

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 623

*An Act to amend and reenact §§ 15.2-2257, 55-508, and 55-509 of the Code of Virginia, relating to the Subdivided Land Sales Act.*

[H 1356]

Approved April 15, 1998

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

**1. That §§ 15.2-2257, 55-508, and 55-509 of the Code of Virginia are amended and reenacted as follows:**

§ 15.2-2257. Procedure to modify certain covenants in certain counties.

Upon a verified petition signed by the owners, other than the original subdivider, of ten percent of the lots in any subdivision previously recorded, the circuit court for any county with a 1980 population of more than 27,500 but less than 29,000, in which such subdivision lies, shall have authority to conduct a hearing and modify any and all covenant provisions of any previously recorded deed of dedication or other document relating to road maintenance fees as to any roads located within the subdivision. Upon receipt of the petition, the court shall, if all owners of lots within such subdivision are not before the court, enter an order of publication under the provisions of subdivision 3 of § 8.01-316, making the owners of all lots not owned by petitioners parties to the cause, which shall then be docketed and set for trial on the chancery side of the court. Should the court, after hearing evidence and argument of counsel, find that the streets and roads in the subdivision require maintenance in excess of that provided for with the road maintenance funds specified in the covenants to permit emergency vehicles ready access to the residents of the subdivision to ensure the public health, safety, and welfare, the court may increase the fees required for road maintenance to the extent reasonably necessary to permit emergency vehicles ready access to the residents of the subdivision. The funds collected shall be accounted for as provided in § 15.2-2256. Nothing herein shall be construed to prohibit the members of a subdivision association from proceeding under the provisions of ~~subsection C of § 55-344~~ *the Property Owners' Association Act (§ 55-508 et seq.)*.

§ 55-508. Applicability.

A. This chapter shall apply to developments subject to a declaration, *as defined herein*, initially recorded after January 1, 1959, ~~and property owners' 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 ~~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.

§ 55-509. 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.

"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.

"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. ~~A property owners' association shall not include the association formed pursuant to the Condominium Act (§ 55-79.39 et seq.), the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or the Virginia Membership Camping Act (§ 59.1-311 et seq.).~~