borne by the petitioner; if it is contested, costs shall be awarded to the prevailing party.

§ 55.1-2834. Owner of domesticated livestock liable for trespasses.

If any domesticated livestock, as to which the boundaries of the lots or tracts of land in any county, magisterial district, or selected portion of such county constitute a lawful fence, are found going at large within such county, district, or portion of such county, or upon the lands of any person other than the owner, the owner or manager of such animals shall be liable for all damage or injury done by such animals to the owner of the crops or lands upon which they trespass, whether the animals wander from the premises of their owner in the county in which the trespass was committed or from another county, provided that when the boundaries of lots or tracts of land in only one of two adjoining counties constitutes a lawful fence, and any of such animals escapes across the line or boundary of the two counties, the owner of such animal shall not be liable to the fine imposed by subsection B of § 55.1-2810, nor for any trespass committed by such animal upon the lands lying next to such line or boundary, nor to a forfeiture of the animal, unless the land upon which the trespass is alleged to have been committed is enclosed, as provided in § 55.1-2804.

Article 8.

Cutting Timber.

§ 55.1-2835. Damages recoverable for timber cutting.

If any person, firm, or corporation encroaches and cuts timber, except when acting prudently and under bona fide claim of right, the owner of such timber shall, in addition to all other remedies afforded by law, have the benefit of a right to, and a summary remedy for recovery of, damages in an amount as specified in this article and recovered as provided for in this article.

If the trespass is proven, the defendant shall have the burden of proving that he acted prudently and under a bona fide claim of right.

§ 55.1-2836. Procedure for determination of damage.

A. The owner of the land on which a trespass as described in § 55.1-2835 was committed shall have the right, within 30 days after the discovery of such trespass and the identity of the trespasser, to notify the trespasser and to appoint an experienced timber estimator to determine the amount of damages. For the purposes of determining damages, the value of the timber cut shall be calculated by first determining the value of the timber on the stump. Within 30 days after receiving notice of the alleged trespass and of the appointment of such estimator, the alleged trespasser, if he does not deny the fact of trespass, shall appoint an experienced timber estimator to participate with the one already so appointed in the estimation of damages. If the two estimators cannot agree, they shall select a third person, experienced and disinterested, who shall make a decision that shall be final and conclusive and not subject to appeal. The estimation of damages and the rendition of statement must be effected within 30 days from the receipt of notice of appointment, by the trespasser, of an estimator.

If the alleged trespasser fails to appoint an estimator within the prescribed time, or to notify within such time that the allegation of the fact of trespass is disputed, the estimator appointed by the injured party may make an estimate, and collection or recovery may be had accordingly.

B. Any person who (i) severs or removes any timber from the land of another without legal right or permission or (ii) authorizes or directs the severing or removal of timber or trees from the land of another without legal right or permission shall be liable to pay to the rightful owner of the timber three times the value of the timber on the stump and shall pay to the rightful owner of the property the reforestation costs incurred not to exceed $450 per acre, the costs of ascertaining the value of the timber, any directly associated legal costs, and reasonable attorney fees incurred by the owner of the timber as a result of the trespass.

§ 55.1-2837. When person damaged may proceed in court.

If the amount specified in subsection B of § 55.1-2836 is not paid within 30 days after rendition of statement, the person upon whose land the trespass occurred may proceed for judgment in the amount of payment as specified in § 55.1-2836.

If upon receiving notice of the alleged trespass and of the appointment of an estimator, the person so receiving notice does not admit the fact of trespass, he may decline to appoint an estimator and notify the other party to such effect, together with his reason for refusing to appoint an estimator, and in such case the aggrieved party may proceed in the appropriate court.

§ 55.1-2838. Larceny of timber; penalty.

A. Any person who knowingly and willfully takes, steals, and removes from the lands of another any timber growing, standing, or lying on the lands is guilty of larceny. Any person so convicted shall be ordered to pay restitution calculated pursuant to § 55.1-2836.

B. In a criminal prosecution pursuant to subsection A, it shall be prima facie evidence of the intent to steal the timber if the timber was harvested or removed from property marked with readily visible paint marks not more than 100 feet apart on trees or posts along the property line, where the paint marks were vertical lines at least two inches in width and at least eight inches in length and the center of the mark was not less than three feet nor more than six feet from the ground or normal water surface.

§ 55.1-2839. Effect of article.

Nothing in this article shall have the effect of precluding any compromise or agreed settlement that the parties in dispute may effect as to the civil remedies provided by this article, nor of barring any other remedy provided for by law.

CHAPTER 29.

VIRGINIA SELF-SERVICE STORAGE ACT.

§ 55.1-2900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Default" means the failure to perform on time any obligation or duty set forth in the rental agreement or this chapter.

"Last known address" means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address.

"Leased space" means the individual storage space at the self-service facility that is leased or rented to an occupant pursuant to a rental agreement.

"Occupant" means a person, his sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility under a rental agreement.

"Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his agent, or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement.

The owner of a self-service storage facility is not a warehouseman as defined in § 8.7-102, unless the owner issues a warehouse receipt, bill of lading, or other document of title for the personal property stored, in which event, the owner and the occupant are subject to the provisions of Title 8.7 dealing with warehousemen.

"Personal property" means movable property not affixed to land and includes goods, wares, merchandise, and household items and furnishings.

"Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility.

"Self-service storage facility" means any real property designed and used for renting or leasing individual storage spaces, other than storage spaces that are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants thereof have access for storing or removing their personal property. No occupant shall use a self-service storage facility for residential purposes.

"Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

§ 55.1-2901. Lien on personal property stored within a leased space.

A. The owner shall have a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale pursuant to this chapter. Such lien shall attach as of the date the personal property is stored within each leased space and, to the extent that the property remains stored within such leased space, as provided in this subsection, shall be superior to any other existing liens or security interests to the extent of $250 or, if the leased space is a climate-controlled facility, $500. In addition, such lien shall extend to the proceeds, if any, remaining after the satisfaction of any perfected liens, and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

B. In the case of any watercraft that is subject to a lien, previously recorded on the certificate of title, the owner, so long as the watercraft remains stored within such leased space, shall have a lien on such watercraft as provided in this subsection to the extent of $250 or, if the leased space is a climate-controlled facility, $500. In addition, such lien shall extend to the proceeds, if any, remaining after the satisfaction of any recorded liens, and the owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

C. The rental agreement shall contain a statement, in bold type, advising the occupant of the existence of such lien and that the personal property stored within the leased space may be sold to satisfy the lien if the occupant is in default.

D. In the case of any motor vehicle that is subject to a lien, previously recorded on the certificate of title, the owner, so long as the motor vehicle remains stored within such leased space, shall have a lien on such vehicle in accordance with § 46.2-644.01.

§ 55.1-2902. Enforcement of lien.

A. 1. If any occupant is in default under a rental agreement, the owner shall notify the occupant of such default by regular mail at his last known address, or, if expressly provided for in the rental agreement, such notice may be given by electronic means. If such default is not cured within 10 days after its occurrence, then the owner may proceed to enforce such lien by selling the contents of the occupant's unit at public auction, for cash, and apply the proceeds to satisfaction of the lien, with the surplus, if any, to be disbursed as provided in this section. Before conducting such a public auction, the owner shall notify the occupant as prescribed in subsection C and shall advertise the time, place, and terms of such auction in such manner as to give the public notice.

2. In the case of personal property having a fair market value in excess of $1,000, and against which a creditor has filed a financing statement in the name of the occupant at the State Corporation Commission or in the county or city where the self-service storage facility is located or in the county or city in the Commonwealth shown as the last known address of the occupant, or if such personal property is a watercraft required by the laws of the Commonwealth to be registered and the Department of Game and Inland Fisheries shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified mail, at the address on the financing statement or certificate of title, at least 10 days prior to the time and place of the proposed public auction.

If the owner of the personal property cannot be ascertained, the name of "John Doe" shall be substituted in the proceedings provided for in this section and no written notice shall be required. Whenever a watercraft is sold pursuant to this subsection, the Department of Game and Inland Fisheries shall issue a certificate of title and registration to the purchaser of such watercraft upon his application containing the serial or motor number of the watercraft purchased, together with an affidavit by the lienholder, or by the person conducting the public auction, evidencing compliance with the provisions of this subsection.

B. Whenever the occupant is in default, the owner shall have the right to deny the occupant access to the leased space.

C. After the occupant has been in default for a period of 10 days, and before the owner can sell the occupant's personal property in accordance with this chapter, the owner shall send a further notice of default, by verified mail, postage prepaid, to the occupant at his last known address, or, if expressly provided for in the rental agreement, such notice may be given by electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. Such notice of default shall include:

1. An itemized statement of the owner's claim, indicating the charges due on the date of the notice and the date when the charges became due;

2. A demand for payment of the charges due within a specified time not less than 20 days after the date of the notice;

3. A statement that the contents of the occupant's leased space are subject to the owner's lien;

4. A conspicuous statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at public auction at a specified time and place; and

5. The name, street address, and telephone number of the owner or his designated agent whom the occupant may contact to respond to the notice.

D. At any time prior to the public auction pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and thereby redeem the personal property.

E. In the event of a public auction pursuant to this section, the owner may satisfy his lien from the proceeds of the public auction and shall hold the balance, if any, for delivery on demand to the occupant or other lienholder referred to in this chapter. However, the owner shall not be obligated to hold any balance for a lienholder of record notified pursuant to subdivision A 2, or any other lien creditor, that fails to claim an interest in the balance within 30 days of the public auction. So long as the owner complies with the provisions of this chapter, the owner's liability to the occupant under this chapter shall be limited to the net proceeds received from the public auction of any personal property and, as to other lienholders, shall be limited to the net proceeds received from the public auction of any personal property covered by such superior lien.

F. Any public auction of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored. An advertisement shall be published in a newspaper of general circulation in the locality in which the public auction is to be held at least once prior to the public auction. The advertisement shall state (i) the fact that it is a public auction; (ii) the date, time, and location of the public auction; and (iii) the form of payment that will be accepted.

G. A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this chapter takes such property free and clear of any rights of persons against whom the lien was valid.

H. Any notice made pursuant to this section shall be presumed delivered when it is (i) deposited with the United States Postal Service and properly addressed to the occupant's last known address with postage prepaid or (ii) sent by electron means, provided that thesender retains sufficint proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery. In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of default.

I. In the case of any motor vehicle, so long as the motor vehicle remains stored within such leased space, the owner shall have a lien on such vehicle in accordance with § 46.2-644.01.

§ 55.1-2903. Other legal remedies may be used.

The provisions of this chapter shall not preempt or limit the owner's use of any additional remedy otherwise allowed by law.

§ 55.1-2904. Care, custody, and control of property.

Unless the rental agreement specifically provides otherwise, the exclusive care, custody, and control of all personal property stored in the leased space shall remain vested in the occupant.

§ 55.1-2905. Savings clause.

All rental agreements, entered into prior to July 1, 1981, that have not been extended or renewed after that date, shall remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of the Commonwealth.

§ 55.1-2906. Effective date and application of chapter.

The provisions of this chapter shall apply to all rental agreements entered into or extended or renewed after July 1, 1981.

§ 57-6.1. Validity of literary, educational, and charitable gifts, grants, devises, or bequests.

Every gift, grant, devise, or bequest made on or after April 2, 1839, for literary or educational purposes, and every gift, grant, devise, or bequest made on or after April 6, 1976, for charitable purposes, whether made in any case to any type of entity or to a natural person, shall be as valid as if made to or for the benefit of a certain natural person, except such devises or bequests, if any, that have failed or become void by virtue of the seventh section of the Act of the General Assembly passed on April 2, 1839, entitled "an act concerning devises made to schools, academies, and colleges." Nothing in this section shall be construed so as to give validity to any devise or bequest to or for the use of any unincorporated theological seminary. Every gift, grant, devise, or bequest made for literary, educational, or charitable purposes before April 6, 1976, is hereby validated.

§ 64.2-108.2. Provision in certain trust void.

A. For purposes of this section, "medical assistance" and "medical assistance benefits" mean benefits payable under the state plan for medical assistance services.

B. Except as provided in subsection C, a provision in any inter vivos trust created for the benefit of the grantor that provides directly or indirectly for the suspension, termination, or diversion of the principal, income, or other beneficial interest of the grantor in the event that he should apply for medical assistance or require medical, hospital, or nursing care or long-term custodial, nursing, or medical care shall be against public policy and ineffective as against the Commonwealth. The assets of the trust, both principal and interest,

shall be distributed as though no such application had been made. The provisions of this subsection shall apply without regard to the irrevocability of the trust or the purpose for which the trust was created.

C. Subsection B shall not apply to any trust with a corpus of $25,000 or less. If the corpus of any such trust exceeds $25,000, $25,000 of the trust shall be exempt from the provisions of subsection B. However, if the grantor has created more than one trust as described in subsection B, the $25,000 exemption shall be prorated among the trusts. Further, if the grantor made uncompensated transfers, as defined in § 20-88.02, within 30 months of applying for Medicaid benefits and no payments were ordered pursuant to subsection D of § 20-88.02, the $25,000 exemption under this subsection shall not apply.

D. The exemption provided by subsection C shall not apply to any trust created on or after August 11, 1993.

E. To the extent any trust created between August 11, 1993, and July 1, 1994 would but for subsection D be entitled to the exemption provided by subsection C, the grantor may revoke such trust notwithstanding any irrevocability in the terms of such trust. Nothing contained in this subsection shall be construed to authorize the grantor to effect the vested rights of any beneficiary o such trust without the express written consent of such beneficiary.

F. The provisions of subsection B shall not apply to an irrevocable inter vivos trust to the extent it is created for the purpose of paying the grantor's funeral and burial expenses and is funded in an amount and manner allowable as a resource in determining eligibility for medical assistance benefits. In the event any amount remains in the trust upon payment of the funeral or burial arrangements provided to or on behalf of such individual, the Commonwealth shall receive all amounts remaining in such trust up to an amount equal to the total medical assistance paid on behalf of the individual.

2. That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Title 55 or any other title of the Code of Virginia as such titles existed prior to October 1, 2019, are transferred in the same or modified form to a new section or chapter of Title 55.1 or any other title of the Code of Virginia and whenever any such former section or chapter is given a new number in Title 55.1 or any other title, all references to any such former section or chapter of Title 55.1 or other title appearing in this Code shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.

3. That the regulations of any department or agency affected by the revision of Title 55 or such other titles in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

4. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of Title 55.1 so as to give effect to other laws enacted by the 2019 Session of the General Assembly, notwithstanding the delay in the effective date of this act.

5. That the repeal of Title 55 and § 18.2-324.1, effective as of October 1, 2019, shall not affect any act or offense done or committed, or any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that day. Except as otherwise provided in this act, neither the repeal of Title 55 nor the enactment of Title 55.1 shall apply to offenses committed prior to October 1, 2019, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this enactment, an offense was committed prior to October 1, 2019, if any of the essential elements of the offense occurred prior thereto.

6. That any notice given, recognizance taken, or process or writ issued before October 1, 2019, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 55.1 had been effective before the same was given, taken, or issued.

7. That if any clause, sentence, paragraph, subdivision, or section of Title 55.1 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 55.1 are declared severable.

8. That the repeal of Title 55, effective as of October 1, 2019, shall not affect the validity, enforceability, or legality of any loan agreement or other contract, or any right established or accrued under such loan agreement or other contract, that existed prior to such repeal.

9. That the repeal of Title 55, effective October 1, 2019, shall not affect the validity, enforceability, or legality of any properly recorded deed that was recorded prior to such repeal.

10. That the repeal of Title 55, effective as of October 1, 2019, shall not affect the validity, enforceability, or legality of any bond or other debt obligation authorized, issued, or outstanding prior to such repeal.
11. That § 18.2-324.1 and Title 55 (§§ 55-1 through 55-559) of the Code of Virginia are repealed.
12. That the provisions of this act shall not affect the existing terms of persons currently serving as members of any agency, board, authority, commission, or other entity and that appointees currently holding positions shall maintain their terms of appointment and continue to serve until such time as the existing terms might expire or become renewed. However, any new appointments made on or after October 1, 2019, shall be made in accordance with the provisions of this act.
13. That the provisions of this act shall become effective on October 1, 2019.