
Virginia Property Owners' Association Act

Code of Virginia

Title 55.1, Subtitle IV, Chapter 18

Virginia Property Owners' Association Act

Table of Contents

ARTICLE 1. GENERAL PROVISIONS	1
§ 55.1-1800. Definitions	1
§ 55.1-1801. Applicability	3
§ 55.1-1802. Developer to register and file annual report; payment of real estate taxes attributable to the common area	4
§ 55.1-1803. Limitation on certain contracts and leases by declarant.....	4
§ 55.1-1804. Documents to be provided by declarant upon transfer of control.....	5
§ 55.1-1805. Association charges	6
§ 55.1-1806. Rental of lots.....	6
§ 55.1-1807. Statement of lot owner rights	7
ARTICLE 3. OPERATION AND MANAGEMENT OF ASSOCIATION	7
§ 55.1-1815. Access to association records; association meetings; notice.....	7
§ 55.1-1816. Meetings of the board of directors.....	10
§ 55.1-1817. Distribution of information by members	11
§ 55.1-1818. Common areas; notice of pesticide application	12
§ 55.1-1819. Adoption and enforcement of rules.....	12
§ 55.1-1819.1 Limitation of smoking in development	13
§ 55.1-1820. Display of the flag of the United States; necessary supporting structures; affirmative defense	13
§ 55.1-1820.1. Installation of solar energy collection devices.....	14
§ 55.1-1821. Home-based businesses permitted; compliance with local ordinances.....	15
§ 55.1-1822. Use of for sale signs in connection with sale	15
§ 55.1-1823. Designation of authorized representative.....	15

§ 55.1-1823.1. Electric vehicle charging stations permitted 16

§ 55.1-1824. Assessments; late fees 16

§ 55.1-1825. Authority to levy additional assessments; authority to borrow 16

§ 55.1-1826. Annual budget; reserve study; reserves for capital components..... 17

§ 55.1-1827. Deposit of funds; fidelity bond..... 18

§ 55.1-1828. Compliance with declaration 18

§ 55.1-1829. Amendment to declaration and bylaws; consent of mortgagee 19

§ 55.1-1830. Validity of declaration; corrective amendments 20

§ 55.1-1831. Reformation of declaration; judicial procedure 21

§ 55.1-1832. Use of technology 22

§ 55.1-1833. Lien for assessments; foreclosure 23

§ 55.1-1834. Notice of sale under deed of trust 28

§ 55.1-1835. Annual report by association 28

§ 55.1-1836. Condemnation of common area; procedure 28

§ 55.1-1837. Termination and duration of certain management contracts 28

Code of Virginia

Title 55.1, Subtitle IV, Chapter 18

Virginia 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

2 Property Owners' Association Act

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.

“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. A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods. 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.

“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.

“Resale certificate” means a certificate issued by an association pursuant to §§ 55.1-2309 and 55.1-2310.

“Reserve study” means a capital budget planning tool used to determine the physical status and estimated repair or replacement cost of capital components and an analysis of association funding capacity to maintain, repair, and replace capital components.

“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

4 Property Owners' Association Act

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. 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 and any required update 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, including stormwater facilities; (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; and (xi) an inventory and description of stormwater facilities located on the common area or which otherwise serve the development and for which the association has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements for maintenance thereof.

The requirement for delivery of stormwater facility information required by clause (xi) shall be deemed satisfied by delivery to the association of a final site plan or final construction drawings showing stormwater facilities as approved by a local government jurisdiction and applicable recorded easements or agreements, if any, containing requirements for the maintenance, repair, or replacement of the stormwater facilities.

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 impose a charge against one or more but less than all lot owners unless the charge is (i) a fee for services provided, (ii) related to use of the common area, or (iii) a fee expressly authorized in § 55.1-2316. Nothing in this chapter shall be construed to prevent an association from levying or using assessments, charges, or fees to pay the association's contractual or other legal obligations in the exercise of the association's duties and responsibilities. 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 pursuant to § 54.1–2352.

§ 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;
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; or
7. Refuse to recognize a person designated by the lot owner as the lot owner's authorized representative under the provisions of § 55.1-1823. 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 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. The association shall maintain individual assessment account records. The association shall maintain a record of any recorded lien at least as long as the lien remains effective.

8 Property Owners' Association Act

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 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. In lieu of sending such notice by United States mail, notice may be (i) 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, or (ii) sent to the member by electronic mail, provided that the member has elected to receive such notice by electronic mail and, in the event that such electronic mail is returned as undeliverable, notice is subsequently sent by United States mail. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (a) within 60 days from the conclusion of the meeting to which such minutes appertain or (b) 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.

H. Unless expressly prohibited by the governing documents, a member may vote at a meeting of the association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the board of directors has adopted guidelines for such voting by electronic means. Members voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

§ 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.

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; 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 during each 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.

E. The requirements of this section govern the conduct of meetings of the board of directors without regard to whether the property owners' association is incorporated or unincorporated but shall not be interpreted to supersede corporate authorities otherwise established by law or the governing documents.

§ 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. At a special meeting of the association convened in accordance with the provisions of the association's bylaws, a majority of votes cast at such meeting may 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 shall 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.

§ 55.1–1819.1. Limitation of smoking in development.

Except to the extent that the declaration provides otherwise, the board of directors may establish reasonable rules that restrict smoking in the development, including rules that prohibit smoking in the common areas. For developments that include attached private dwelling units, such rules may prohibit smoking within such dwelling units. Rules adopted pursuant to this section may be enforced in accordance with § 55.1-1819.

§ 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

14 Property Owners' Association Act

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 resale certificate as required by § 55.1–2310.

§ 55.1-1820.1. Installation of solar energy collection devices.

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the association establishes such a prohibition. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate issued pursuant to § 55.1-2309 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the association. An association may establish reasonable restrictions as to the

number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

§ 55.1–1821. Home-based businesses permitted; compliance with local ordinances.

A. 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.

B. If a development is located in a locality that classifies home-based child care services as an accessory or ancillary residential use under the locality's zoning ordinance, the provision of home-based child care services in a personal residence shall be deemed a residential use unless expressly (i) prohibited or restricted by the declaration or (ii) restricted by the association's bylaws or rules as provided in subsection A.

§ 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 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 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 that includes the designated representative's

name, contact information, and license number and the lot owner's signature. 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.

§ 55.1–1823.1. Electric vehicle charging stations permitted

A. Except to the extent that the declaration or other recorded governing document provides otherwise, no association shall prohibit any lot owner from installing an electric vehicle charging station for the lot owner's personal use on property owned by the lot owner. An association may establish reasonable restrictions concerning the number, size, place, and manner of placement or installation of such electric vehicle charging station on the exterior of property owned by the lot owner.

B. An association may prohibit or restrict the installation of electric vehicle charging stations on the common area within the development served by the association and may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of electric vehicle charging stations on the common area.

C. Any lot owner installing an electric vehicle charging station shall indemnify and hold the association harmless from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of the installation, maintenance, operation, or use of such electric charging station. An association may require the lot owner to obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, or use of the electric vehicle charging station and require the association to be included as a named insured on such policy.

§ 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 additional assessments; authority to borrow.

A. In addition to all other assessments that are authorized in the declaration, the board of directors shall have the power to levy an additional 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, including maintenance, repair, and replacement of capital components.

B. The failure of a member to pay the additional 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 additional 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 a common area.

D. Unless the declaration provides greater or lesser authority, the board of directors may borrow money on behalf of the association for maintenance, replacement, repair, and restoration of capital components and for funding recommended reserves and shall have the right and power to assign and pledge all revenues to be received by the association, including annual and additional assessments to secure the repayment of sums borrowed by the association from time to time for such purposes.

§ 55.1–1826. Annual budget; reserve study; reserves for capital components .

A. Prior to the commencement of the fiscal year, the board of directors shall make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. 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 as defined in § 55.1-1800;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments to the annual budget and annual assessment the board of directors deems necessary to maintain reserves, as appropriate.

C. 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 as defined in § 55.1-1800;
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;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
 4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.
- D. The board of directors shall have the discretion to meet repair and replacement requirements through replacement reserves, additional assessments, or borrowed funds.

§ 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 expressly prohibited by the declaration, (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. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

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 board of directors.

F. Any meeting of the association, the board of directors, or any committee may be held entirely or partially by electronic means, provided that the board of directors has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons entitled to

participate in such meetings have an opportunity to do so. The board of directors shall determine whether any such meeting may be held entirely or partially by electronic means.

G. If any person does not have the capability or desire to conduct business using electronic means, the association shall make available a reasonable alternative, at its expense, for such person to conduct business with the association without use of such electronic means.

H. 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; foreclosure.

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. Any lien perfected pursuant to subsection B may be enforced by filing a civil action to conduct a judicial foreclosure in the circuit court in the county or city where the lot is located or by nonjudicial foreclosure pursuant to subsections I and J. No foreclosure of any lien perfected under this section shall be initiated after 120 months from the time when the memorandum of lien was recorded. The filing of a civil action to enforce any such lien by foreclosure through judicial means or issuance of notice of nonjudicial foreclosure under subdivision J 1 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 any lien perfected pursuant to subsection B, 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 § 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. The association may conduct a judicial or nonjudicial foreclosure sale upon a lot against which the association has perfected one or more liens pursuant to this section if the total sums secured are in excess of \$5,000, exclusive of attorney fees and costs. 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.

J. 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

26 Property Owners' Association Act

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 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 filed in the Court of Appeals or granted by the Supreme Court 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.

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 fee in an amount established by the Board, which shall be paid into the state treasury and 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.

§ 55.1–1837. Termination and duration of certain management contracts.

A management contract that contains an automatic renewal provision may be terminated by the association or the common interest community manager at any time without cause and without penalty upon not less than 60 days' written notice.