

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 422

*An Act to amend and reenact §§ 55-508, 55-509, and 55-511 of the Code of Virginia, relating to the Property Owners' Association Act; applicability.*

[H 2217]

Approved March 16, 2003

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

**1. That §§ 55-508, 55-509, and 55-511 of the Code of Virginia are amended and reenacted as follows:**

§ 55-508. Applicability.

A. This chapter shall apply to developments subject to a declaration, as defined herein, initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the former Subdivided Land Sales Act (§ 55-336 et seq.). For the purposes of this chapter, as used in the former Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation and control of a development shall be deemed to correspond with the term "declaration";

"Developer" shall be deemed to correspond with the term "declarant";

"Lot" shall be deemed to correspond with the term "lot"; and

"Subdivision" shall be deemed to correspond with the term "development."

This chapter shall be deemed to supersede the Subdivided Land Sales Act, and no development shall be established under the latter 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.

~~The provisions of this chapter which exclude the applicability of this chapter to developments which impose on the association maintenance or operational responsibilities or on the owners or occupants of lots a mandatory payment of money less than \$150 per year per lot as a regular annual assessment shall not be applied retroactively to any development subject to a declaration recorded prior to July 1, 1991.~~

This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent 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.

B. 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 (§ 55-79.39 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 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 the general public.

§ 55-509. Definitions.

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

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which 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 common area in the declaration.

"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 thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area ~~in an amount in excess of~~

\$150 per year per lot 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 in an amount in excess of \$150 per year per lot as a regular annual assessment in connection with the provision of maintenance and/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" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this 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.

"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.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"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.

§ 55-511. Contract disclosure statement; right of cancellation.

A. Subject to the provisions of subsection F of § 55-512, a person selling a lot shall disclose in the contract that (i) the lot is located within a development which is subject to the Virginia Property Owners' Association Act; (ii) the Act 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 § 55-512; 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 (i) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or with the Real Estate Board pursuant to § 55-516.1, (ii) 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 E of § 55-512, or (iii) written notice has been provided by the association that a packet is not available.*

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet obtained by the seller in accordance with this section. 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 or delivered with the consent of the purchaser by electronic means and a receipt 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 may also 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 hand delivered or sent by United States mail, return receipt requested, to the owner or his agent. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser. The association may also send the resale certificate by electronic means with the consent of the seller and the purchaser.

D. Whenever any contract is canceled based on a failure to comply with subsection A or C or pursuant to subsection B, any deposit or escrowed funds shall be returned within ~~thirty~~ 30 days of the cancellation, unless the parties to the contract agreed upon a shorter period.

E. Any rights of the purchaser to cancel the contract provided by this chapter are waived conclusively if not exercised prior to settlement.

F. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may not be varied by agreement, and the rights conferred by this section and § 55-512 may not be waived.