

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 32

*An Act to amend and reenact §§ 55-79.44, 55-79.52, 55-79.54, 55-79.57, 55-79.73, 55-79.73:1, 55-79.77, 55-79.97, 55-508, 55-511, 55-512, 55-514, 55-515.1, and 55-516.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-515.2, relating to the Condominium and Property Owners' Association Acts; powers and duties of associations.*

[H 1390]

Approved March 9, 1998

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

**1. That §§ 55-79.44, 55-79.52, 55-79.54, 55-79.57, 55-79.73, 55-79.73:1, 55-79.77, 55-79.97, 55-508, 55-511, 55-512, 55-514, 55-515.1, and 55-516.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-515.2 as follows:**

§ 55-79.44. Eminent domain.

(a) If any portion of the common elements is taken by eminent domain, the award therefor 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 decree 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 thereof 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 which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned *in accordance with § 55-79.57*.

(b) If one or more units is 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 a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, 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) 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. 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 the preceding sentence. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this subsection and not revested in him by operation of the following sentence, 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 a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, 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 or units 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 decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the city or county in which the condominium is located.

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

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

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

(c) C. No restraint on alienation shall discriminate or be used to discriminate on the basis of religious conviction, race, color, sex, or national origin any basis prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

(d) D. Subject to the provisions of subsection (c) hereof 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.

§ 55-79.54. 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 city or county in which the condominium is located.

(3) A legal description by metes and bounds of the land submitted to 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 which are limited common elements by virtue of subsection (e) of § 55-79.50, 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 which 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 whereby any such assignments shall be made in accordance with the provisions of § 55-79.57 or (ii) once assigned, the conditions under which they may be unassigned and converted to common elements in accordance with § 55-79.57.

(7) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 55-79.55.

(7a) 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.

(8) 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 therein that may be occupied by units not 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 therein.

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, and/or to designate common elements therein which 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.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (1), (4), (5), (6) and (7) of this subsection, and that item (3) of this subsection need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(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, without limitation, 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 seven years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which 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 § 55-79.74, such time limit may be extended by an amendment to the declaration made pursuant to § 55-79.71.

(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 thereof and/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 item (6) of this subsection, 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 item (6) of this subsection, 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 or portions thereof 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 thereon that may be occupied by units not 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 thereon, 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 thereon, 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, and/or to designate common elements therein which 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.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (4), (5), (6), (7), (10), (11), (12) and (13) of this subsection, and that item (9) of this subsection need not be complied with if none of the units on the submitted land is restricted exclusively to residential use.

(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, without limitation, 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 seven years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which 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, henceforth 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 thereof and/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.

Provided, that plats may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (4), (5) and (6) of this subsection, and that item (6) of this subsection shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 55-79.72:1.

(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 city or county wherein the same are 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 and/or improvements will be owned by the unit owners in fee simple, and if so, either (a) a description of the same, including without limitation a legal description by metes and bounds of any such land, or (b) 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 or leases involved, or a statement that they shall have no such rights.

(3) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights.

Provided, that after the recording of the declaration, no lessor who executed the same, 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 or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, 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 shall 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 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 to this chapter or that may be added to or withdrawn from the condominium, as the case may be. 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 same.

(g) Wherever this section requires a legal description by metes and bounds of land that is submitted 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 therein. 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.

§ 55-79.57. 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 thereby 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 common element* upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer or officers as the condominium instruments may specify. The officer or officers 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 the unit owner or unit owners of the unit or units concerned and recorded by an officer of the unit owners' association or his agent following payment by the unit owner or unit owners of the unit or units concerned of all reasonable costs for the preparation, acknowledgment and recordation thereof. The amendment shall become effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned only in pursuance of subdivision (a) (6) of § 55-79.54. 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 or officers 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 the unit owner or unit owners of the unit or units concerned of all reasonable costs for the preparation, acknowledgment and recordation thereof. The amendment shall become effective when recorded, and the recordation thereof shall be conclusive evidence that the method prescribed pursuant to subdivision (a) (6) of § 55-79.54 was adhered to. A copy of the amendment shall be delivered to the unit owner or unit owners of the unit or 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.*

§ 55-79.73. Bylaws to be recorded with declaration; contents; unit owners' association; executive organ; amendment of bylaws.

A. There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive organ. If there is to be such an organ, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive organ shall be filled by a vote of a majority of the remaining members of the executive organ at a meeting of the executive organ, even though the ~~directors~~ *members of the executive organ* 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 organ, 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 organ may delegate to a managing agent.

C. The bylaws may provide for arbitration of ~~disputes~~ *disputes* or other means of alternative *dispute* resolution in accordance with subsection B of § 55-79.53.

D. In any case where an amendment to the declaration is required by subsection (b), (c) or (d) of § 55-79.56, the person or persons required to execute the same 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 § 55-79.58, or shall abolish the votes appertaining to former units, as the case may be. 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 said amendment.

§ 55-79.73:1. Amendment to bylaws; consent of mortgagee.

A. In the event that any provision in the bylaws requires the written consent of a mortgagee in order to amend the bylaws, 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 supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the bylaws and receives no written objection to the adoption of the amendment from the mortgagee within ~~ninety~~ *sixty* days of the date that the notice of amendment is ~~received by the addressee sent by the association, unless the bylaws expressly provide 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 sixty days of the date that the notice of amendment is sent by the association, unless the bylaws expressly provide otherwise.~~

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect the unit as collateral or the right of the mortgagee to foreclose on a

unit as collateral.

*C. Where the bylaws are silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the bylaws does not specifically affect mortgagee rights.*

§ 55-79.77. Same; voting.

A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55-79.58 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. But 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. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

D. The votes appertaining to any unit may be cast pursuant to a proxy or proxies 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. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as aforesaid, or if the signatures of any of those executing the same have not been witnessed by a person who shall sign his full name and address. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, 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 ~~held within thirty days~~. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed.

E. If fifty percent or more of the votes in the unit owners' association appertain to twenty-five 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.

§ 55-79.97. Resale by purchaser.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, such owner shall obtain from the unit owners' association and furnish to the purchaser, prior to the contract date of the disposition, *a resale certificate which shall include the following:*

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and, if applicable, an appropriate statement pursuant to § 55-79.85;

2. A statement of any ~~capital expenditures anticipated~~ *expenditure of funds approved by the unit owners' association within or the executive organ which shall require an assessment in addition to the regular assessment during the current or the immediately succeeding two fiscal years* ~~fiscal year~~;

3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association 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 whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;*

5. 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 ~~board of directors~~ *executive organ*;

~~5-~~ 6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit owners' association and a copy of the statement of *its* financial condition ~~of the unit owners' association~~ for the last fiscal year for which a statement is available;

~~6-~~ 7. A statement of the nature and status of any pending suits or *unpaid judgments in* ~~to~~ which the unit owners' association is a party which either could or would have a material impact on the association or the unit owners or which relates to the unit being purchased;

~~7-~~ 8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, *including any fidelity bond maintained by the unit owners' association*, and what

additional insurance coverage would normally be secured by each individual unit owner;

~~8.~~ 9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are not in violation of the condominium instruments;

~~9.~~ 10. A copy of the current bylaws ~~and~~, rules and regulations ~~of and~~ architectural guidelines adopted by the unit owners' association and the amendments thereto;

~~10.~~ 11. A statement of whether the condominium or any portion thereof is located within a development subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title; and

~~11.~~ 12. A certificate that the unit owners' association has filed the annual report required by § 55-79.93.1; the certificate shall indicate the registration number and date of registration with the agency.

Failure to receive copies of such documents *in the resale certificate* shall not excuse any failure to comply with the provisions thereof.

*The resale certificate, once received by the owner from the unit owners' association, shall be delivered by the owner to the purchaser. The unit owners' association shall have no obligation to deliver the resale certificate to the purchaser of the unit. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.*

B. If more than ~~sixty days~~ *six months* have elapsed between the *purchase* contract date ~~of the disposition~~ and the date of settlement, the purchaser may submit a copy of the contract to the unit owners' association with a request for assurance that statements previously furnished pursuant to subsection A ~~hereof~~ remain 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 unit owners' association. The purchaser may be required to pay the same fee charged a unit owner for ~~statements requested pursuant to subsection A hereof the~~ *resale certificate*, if any.

C. In the absence of a written agreement to the contrary, the failure of the unit owners' association to provide the statement required by subsection B or the disclosure by such statement that there have been one or more material changes shall, *render the purchase contract void* at the option of the purchaser; ~~render void the contract of purchase.~~

D. The unit owners' association shall furnish the ~~statements and copies of documents prescribed by subsection A hereof~~ *resale certificate* upon the written request of any unit owner within ~~ten~~ *fourteen* days of the receipt of such request. Payment of the reasonable costs of preparing ~~such statements and copies of documents~~ *the resale certificate* may be required of the unit owner requesting them as a prerequisite to their issuance, but the total fee shall not exceed \$100, including and not in addition to, any fee charged pursuant to subsection H of § 55-79.84 and § 55-79.85.

E. *When a resale certificate has been issued as required by this section, the unit owners' 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 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.*

F. *If the unit owners' association has been requested to furnish the resale certificate required by this section and has been paid the appropriate fee, its failure to provide the resale certificate in substantially the form provided herein within fourteen days from the actual receipt of the request by an officer, director or agent of the unit owners' association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the condominium instruments, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The unit owners' 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 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.*

~~E.~~ G. Subject to the provisions of § 55-79.87, 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 (§ 55-79.1 et seq.).

H. *The resale certificate required by this section 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 to a person or entity who is not acquiring the unit 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 unit for such purpose shall be conclusive and may be relied upon by the seller of the unit. The person or entity acquiring the unit 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.*

*1. 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.*

§ 55-508. Applicability.

A. This chapter shall apply to developments subject to a declaration initially recorded after January 1, 1959, and ~~property owners'~~ associations incorporated or otherwise organized after such date. 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 declaration ~~recorded prior to July 1, 1989, but; 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 ~~this the~~ Commonwealth before July 1, 1989. ~~Sections 55-511 and 55-512 shall not apply to contracts entered into prior to July 1, 1989, for the sale of a lot.~~

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.). ~~Not shall~~ 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.

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

A. Subject to the provisions of subsection ~~E~~ *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, 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.~~ *E.* 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.

§ 55-512. Contents of association disclosure packet; other requirements.

A. Subject to the provisions of subsections ~~B C~~ and ~~E F~~, 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. *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.* 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~~ *expenditure of funds approved by the association within or the board of directors which shall require an assessment in addition to the regular assessment during the current year and, where available, the two or the immediately succeeding fiscal years year;*

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association ~~applicable to~~ *and associated with the purchase, disposition and maintenance of 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, *prepared by the association*, 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 *and status* 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 what~~ *insurance coverage is provided for all lot owners by the association*, including any fidelity bond, maintained by the association, *and what additional insurance would normally be secured by each individual lot owner;*

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 *by the prior lot owner*, are *not* 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;

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

12. A certificate that the property owners' association has filed the annual report required by § 55-516.1; the certificate shall indicate the registration number and date of registration with the Real Estate Board.

*Failure to receive copies of such documents shall not excuse any failure to comply with the provisions thereof.*

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. If more than six months have elapsed between the purchase contract date and the date of settlement, the purchaser may submit a copy of the contract to the association with a request for assurance that the information required by this section previously furnished 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 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 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 § 55-511, the purchaser may renew requests for assurances as provided herein every six months.*

~~B. C.~~ 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. D.~~ 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 11 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. E. 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. F. The contract disclosures required by § 55-511 and the disclosure packet required by this section need 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 that is zoned for or otherwise restricted to nonresidential use; 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.

F. G. 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.

#### § 55-514. Authority to levy special assessments.

A. In addition to all other assessments which are authorized in the declaration, the board of directors of an association shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep, ~~including capital expenditures~~, 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 sixty 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 claimed breach of fiduciary duty arising therefrom.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § 55-516 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. Notwithstanding the immediately preceding sentence, direct access to the member's lot over any road within the development which is a common area shall not be denied the member.

#### § 55-515.1. 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 ~~ninety~~ sixty days of the date that the notice of amendment is ~~received by the addressee~~ *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 sixty 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 which alter the priority of the lien of the mortgagee

or which 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.*

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

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

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

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

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

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

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

*§ 55-516.2. 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 therefor shall be paid to the association, which shall be a party in interest in the condemnation proceeding.

Except to the extent the declaration or any rules and regulations duly adopted pursuant thereto ~~so~~ *otherwise* provide, the board of directors shall have the authority to negotiate with the condemning authority ~~and~~, 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.