

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 573

An Act to amend and reenact §§ 55-511 and 55-512 of the Code of Virginia, relating to the Property Owners' Association Act.

[H 2190]

Approved March 24, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-511 and 55-512 of the Code of Virginia are amended and reenacted as follows:

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

A. *Subject to the provisions of subsection E 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, and (iv) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

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 specified date within thirty days of the date of the contract. 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 (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. Such cancellation shall be without penalty and the seller shall cause any deposit to be returned promptly to the purchaser.

D. If more than six months have elapsed between the contract date and the date of settlement, the purchaser may submit a copy of the contract to the property owners' association with a request for assurance that the information required by § 55-512 previously furnished pursuant to subsection A of this section remains materially unchanged, or, if there have been material changes, a statement specifying such changes. The purchaser shall be provided with such assurances or such statement within ten days of the receipt of such request by the property owners' association. The purchaser may be required to pay a fee for the preparation and issuance of the requested assurances. The fee shall reflect the actual cost incurred by the property owners' association in providing such assurances but shall not exceed fifty dollars. If settlement has not occurred and the purchaser has not cancelled the contract in accordance with subsection C of this section, the purchaser may renew requests for assurances as provided herein every six months.

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

F. The rights afforded a purchaser pursuant to this section and § 55-512 may be waived in writing by the purchaser in a separate document.

§ 55-512. Association disclosure packet.

A. ~~Subject to the provisions of subsection B of this section and E~~, the association shall make available to an owner or his authorized agent within fourteen days after receipt of a written request therefor and receipt of the appropriate fee, an association disclosure packet, which, upon receipt, the seller shall deliver to the purchaser. If hand delivered, the written request and fee are deemed received on the date of delivery. If sent by United States mail, the request and fee are 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 Virginia;

2. A statement of any capital expenditure anticipated by the association within the current year and, where available, the two succeeding fiscal years;

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association applicable to the lot being purchased and to the right of use of

common areas, and the status of the account;

4. A statement whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;

5. A statement or a summary 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 thereof, and a copy of its statement of income and expenses or statement of its financial condition for the last fiscal year for which such statement is available;

7. A statement of the nature of any pending suit or unpaid judgment to which the association is a party which either could or would have a material impact on the association or its members or which relates to the lot being purchased;

8. A statement setting forth all insurance coverage, including any fidelity bond, maintained by the association;

9. A statement as to whether any notice has been given to the seller that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto, are in violation of any of the instruments referred to in subdivision 11 of this subsection;

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; and

11. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines promulgated by the association.

The disclosure packet, once received by the seller from the association, shall be delivered by the seller to the purchaser. The association shall have no obligation to deliver the disclosure packet to the purchaser of the lot. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

B. The association may charge a fee for the preparation and issuance of the disclosure packet required by this section. The fee shall reflect the actual cost of the preparation of the packet, but shall not exceed \$100.

C. When a disclosure packet has been issued as required by this section, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of any of the instruments referred to in subdivision 10 of subsection A of this section as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

D. If the association has been requested to furnish the disclosure packet required by this section and has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form provided herein within fourteen days from the actual receipt of the request by an officer, director or agent of the association 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.

E. The contract disclosures *required by § 55-511* and the disclosure packet *required by this section* need not be ~~prepared or delivered~~ *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 ~~in a development where all the lots are~~ *that is zoned for or otherwise* restricted to nonresidential use; or

5. A disposition of a lot to a person ~~in the business of selling real estate who offers lots for his own account~~ *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.*

F. In any transaction in which a disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the disclosure packet from the association and provide the packet to the purchaser.