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SUBTITLE IV.

COMMON INTEREST COMMUNITIES.

**Drafting note: Proposed Subtitle IV is created to logically reorganize all provisions relating to common interest communities. Proposed Subtitle IV contains six chapters: Property Owners' Association Act, Virginia Condominium Act, Horizontal Property Act, Virginia Real Estate Cooperative Act, Virginia Timeshare Act, and Subdivided Land Sales Act.**

CHAPTER-26 XX.

PROPERTY OWNERS' ASSOCIATION ACT.

**Drafting note: Existing Chapter 26, the Property Owners' Association Act, is retained as proposed Chapter XX. This proposed chapter is logically divided into three articles.**

Article 1.

General Provisions.

**Drafting note: Existing Article 1 is retained and contains general provisions for the Property Owners' Association Act.**

~~§ 55-509.55.1-xxx.~~ 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 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.

26 "Common area" means property within a development which is owned, leased, or  
27 required by the declaration to be maintained or operated by a property owners' association for  
28 the use of its members and designated as a common area in the declaration.

29 "Common interest community" means the same as that term is defined in § ~~55-528~~ 55.1-  
30 xxx.

31 "Common interest community manager" means the same as that term is defined in §  
32 54.1-2345.

33 "Declarant" means the person or entity signing the declaration and its successors or  
34 assigns who may submit property to a declaration.

35 "Declaration" means any instrument, however denominated, recorded among the land  
36 records of the county or city in which the development or any part ~~thereof~~ of such development  
37 is located, that either (i) imposes on the association maintenance or operational responsibilities  
38 for the common area or (ii) creates the authority in the association to impose on lots, ~~or~~ on the  
39 owners or occupants of such lots, or on any other entity any mandatory payment of money in  
40 connection with the provision of maintenance ~~and/or~~ or services for the benefit of some or all of  
41 the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any  
42 amendment or supplement to the instruments described in this definition. "Declaration" ~~shall~~  
43 does not include a declaration of a condominium, real estate cooperative, time-share project, or  
44 campground.

45 "Development" means real property located within ~~this~~ the Commonwealth subject to a  
46 declaration which contains both lots, at least some of which are residential or are occupied for  
47 recreational purposes, and common areas with respect to which any person, by virtue of  
48 ownership of a lot, is a member of an association and is obligated to pay assessments provided  
49 for in a declaration.

50 "Disclosure packet update" means an update of the financial information referenced in  
51 subdivisions A 2 through ~~A~~ 9 of § ~~55-509.5~~ 55.10-xxx. The update shall include a copy of the  
52 original disclosure packet.

53 "Electronic means" means any form of communication, not directly involving the  
54 physical transmission of paper, that creates a record that may be retained, retrieved, and  
55 reviewed by a recipient of such communication. Any term used in this definition that is defined  
56 in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in  
57 such section.

58 "Financial update" means an update of the financial information referenced in  
59 subdivisions A 2 through ~~A 7~~ of § ~~55-509.5~~ 55.1-xxx.

60 "Lot" means (i) any plot or parcel of land designated for separate ownership or  
61 occupancy shown on a recorded subdivision plat for a development or the boundaries of which  
62 are described in the declaration or in a recorded instrument referred to or expressly  
63 contemplated by the declaration, other than a common area, and (ii) a unit in a condominium  
64 association or a unit in a real estate cooperative if the condominium or cooperative is a part of a  
65 development.

66 "Lot owner" means one or more persons who own a lot, including any purchaser of a lot  
67 at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot  
68 is located. "Lot owner" does not include any person holding an interest in a lot solely as security  
69 for a debt.

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

72 "Professionally managed" means a common interest community that has engaged (i) a  
73 common interest community manager to provide management services to the community or (ii)  
74 a person as an employee for compensation to provide management services to the community,  
75 other than a resident of the community who provides bookkeeping, billing, or recordkeeping  
76 services for that community.

77 "Property owners' association" or "association" means an incorporated or unincorporated  
78 entity upon which responsibilities are imposed and to which authority is granted in the  
79 declaration.

80 "Settlement agent" means the same as that term is defined in § ~~55-525.16~~ 55.1-xxx.

81 **Drafting note: The defined term "Act" is stricken because it is not used in the**  
82 **chapter. In the definition of "declaration," the term "and/or," a grammatical shortcut**  
83 **that is inherently ambiguous, is stricken and replaced with the word "or" to reflect its**  
84 **meaning "or" in the sense of either or both/all. A definition of "electronic means" is added**  
85 **to define that term as it appears in § 55.1-xxx [§ 55-515.3]; the definition is identical to the**  
86 **definition of the term as it appears in proposed § 55.1-xxx of the Virginia Condominium**  
87 **Act [§ 55-79.41] (§ 55.1-xxx et seq.). The definition of "meeting" is deleted because it is**  
88 **inconsistent with the provisions of §§ 55.1-xxx and 55.1-xxx [§§ 55-510 and 55-510.1], in**  
89 **which rules are outlined for both association meetings and board of directors meetings;**  
90 **the definition of "meeting" applied only to board of directors meetings and created**  
91 **confusion. Technical changes are made.**

92 § ~~55-508~~ 55.1-xxx. Applicability.

93 A. This chapter ~~shall apply~~ applies to developments subject to a declaration, ~~as defined~~  
94 herein, initially recorded after January 1, 1959, associations incorporated or otherwise organized  
95 after such date, and all subdivisions created under the ~~former~~ Subdivided Land Sales Act (§ ~~55-~~  
96 ~~336~~ 55.1-xxx et seq.). For the purposes of this chapter, as used in the ~~former~~ Subdivided Land  
97 Sales Act, the terms:

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

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

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

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

104 This chapter ~~shall be deemed to supersede~~ supersedes the ~~former~~ Subdivided Land Sales  
105 Act (§ ~~55-336~~ 55.1-xxx et seq.), and no development shall be ~~established under~~ subject to the  
106 latter Subdivided Land Sales Act on or after July 1, 1998. ~~This chapter shall not be construed to~~

107 ~~affect the validity of any provision of any declaration recorded prior to July 1, 1998; however,~~  
108 ~~any~~ Any development established prior to ~~the enactment of the former Subdivided Land Sales~~  
109 ~~Act July 1, 1978,~~ may specifically provide for the applicability of the provisions of this chapter.

110 This chapter shall not be construed to affect the validity of any provision of any prior  
111 declaration; however, to the extent that the declaration is silent, the provisions of this chapter  
112 shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in  
113 the development shall be subject to the provisions of this chapter notwithstanding the fact that  
114 such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any  
115 provisions of this chapter, a declaration may specifically provide for the applicability of the  
116 provisions of this chapter. The granting of rights in this chapter shall not be construed to imply  
117 that such rights did not exist with respect to any development created in the Commonwealth  
118 before July 1, 1989.

119 B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of  
120 any association governing, or (iii) relationship of a member to any association governing  
121 condominiums created pursuant to the Condominium Act (§ ~~55-79.39~~ 55.1-xxx et seq.),  
122 cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ ~~55-424~~ 55.1-xxx et  
123 seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ ~~55-360~~ 55.1-  
124 xxx et seq.), or membership campgrounds created pursuant to the Virginia Membership  
125 Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit,  
126 taxable corporation with nonmandatory membership ~~which~~ that, as its primary function, makes  
127 available golf, ski, and other recreational facilities both to its members and the general public.

128 **Drafting note: In subsection A, the explanation of the term "lot" is deleted as**  
129 **unnecessary. In subsection A, the word "former" is stricken as unnecessary where it**  
130 **appears before "Subdivided Land Sales Act": there is only one Subdivided Land Sales**  
131 **Act. In the paragraph in subsection A that explains that the Property Owners' Association**  
132 **Act supersedes the Subdivided Land Sales Act, the date of July 1, 1978, is inserted for**  
133 **clarity, as the Subdivided Land Sales Act was enacted on July 1, 1978. These changes**

134 **correct the characterization of the Subdivided Land Sales Act and clarify the applicability**  
135 **of that Act. Technical changes are made.**

136 § ~~55-509.1~~ 55.1-xxx. Developer to pay real estate taxes attributable to the common area  
137 ~~upon transfer to association.~~

138 Upon the transfer of the common area to the association, the developer shall pay all real  
139 estate taxes attributable to the open or common space as defined in § 58.1-3284.1 through the  
140 date of the transfer to the association.

141 **Drafting note: Catchline is shortened.**

142 § ~~55-509.1:1~~ 55.1-xxx. Limitation on certain contracts and leases by declarant.

143 A. If entered into any time prior to the expiration of the period of declarant control  
144 contemplated by the declaration, no contract or lease entered into with the declarant or any  
145 entity controlled by the declarant, management contract, or employment contract that is directly  
146 or indirectly made by or on behalf of the association, its board of directors, or the lot owners as  
147 a group shall be entered into for a period in excess of five years. Any such contract or agreement  
148 may be terminated without penalty by the association or its board of directors upon not less than  
149 90 days' written notice to the other party given no later than 60 days after the expiration of the  
150 period of declarant control contemplated by the declaration.

151 B. If entered into any time prior to the expiration of the period of declarant control  
152 contemplated by the declaration, any contract or lease entered into with the declarant or any  
153 entity controlled by the declarant, management contract, or employment contract that is directly  
154 or indirectly made by or on behalf of the association, its board of directors, or the lot owners as  
155 a group may be renewed for periods not in excess of five years; however, at the end of any five-  
156 year period, the association or its board of directors may terminate any further renewals or  
157 extensions ~~thereof of such contract or lease.~~

158 C. If entered into at any time prior to the expiration of the period of declarant control  
159 contemplated by the declaration, any contract, lease, or agreement, other than those subject to  
160 the provisions of subsection A or B, may be entered into by or on behalf of the association, its

161 board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide  
162 and is commercially reasonable to the association at the time entered into under the  
163 circumstances.

164 D. This section shall be strictly construed to protect the rights of the lot owners.

165 **Drafting note: Technical change.**

166 § ~~55-509.2~~ 55.1-xxx. Documents to be provided by declarant upon transfer of control.

167 Unless previously provided to the board of directors of the association, once the majority  
168 of the members of the board of directors other than the declarant are owners of improved lots in  
169 the association and the declarant no longer holds a majority of the votes in the association, the  
170 declarant shall provide to the board of directors or its designated agent the following: (i) all  
171 association books and records held by or controlled by the declarant, including ~~without~~  
172 ~~limitation~~, minute books and rules and regulations and all amendments ~~thereto which to such~~  
173 rules and regulations that may have been promulgated; (ii) a statement of receipts and  
174 expenditures from the date of the recording of the association documents to the end of the  
175 regular accounting period immediately succeeding the first election of the board of directors by  
176 the ~~home lot~~ owners, not to exceed 60 days after the date of the election, such statement being  
177 prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii)  
178 the number of lots subject to the declaration; (iv) the number of lots that may be subject to the  
179 declaration upon completion of development; (v) a copy of the latest available approved plans  
180 and specifications for all improvements in the project or as-built plans if available; (vi) all  
181 association insurance policies ~~which that~~ are currently in force; (vii) written unexpired  
182 warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all  
183 common area improvements; (viii) any contracts in which the association is a contracting party;  
184 (ix) a list of manufacturers of paints, roofing materials, and other similar materials if specified  
185 for use on the association property; and (x) the number of members of the board of directors and  
186 number of such directors appointed by the declarant together with names and contact  
187 information of members of the board of directors.

188 If the association is managed by a common interest community manager in which the  
189 declarant, or its principals, has no pecuniary interest or management role, then such common  
190 interest community manager shall have the responsibility to provide the documents and  
191 information required by clauses (i), (ii), (vi), and (viii).

192 **Drafting note: The phrase "without limitation" is stricken after the word**  
193 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**  
194 **means includes, but not limited to." The word "home" is stricken and replaced with "lot"**  
195 **to use the defined term "lot owners." Technical changes are made.**

196 § ~~55-509.3~~ 55.1-xxx. Association charges.

197 Except as expressly authorized in this chapter, in the declaration, or otherwise provided  
198 by law, no association ~~may shall~~ (i) make an assessment or impose a charge against a lot or a lot  
199 owner unless the charge is a fee for services provided or related to use of the common area or  
200 (ii) charge a fee related to the provisions set out in § ~~55-509.6~~ 55.1-xxx or ~~55-509.7~~ 55.1-xxx  
201 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to  
202 authorize an association or common interest community manager to charge an inspection fee for  
203 an unimproved or improved lot except as provided in § ~~55-509.6~~ 55.1-xxx or ~~55-509.7~~ 55.1-xxx.  
204 The Common Interest Community Board may assess a monetary penalty for a violation of this  
205 section against any (a) association pursuant to § 54.1-2351 or (b) common interest community  
206 manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator  
207 pursuant to § 54.1-2349 or 54.1-2352, as applicable.

208 **Drafting note: "May" is stricken and replaced with "shall" because it is used in**  
209 **this section to express an absolute prohibition, which, to be consistent throughout the**  
210 **Code, is more properly expressed by the phrase "No association shall."**

211 § ~~55-509.3:1~~ 55.1-xxx. Rental of lots.

212 A. Except as expressly authorized in this chapter ~~or~~, in the declaration, or as otherwise  
213 provided by law, no association shall:



214 1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an  
215 assessment or impose a charge except as provided in § ~~55-509.3~~ 55.1-xxx;

216 2. Charge a rental fee, application fee, or other processing fee of any kind in excess of  
217 \$50 during the term of any lease;

218 3. Charge an annual or monthly rental fee or any other fee not expressly authorized in §  
219 ~~55-509.3~~ 55.1-xxx;

220 4. Require the lot owner to use a lease or an addendum to the lease prepared by the  
221 association;

222 5. Charge any deposit from the lot owner or the tenant of the lot owner; or

223 6. Have the authority to evict a tenant of any lot owner or to require any lot owner to  
224 execute a power of attorney authorizing the association to ~~so~~-evict such a tenant. However, if the  
225 lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's  
226 authorized representative with respect to any lease, the association shall recognize such  
227 representation without a formal power of attorney, provided that the association is given a  
228 written authorization signed by the lot owner designating such representative. Notwithstanding  
229 the foregoing, the requirements of § ~~55-515~~ 55.1-xxx and the declaration shall be satisfied  
230 before any such representative may exercise a vote on behalf of a lot owner as a proxy.

231 B. The association may require the lot owner to provide the association with (i) the  
232 names and contact information of and vehicle information for the tenants and authorized  
233 occupants under such lease and (ii) the name and contact information of any authorized agent of  
234 the lot owner, ~~and vehicle information for such tenants or authorized occupants~~. The association  
235 may require the lot owner to provide the association with the tenant's ~~acknowledgement~~  
236 acknowledgment of and consent to any rules and regulations of the association.

237 C. The provisions of this section shall not apply to lots owned by the association.

238 **Drafting note: The provisions of subsection B are reorganized to clarify what**  
239 **information may be required of a tenant, authorized occupant, and authorized agent.**  
240 **Technical changes are made.**

241 § ~~55-509.3:2~~ 55.1-xxx. Statement of lot owner rights.

242 Every lot owner who is a member in good standing of a property owners' association  
243 shall have the following rights:

244 1. The right of access to all books and records kept by or on behalf of the association  
245 according to and subject to the provisions of § ~~55-510~~ 55.1-xxx, including records of all  
246 financial transactions;

247 2. The right to cast a vote on any matter requiring a vote by the association's membership  
248 in proportion to the lot owner's ownership interest, ~~except to the extent that~~ unless the  
249 declaration provides otherwise;

250 3. The right to have notice of any meeting of the board of directors, to make a record of  
251 any such ~~meetings~~ meeting by audio or visual means, and to participate in any such meeting in  
252 accordance with the provisions of subsection F of § ~~55-510~~ 55.1-xxx and § ~~55-510.1~~ 55.1-xxx;

253 4. The right to have (i) notice of any proceeding conducted by the board of directors or  
254 other tribunal specified in the declaration against the lot owner to enforce any rule or regulation  
255 of the association and (ii) the opportunity to be heard and represented by counsel at ~~the~~ such  
256 proceeding, as provided in § ~~55-513~~ 55.1-xxx, and the right of due process in the conduct of that  
257 hearing; and

258 5. The right to serve on the board of directors if duly elected and a member in good  
259 standing of the association, ~~except to the extent~~ unless the declaration provides otherwise.

260 The rights enumerated in this section shall be enforceable by any such lot owner  
261 pursuant to the provisions of § ~~55-515~~ 55.1-xxx.

262 **Drafting note: In subdivision 3, the word "meetings" is stricken and replaced with**  
263 **the grammatically consistent singular "meeting" on the basis of § 1-227, which states that**  
264 **throughout the Code any word used in the singular includes the plural. Technical changes**  
265 **are made.**

266 Article 2.

267 Disclosure Requirements; Authorized Fees.

268           **Drafting note: Existing Article 2 is retained and contains provisions pertaining to**  
269 **disclosure and fees for the Property Owners' Association Act.**

270           § ~~55-509.4~~ 55.1-xxx. Contract disclosure statement; right of cancellation.

271           A. For purposes of this article, unless the context requires a different meaning:

272           "Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's  
273 authorized agent by one of the methods specified in this section.

274           "Purchaser's authorized agent" means any person designated by such purchaser in a  
275 ratified real estate contract for purchase and sale of residential real property or other writing  
276 designating such agent.

277           "Receives, received, or receiving" the disclosure packet means that the purchaser or  
278 purchaser's authorized agent has received the disclosure packet by one of the methods specified  
279 in this section.

280           "Seller's authorized agent" means a person designated by such seller in a ratified real  
281 estate contract for purchase and sale of residential real property or other writing designating  
282 such agent.

283           B. Subject to the provisions of subsection A of § ~~55-509.10~~ 55.1-xxx, an owner selling a  
284 lot shall disclose in the contract that (i) the lot is located within a development that is subject to  
285 the ~~Virginia~~ Property Owners' Association Act (§ ~~55-508~~ 55.1-xxx et seq.); (ii) the Property  
286 Owners' Association Act (§ 55.1-xxx et seq.) requires the seller to obtain from the property  
287 owners' association an association disclosure packet and provide it to the purchaser; (iii) the  
288 purchaser may cancel the contract within three days after receiving the association disclosure  
289 packet or being notified that the association disclosure packet will not be available; (iv) if the  
290 purchaser has received the association disclosure packet, the purchaser has a right to request an  
291 update of such disclosure packet in accordance with subsection H of § ~~55-509.6~~ 55.1-xxx or  
292 subsection C of § ~~55-509.7~~ 55.1-xxx, as appropriate; and (v) the right to receive the association  
293 disclosure packet and the right to cancel the contract are waived conclusively if not exercised  
294 before settlement.

295 For purposes of clause (iii), the association disclosure packet shall be deemed not to be  
296 available if (a) a current annual report has not been filed by the association with either the State  
297 Corporation Commission pursuant to § 13.1-936 or ~~with~~ the Common Interest Community  
298 Board pursuant to § ~~55-516.1~~ 55.1-xxx, (b) the seller has made a written request to the  
299 association that the packet be provided and no such packet has been received within 14 days in  
300 accordance with subsection A of § ~~55-509.5~~ 55.1-xxx, or (c) written notice has been provided  
301 by the association that a packet is not available.

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

304 ~~C. D.~~ The information contained in the association disclosure packet shall be current as  
305 of a date specified on the association disclosure packet prepared in accordance with this section;  
306 however, a disclosure packet update or financial update may be requested in accordance with  
307 subsection G of § ~~55-509.6~~ 55.1-xxx or subsection C of § ~~55-509.7~~ 55.1-xxx, as appropriate.

308 The purchaser may cancel the contract: (i) within three days after the date of the contract, if, on  
309 or before the date that the purchaser signs the contract, the purchaser receives the association  
310 disclosure packet or is notified that the association disclosure packet will not be available; (ii)  
311 within three days after receiving the association disclosure packet if the association disclosure  
312 packet or notice that the association disclosure packet will not be available is hand delivered,  
313 delivered by electronic means, or delivered by a commercial overnight delivery service or the  
314 United States Postal Service, and a receipt is obtained; or (iii) within six days after the postmark  
315 date if the association disclosure packet or notice that the association disclosure packet will not  
316 be available is sent to the purchaser by United States mail. The purchaser also may ~~also~~ cancel  
317 the contract at any time prior to settlement if the purchaser has not been notified that the  
318 association disclosure packet will not be available and the association disclosure packet is not  
319 delivered to the purchaser.

320 Notice of cancellation shall be provided to the lot owner or his agent by one of the  
321 following methods:

- 322 1. Hand delivery;
- 323 2. United States mail, postage prepaid, provided that the sender retains sufficient proof
- 324 of mailing, ~~which may be either a United States postal certificate of mailing or in the form of~~ a
- 325 certificate of service prepared by the sender confirming such mailing;
- 326 3. Electronic means, provided that the sender retains sufficient proof of the electronic
- 327 delivery, which may be in the form of an electronic receipt of delivery, a confirmation that the
- 328 notice was sent by facsimile, or a certificate of service prepared by the sender confirming the
- 329 electronic delivery; or
- 330 4. Overnight delivery using a commercial service or the United States Postal Service.

331 In the event of a dispute, the sender shall have the burden to demonstrate delivery of the

332 notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any

333 deposit to be returned promptly to the purchaser.

334 ~~D.E.~~ Whenever any contract is canceled based on a failure to comply with subsection ~~A~~

335 ~~B~~ or ~~C D~~ or pursuant to subsection ~~B C~~, any deposit or escrowed funds shall be returned within

336 30 days of the cancellation, unless the parties to the contract specify in writing a shorter period.

337 ~~E.F.~~ Any rights of the purchaser to cancel the contract provided by this chapter are

338 waived ~~conclusively~~ if not exercised prior to settlement.

339 ~~F.G.~~ Except as expressly provided in this chapter, the provisions of this section and §

340 ~~55-509.5 55.1-xxx~~ may not be varied by agreement, and the rights conferred by this section and

341 § ~~55-509.5 55.1-xxx~~ may not be waived.

342 ~~G. For purposes of this chapter:~~

343 ~~"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's~~

344 ~~authorized agent by one of the methods specified in this section.~~

345 ~~"Purchaser's authorized agent" means any person designated by such purchaser in a~~

346 ~~ratified real estate contract for purchase and sale of residential real property or other writing~~

347 ~~designating such agent.~~

348 ~~"Receives, received, or receiving" the disclosure packet means that the purchaser or~~  
349 ~~purchaser's authorized agent has received the disclosure packet by one of the methods specified~~  
350 ~~in this section.~~

351 ~~"Seller's authorized agent" means a person designated by such seller in a ratified real~~  
352 ~~estate contract for purchase and sale of residential real property or other writing designating~~  
353 ~~such agent.~~

354 H. Unless otherwise provided in the ratified real estate contract or other writing, delivery  
355 to the purchaser's authorized agent shall require delivery to such agent and not to a person other  
356 than such agent. Delivery of the disclosure packet may be made by the lot owner or the lot  
357 owner's authorized agent.

358 I. If the lot is governed by more than one association, the purchaser's right of  
359 cancellation may be exercised within the required time frames following delivery of the last  
360 disclosure packet or resale certificate.

361 ~~J. Except as expressly authorized in this chapter or in the declaration or as otherwise~~  
362 ~~provided by law, no property owners' association shall:~~

363 ~~1. Require the use of any for sale sign that is (i) an association sign or (ii) a real estate~~  
364 ~~sign that does not comply with the requirements of the Real Estate Board. An association may,~~  
365 ~~however, prohibit the placement of signs in the common area and establish reasonable rules and~~  
366 ~~regulations that regulate (a) the number of real estate signs to be located on real property upon~~  
367 ~~which the owner has a separate ownership interest or a right of exclusive possession so long as~~  
368 ~~at least one real estate sign is permitted; (b) the geographical location of real estate signs on real~~  
369 ~~property in which the owner has a separate ownership interest or a right of exclusive possession,~~  
370 ~~so long as the location of the real estate signs complies with the requirements of the Real Estate~~  
371 ~~Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period~~  
372 ~~of time after settlement when the real estate signs on such real property shall be removed; or~~

373 ~~2. Require any lot owner to execute a formal power of attorney if the lot owner~~  
374 ~~designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized~~

375 ~~representative, and the association shall recognize such representation without a formal power~~  
376 ~~of attorney, provided that the association is given a written authorization signed by the lot owner~~  
377 ~~designating such representative. Notwithstanding the foregoing, the requirements of § 13.1-849~~  
378 ~~of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association's declaration,~~  
379 ~~bylaws, and articles of incorporation shall be satisfied before any such representative may~~  
380 ~~exercise a vote on behalf of a lot owner as a proxy.~~

381 **Drafting note: The definitions contained in existing subsection G are relocated to**  
382 **subsection A. In proposed subsection B, "Property Owners' Association" is inserted prior**  
383 **to the word "Act" because the disclosure should be clear as to the basis for the**  
384 **requirement. In proposed subdivision D 2, the reference to a U.S. postal certificate of**  
385 **mailing is stricken because that type of certificate is no longer used. In proposed**  
386 **subsection F, the word "conclusively" is stricken as unnecessary. The language in existing**  
387 **subsection J is relocated to proposed §§ 55.1-xxx and 55.1-xxx [Use of for sale signs in**  
388 **connection with sale; Designation of authorized representative] to form two separate**  
389 **sections pertaining to limitations placed on the authority of associations relating to resale**  
390 **of units. Technical changes are made.**

391 ~~§ 55-509.5~~ 55.1-xxx. Contents of association disclosure packet; delivery of packet.

392 A. ~~The association shall deliver, within~~ Within 14 days after receipt of a written request  
393 and instructions by a seller or the seller's authorized agent, the association shall deliver an  
394 association disclosure packet as directed in the written request. The information contained in the  
395 association disclosure packet shall be current as of a date specified on the association disclosure  
396 packet. If hand or electronically delivered, the written request is deemed received on the date of  
397 delivery. If sent by United States mail, the request is deemed received six days after the  
398 postmark date. An association disclosure packet shall contain the following:

399 1. The name of the association and, if incorporated, the state in which the association is  
400 incorporated and the name and address of its registered agent in ~~Virginia~~ the Commonwealth;

401           2. A statement of any expenditure of funds approved by the association or the board of  
402 directors that ~~shall require~~ requires an assessment in addition to the regular assessment during  
403 the current year or the immediately succeeding fiscal year;

404           3. A statement, including the amount of all assessments and any other mandatory fees or  
405 charges currently imposed by the association, together with any post-closing fee charged by the  
406 common interest community manager, if any, and associated with the purchase, disposition, and  
407 maintenance of the lot and to the right of use of common areas, and the status of the account;

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

410           5. The current reserve study report or summary ~~thereof of such report~~, a statement of the  
411 status and amount of any reserve or replacement fund, and any portion of the fund allocated by  
412 the board of directors for a specified project;

413           6. A copy of the association's current budget or a summary ~~thereof of such budget~~,  
414 prepared by the association, and a copy of its statement of income and expenses or statement of  
415 its financial position (balance sheet) for the last fiscal year for which such statement is available,  
416 including a statement of the balance due of any outstanding loans of the association;

417           7. A statement of the nature and status of any pending suit or unpaid judgment (i) to  
418 which the association is a party and (ii) that ~~either~~ could or would have a material impact on the  
419 association or its members or that relates to the lot being purchased;

420           8. A statement setting forth ~~what the~~ insurance coverage that is provided for all lot  
421 owners by the association, including the fidelity ~~bond coverage~~ maintained by the association,  
422 and ~~what any~~ additional insurance ~~would normally be secured by that is required or~~  
423 recommended for each ~~individual~~ lot owner;

424           9. A statement that any improvement or alteration made to the lot, or uses made of the  
425 lot or common area assigned ~~thereto are to such lot, is~~ or ~~are is~~ not in violation of the  
426 declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation,  
427 if any, of the association;



428 10. A statement setting forth any restriction, limitation, or prohibition on the right of a  
429 lot owner to place a sign on the owner's lot advertising the lot for sale;

430 11. A statement setting forth any restriction, limitation, or prohibition on the right of a  
431 lot owner to display any flag on the owner's lot, including ~~but not limited to~~ reasonable  
432 restrictions as to the size, place, and manner of placement or display of such flag and the  
433 installation of any flagpole or similar structure necessary to display such flag;

434 12. A statement setting forth any restriction, limitation, or prohibition on the right of a  
435 lot owner to install or use solar energy collection devices on the owner's property;

436 13. A copy of the current declaration, the association's articles of incorporation and  
437 bylaws, and any rules and regulations or architectural guidelines adopted by the association;

438 14. A copy of any approved minutes of the board of directors and association meetings  
439 for the six calendar months preceding the request for the disclosure packet;

440 15. A copy of the notice given to the lot owner by the association of any current or  
441 pending rule or architectural violation;

442 16. A copy of the fully completed one-page cover sheet developed by the Common  
443 Interest Community Board pursuant to § 54.1-2350;

444 17. Certification that the association has filed with the Common Interest Community  
445 Board the annual report required by ~~§ 55-516.1, which~~ 55.1-xxx. Such certification shall  
446 indicate the filing number assigned by the Common Interest Community Board, and the  
447 expiration date of such filing; and

448 18. A statement indicating any known project approvals currently in effect issued by  
449 secondary mortgage market agencies.

450 B. Failure to receive copies of an association disclosure packet shall not excuse any  
451 failure to comply with the provisions of the declaration, articles of incorporation, bylaws, or  
452 rules or regulations.

453 C. The disclosure packet shall be delivered in accordance with the written request and  
454 instructions of the seller or the seller's authorized agent, including whether the disclosure packet

455 | shall be delivered electronically or in hard copy, and shall specify the complete contact  
456 | information for the parties to whom the disclosure packet shall be delivered. The disclosure  
457 | packet required by this section, shall not, in and of itself, be deemed a security ~~within the~~  
458 | [meaning of as defined in](#) § 13.1-501.

459 |         D. The seller or the seller's authorized agent may request that the disclosure packet be  
460 | provided in hard copy or in electronic form. An association or common interest community  
461 | manager may provide the disclosure packet electronically; however, the seller or the seller's  
462 | authorized agent shall have the right to request that the association disclosure packet be  
463 | provided in hard copy. The seller or the seller's authorized agent shall continue to have the right  
464 | to request a hard copy of the disclosure packet in person at the principal place of business of the  
465 | association. If the seller or the seller's authorized agent requests that the disclosure packet be  
466 | provided in electronic format, neither the association nor its common interest community  
467 | manager may require the seller or the seller's authorized agent to pay any fees to use the  
468 | provider's electronic network or system. The disclosure packet shall not be delivered in hard  
469 | copy if the requester has requested delivery of such disclosure packet electronically. If the  
470 | disclosure packet is provided electronically by a website link, the preparer shall not cause the  
471 | website link to expire within the subsequent 90-day period. The preparer shall not charge  
472 | another fee during the subsequent 12-month period, except that the preparer may charge an  
473 | update fee for a financial update or for an inspection as provided in § ~~55-509.6~~ [55.1-xxx](#). If the  
474 | seller or the seller's authorized agent asks that the disclosure packet be provided in electronic  
475 | format, the seller or the seller's authorized agent may request that an electronic copy be provided  
476 | to each of the following named in the request: the seller, the seller's authorized agent, the  
477 | purchaser, the purchaser's authorized agent, and not more than one other person designated by  
478 | the requester. If so requested, the property owners' association or its common interest  
479 | community manager may require the seller or the seller's authorized agent to pay the fee  
480 | specified in § ~~55-509.6~~ [55.1-xxx](#). Regardless of whether the disclosure packet is delivered in  
481 | paper form or electronically, the preparer of the disclosure packet shall provide such disclosure

482 packet directly to the persons designated by the requester to the addresses or, if applicable, the  
483 email addresses provided by the requester.

484 **Drafting note: In subdivision A 8, language is updated and clarified. In subdivision**  
485 **A 11, the phrase "but not limited to" is stricken after the word "including" on the basis of**  
486 **§ 1-218, which states that throughout the Code "'Includes' means includes, but not limited**  
487 **to." Technical changes are made.**

488 § ~~55-509.6~~ 55.1-xxx. Fees for disclosure packet; professionally managed associations.

489 A. A professionally managed association or its common interest community manager  
490 may charge certain fees as authorized by this section for the inspection of the property, the  
491 preparation and issuance of the disclosure packet required by § ~~55-509.5~~ 55.1-xxx, and for such  
492 other services as set out in this section. The seller or the seller's authorized agent shall specify in  
493 writing whether the disclosure packet shall be delivered electronically or in hard copy, at the  
494 option of the seller or the seller's authorized agent, and shall specify the complete contact  
495 information for the parties to whom the disclosure packet shall be delivered.

496 B. A reasonable fee may be charged by the preparer as follows ~~for~~:

497 1. ~~The For the~~ inspection of the exterior of the dwelling unit and the lot, as authorized in  
498 the declaration and as required to prepare the association disclosure packet, a fee not to exceed  
499 \$100;

500 2. ~~The For~~ preparation and delivery of the disclosure packet in (i) paper format, a fee not  
501 to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a  
502 total of \$125 for an electronic copy to each of the following named in the request: the seller, the  
503 seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one  
504 other person designated by the requester. The preparer of the disclosure packet shall provide the  
505 disclosure packet directly to the designated persons. Only one fee shall be charged for the  
506 preparation and delivery of the disclosure packet;

507           3. At the option of the seller or the seller's authorized agent, with the consent of the  
508 association or the common interest community manager, for expediting the inspection,  
509 preparation, and delivery of the disclosure packet, an additional expedite fee not to exceed \$50;

510           4. At the option of the seller or the seller's authorized agent, for an additional hard copy  
511 of the disclosure packet, a fee not to exceed \$25 per hard copy;

512           5. At the option of the seller or the seller's authorized agent, for hand delivery or  
513 overnight delivery of the overnight disclosure packet, a fee not to exceed an amount equal to the  
514 actual cost paid to a third-party commercial delivery service ~~for hand delivery or overnight~~  
515 ~~delivery of the association disclosure packet~~; and

516           6. A post-closing fee to the purchaser of the property, collected at settlement, for the  
517 purpose of establishing the purchaser as the owner of the property in the records of the  
518 association, a fee not to exceed \$50.

519           Except as otherwise provided in subsection E, neither the association nor its common  
520 interest community manager shall require cash, check, certified funds, or credit card payments  
521 at the time the request for the disclosure packet is made. The disclosure packet shall state that all  
522 fees and costs for the disclosure packet shall be the personal obligation of the lot owner and  
523 shall be an assessment against the lot and collectible as any other assessment in accordance with  
524 the provisions of the declaration and ~~§ 55-516~~ § 55.1-xxx, if not paid at settlement or within 60  
525 days of the delivery of the disclosure packet, whichever occurs first.

526           For purposes of this section, an expedite fee shall ~~only~~ be charged only if the inspection  
527 and preparation of delivery of the disclosure packet are completed within five business days of  
528 the request for a disclosure packet.

529           C. No fees other than those specified in this section, and as limited by this section, shall  
530 be charged by the association or its common interest community manager for compliance with  
531 the duties and responsibilities of the association under this chapter. No additional fee shall be  
532 charged for access to the association's or common interest community manager's website. The  
533 association or its common interest community manager shall publish and make available in

534 paper or electronic format, or both, a schedule of the applicable fees so the seller or the seller's  
535 authorized agent will know such fees at the time of requesting the packet.

536 D. Any fees charged pursuant to this section shall be collected at the time of settlement  
537 on the sale of the lot and shall be due and payable out of the settlement proceeds in accordance  
538 with this section. The settlement agent shall escrow a sum sufficient to pay such costs of the  
539 seller at settlement. The seller shall be responsible for all costs associated with the preparation  
540 and delivery of the association disclosure packet, except for the costs of any disclosure packet  
541 update or financial update, which costs shall be the responsibility of the requester, payable at  
542 settlement. Neither the association nor its common interest community manager shall require  
543 cash, check, certified funds, or credit card payments at the time ~~of~~ the request is made for the  
544 association disclosure packet.

545 E. If settlement does not occur within 60 days of the delivery of the disclosure packet, or  
546 funds are not collected at settlement and disbursed to the association or the common interest  
547 community manager, all fees, including those costs that would have otherwise been the  
548 responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after  
549 delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot  
550 owner, and (iii) an assessment against the lot and collectible as any other assessment in  
551 accordance with the provisions of the declaration and § ~~55-516~~ 55.1-xxx. The seller may pay the  
552 association by cash, check, certified funds, or credit card, if credit card payment is an option  
553 offered by the association. The association shall pay the common interest community manager  
554 the amount due from the lot owner within 30 days after invoice.

555 F. The maximum allowable fees charged in accordance with this section shall adjust  
556 every five years, as of January 1 of that year, in an amount equal to the annual increases for that  
557 five-year period in the United States Average Consumer Price Index for all items, all urban  
558 consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of  
559 Labor.

560 G. If an association disclosure packet has been issued for a lot within the preceding 12-  
561 month period, a person specified in the written instructions of the seller or the seller's authorized  
562 agent, including the seller or the seller's authorized agent, or the purchaser or his authorized  
563 agent may request a disclosure packet update. The requester shall specify whether the disclosure  
564 packet update shall be delivered electronically or in hard copy, and shall specify the complete  
565 contact information of the parties to whom the update shall be delivered. The disclosure packet  
566 update shall be delivered within 10 days of the written request.

567 H. The settlement agent may request a financial update. The requester shall specify  
568 whether the financial update shall be delivered electronically or in hard copy, and shall specify  
569 the complete contact information of the parties to whom the update shall be delivered. The  
570 financial update shall be delivered within three business days of the written request.

571 I. A reasonable fee for the disclosure packet update or financial update may be charged  
572 by the preparer not to exceed \$50. At the option of the purchaser or the purchaser's authorized  
573 agent, the requester may request that the association or the common interest community  
574 manager perform an additional inspection of the exterior of the dwelling unit and the lot, as  
575 authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified  
576 update shall be collected at the time settlement occurs on the sale of the property. The settlement  
577 agent shall escrow a sum sufficient to pay such costs of the seller at settlement. Neither the  
578 association nor its common interest community manager, if any, shall require cash, check,  
579 certified funds, or credit card payments at the time the request is made for the disclosure packet  
580 update. The requester may request that the specified update be provided in hard copy or in  
581 electronic form.

582 J. No association or common interest community manager may require the requester to  
583 request the specified update electronically. The seller or the seller's authorized agent shall  
584 continue to have the right to request a hard copy of the specified update in person at the  
585 principal place of business of the association. If the requester asks that the specified update be  
586 provided in electronic format, neither the association nor its common interest community

587 manager may require the requester to pay any fees to use the provider's electronic network or  
588 system. A copy of the specified update shall be provided to the seller or the seller's authorized  
589 agent.

590 K. When an association disclosure packet has been delivered as required by § ~~55-509.5~~  
591 [55.1-xxx](#), the association shall, as to the purchaser, be bound by the statements set forth ~~therein~~  
592 [in the disclosure packet](#) as to the status of the assessment account and the status of the lot with  
593 respect to any violation of the declaration, bylaws, rules and regulations, architectural  
594 guidelines, and articles of incorporation, if any, of the association as of the date of the statement  
595 unless the purchaser had actual knowledge that the contents of the disclosure packet were in  
596 error.

597 L. If the association or its common interest community manager has been requested in  
598 writing to furnish the association disclosure packet required by § ~~55-509.5~~ [55.1-xxx](#), failure to  
599 provide the association disclosure packet substantially in the form provided in this section shall  
600 be deemed a waiver of any claim for delinquent assessments or of any violation of the  
601 declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of  
602 the request with respect to the subject lot. The preparer of the association disclosure packet shall  
603 be liable to the seller in an amount equal to the actual damages sustained by the seller in an  
604 amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the  
605 declaration, bylaws, rules and regulations, and architectural guidelines of the association as to  
606 all matters arising after the date of the settlement of the sale.

607 M. The Common Interest Community Board may assess a monetary penalty for failure  
608 to deliver the association disclosure packet within 14 days against any (i) property owners'  
609 association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to §  
610 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant  
611 to § 54.1-2349 or 54.1-2352, as applicable.

612 **Drafting note: Technical changes.**

613 | § ~~55-509.7~~ 55.1-xxx. Fees for disclosure packets; associations not professionally  
614 | managed.

615 | A. An association that is not professionally managed may charge a fee for the  
616 | preparation and issuance of the association disclosure packet required by § ~~55-509.5~~ 55.1-xxx.  
617 | Any fee shall reflect the actual cost of the preparation of the association disclosure packet, but  
618 | shall not exceed \$0.10 per page of copying costs or a total of \$100 for all costs incurred in  
619 | preparing the association disclosure packet. The seller or his authorized agent shall specify  
620 | whether the association disclosure packet shall be delivered electronically or in hard copy and  
621 | shall specify the complete contact information of the parties to whom the disclosure packet shall  
622 | be delivered. If the seller or his authorized agent specifies that delivery shall be made to the  
623 | purchaser or his authorized agent, the preparer shall provide the disclosure packet directly to the  
624 | designated persons, at the same time it is delivered to the seller or his authorized agent. The  
625 | association shall advise the ~~requestor~~ requester if electronic delivery of the disclosure packet or  
626 | the disclosure packet update or financial update is not available, if electronic delivery has been  
627 | requested by the seller or his authorized agent.

628 | B. No fees other than those specified in this section shall be charged by the association  
629 | for compliance with its duties and responsibilities under this section. Any fees charged pursuant  
630 | to this section shall be collected at the time of delivery of the disclosure packet. If unpaid, any  
631 | such fees shall be an assessment against the lot and collectible as any other assessment in  
632 | accordance with the provisions of the declaration and § ~~55-516~~ 55.1-xxx. The seller may pay the  
633 | association by cash, check, certified funds, or credit card, if credit card payment is an option  
634 | offered by the association.

635 | C. If an association disclosure packet has been issued for a lot within the preceding 12-  
636 | month period, a person specified in the written instructions of the seller or his authorized agent,  
637 | including the seller or his authorized agent, or the purchaser or his authorized agent may request  
638 | a disclosure packet update. The ~~requestor~~ requester shall specify whether the disclosure packet  
639 | update shall be delivered electronically or in hard copy and shall specify the complete contact



640 information of the parties to whom the specified update shall be delivered. The disclosure  
641 packet update shall be delivered within 10 days of the written request ~~therefor~~ for such  
642 disclosure packet update.

643 D. The settlement agent may request a financial update. The ~~requestor~~ requester shall  
644 specify whether the financial update shall be delivered electronically or in hard copy, and shall  
645 specify the complete contact information of the parties to whom the update shall be delivered.  
646 The financial update shall be delivered within three business days of the written request ~~therefor~~  
647 for such financial update.

648 E. A reasonable fee for the disclosure packet update or a financial update may be  
649 charged by the preparer not to exceed \$50. At the option of the purchaser or his authorized  
650 agent, the ~~requestor~~ requester may request that the association perform an additional inspection  
651 of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to  
652 exceed \$50. Any fees charged for the specified update shall be collected at the time of delivery  
653 of the update. The association shall not require cash, check, certified funds, or credit card  
654 payments at the time the request is made for the disclosure packet update. The ~~requestor~~  
655 requester may request that the specified update be provided in hard copy or in electronic form.

656 F. No association may require the ~~requestor~~ requester to request the specified update  
657 electronically. The seller or his authorized agent shall continue to have the right to request a  
658 hard copy of the specified update in person at the association's principal place of business ~~of the~~  
659 association. If the ~~requestor~~ requester asks that the specified update be provided in electronic  
660 format, the association shall not require the requester to pay any fees to use the provider's  
661 electronic network or system. If the ~~requestor~~ requester asks that the specified update be  
662 provided in electronic format, the ~~requestor~~ requester may designate no more than two  
663 additional recipients to receive the specified update in electronic format at no additional charge.  
664 A copy of the specified update shall be provided to the seller or his authorized agent.

665 G. When a disclosure packet has been delivered as required by § ~~55-509.5~~ 55.1-xxx, the  
666 association shall, as to the purchaser, be bound by the statements set forth ~~therein~~ in the

667 [disclosure packet](#) as to the status of the assessment account and the status of the lot with respect  
668 to any violation of the declaration, bylaws, rules and regulations, architectural guidelines, and  
669 articles of incorporation, if any, of the association as of the date of the statement unless the  
670 purchaser had actual knowledge that the contents of the disclosure packet were in error.

671 H. If the association has been requested to furnish the association disclosure packet  
672 required by this section, failure to provide the association disclosure packet substantially in the  
673 form provided in this section shall be deemed a waiver of any claim for delinquent assessments  
674 or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines  
675 existing as of the date of the request with respect to the subject lot. The association shall be  
676 liable to the seller in an amount equal to the actual damages sustained by the seller in an amount  
677 not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration,  
678 bylaws, rules and regulations, and architectural guidelines of the association as to all matters  
679 arising after the date of the settlement of the sale.

680 **Drafting note: Technical changes.**

681 ~~§ 55-509.8~~ [55.1-xxx](#). Properties subject to more than one declaration.

682 If the lot is subject to more than one declaration, the association or its common interest  
683 community manager may charge the fees authorized by ~~§ 55-509.6~~ [55.1-xxx](#) or ~~55-509.7~~ [55.1-](#)  
684 [xxx](#) for each of the applicable associations, provided, however, that no association shall charge  
685 inspection fees unless the association has architectural control over the lot.

686 **Drafting note: Technical change.**

687 ~~§ 55-509.9~~ [55.1-xxx](#). Requests by settlement agents.

688 A. The settlement agent may request a financial update from the preparer of the  
689 disclosure packet. The preparer of the disclosure packet shall, upon request from the settlement  
690 agent, provide the settlement agent with written escrow instructions directing the amount of any  
691 funds to be paid from the settlement proceeds to the association or the common interest  
692 community manager. There shall be no fees charged for a response by the association or its  
693 common interest community manager to a request from the settlement agent for written escrow

694 instructions, ~~however.~~ However, a fee may be charged for a financial update pursuant to this  
695 chapter.

696 B. The settlement agent, when transmitting funds to the association or the common  
697 interest community manager, shall, unless otherwise directed in writing, provide the preparer of  
698 the disclosure packet with (i) the complete record name of the seller, (ii) the address of the  
699 subject lot, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief  
700 explanation of the application of any funds transmitted or by providing a copy of a settlement  
701 statement, unless otherwise prohibited.

702 **Drafting note: Technical change.**

703 § ~~55-509.10~~ 55.1-xxx. Exceptions to disclosure requirements.

704 A. The contract disclosures required by § ~~55-509.4~~ 55.1-xxx and the association  
705 disclosure packet required by § ~~55-509.5~~ 55.1-xxx shall not be provided in the case of:

- 706 1. A disposition of a lot by gift;
- 707 2. A disposition of a lot pursuant to court order if the court so directs;
- 708 3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
- 709 4. A disposition of a lot by a sale at an auction, where the association disclosure packet  
710 was made available as part of an auction package for prospective purchasers prior to the auction  
711 sale; or
- 712 5. A disposition of a lot to a person or entity who is not acquiring the lot for his own  
713 residence or for the construction thereon of a dwelling unit to be occupied as his own residence,  
714 unless requested by such person or entity. If such disclosures are not requested, a statement in  
715 the contract of sale that the purchaser is not acquiring the lot for such purpose shall be  
716 conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot  
717 shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and  
718 architectural guidelines of the association as to all matters.

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

722 C. In the case of an initial disposition of a lot by the declarant, the association disclosure  
723 packet required by § ~~55-509.5~~ 55.1-xxx need not include the information referenced in  
724 subdivisions A 2, ~~A 3, A 5~~ nor, or A 9 of § ~~55-509.5~~ 55.1-xxx, and it shall include the  
725 information referenced in subdivision A 17 of § ~~55-509.5~~ 55.1-xxx only if the association has  
726 filed an annual report prior to the date of such disclosure packet.

727 **Drafting note: Technical changes.**

728 Article 3.

729 Operation and Management of Association.

730 **Drafting note: Existing Article 3 is retained and contains provisions pertaining to**  
731 **the operation and management of property owners' associations.**

732 § ~~55-510~~ 55.1-xxx. Access to association records; association meetings; notice.

733 A. The association shall keep detailed records of receipts and expenditures affecting the  
734 operation and administration of the association. All financial books and records shall be kept in  
735 accordance with generally accepted accounting practices.

736 B. Subject to the provisions of subsection C and so long as the request is for a proper  
737 purpose related to his membership in the association, all books and records kept by or on behalf  
738 of the association, shall be available for examination and copying by a member in good standing  
739 or his authorized agent, including ~~but not limited to~~:

740 1. The association's membership list and addresses, which shall not be used for purposes  
741 of pecuniary gain or commercial solicitation; and

742 2. The actual salary of the six highest compensated employees of the association earning  
743 over \$75,000 and aggregate salary information of all other employees of the association;  
744 however, individual salary information shall not be available for examination and copying  
745 during the declarant control period.

746 Notwithstanding any provision of law to the contrary, this right of examination shall  
747 exist without reference to the duration of membership and may be exercised (i) only during  
748 reasonable business hours or at a mutually convenient time and location and (ii) upon five  
749 business days' written notice for an association managed by a common interest community  
750 manager and 10 business days' written notice for a self-managed association, which notice  
751 reasonably identifies the purpose for the request and the specific books and records of the  
752 association requested.

753 C. Books and records kept by or on behalf of an association may be withheld from  
754 inspection and copying to the extent that they concern:

- 755 1. Personnel matters relating to specific, identified persons or a person's medical records;
- 756 2. Contracts, leases, and other commercial transactions to purchase or provide goods or  
757 services, currently in or under negotiation;
- 758 3. Pending or probable litigation. ~~Probable~~ For purposes of this subdivision, "probable  
759 litigation" means those instances where there has been a specific threat of litigation from a ~~party~~  
760 person or the legal counsel of a ~~party person~~;
- 761 4. Matters involving state or local administrative or other formal proceedings before a  
762 government tribunal for enforcement of the association documents or rules and regulations  
763 promulgated pursuant to ~~§ 55-513~~ 55.1-xxx;
- 764 5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are  
765 protected by the attorney-client privilege or the attorney work product doctrine;
- 766 6. Disclosure of information in violation of law;
- 767 7. Meeting minutes or other confidential records of an executive session of the board of  
768 directors held in accordance with subsection C of ~~§ 55-510.1~~ 55.1-xxx;
- 769 8. Documentation, correspondence, or management or board reports compiled for or on  
770 behalf of the association or the board by its agents or committees for consideration by the board  
771 in executive session; or

772 | 9. Individual ~~unit~~ lot owner or member files, other than those of the requesting lot  
773 | owner, including any individual lot owner's or member's files kept by or on behalf of the  
774 | association.

775 | D. Prior to providing copies of any books and records to a member in good standing  
776 | under this section, the association may impose and collect a charge, reflecting the reasonable  
777 | costs of materials and labor, not to exceed the actual costs ~~thereof~~ of such materials and labor.  
778 | Charges may be imposed only in accordance with a cost schedule adopted by the board of  
779 | directors in accordance with this subsection. The cost schedule shall (i) specify the charges for  
780 | materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to  
781 | such requesting member at the time the request is made.

782 | E. Notwithstanding the provisions of subsections B and C, all books and records of the  
783 | association, including individual salary information for all employees and payments to  
784 | independent contractors, shall be available for examination and copying upon request by a  
785 | member of the board of directors in the discharge of his duties as a director.

786 | F. Meetings of the association shall be held in accordance with the provisions of the  
787 | bylaws at least once each year after the formation of the association. The bylaws shall specify an  
788 | officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled  
789 | meeting, and at least seven days in advance of any other meeting, send to each member notice of  
790 | the time, place, and purposes of such meeting. In the event of cancellation of any annual  
791 | meeting of the association at which directors are elected, the seven-day notice of any subsequent  
792 | meeting scheduled to elect such directors shall include a statement that the meeting is scheduled  
793 | for the purpose of the election of directors.

794 | Notice shall be sent by United States mail to all members at the address of their  
795 | respective lots unless the member has provided to such officer or his agent an address other than  
796 | the address of the member's lot; ~~or notice~~. Notice may instead be hand delivered by the officer  
797 | or his agent, provided that the officer or his agent certifies in writing that notice was delivered to  
798 | the member. Except as provided in subdivision C 7, draft minutes of the board of directors shall

799 be open for inspection and copying (i) within 60 days from the conclusion of the meeting to  
800 which such minutes appertain or (ii) when such minutes are distributed to board members as  
801 part of an agenda package for the next meeting of the board of directors, whichever occurs first.

802 **Drafting note: In subsection B, the phrase "but not limited to" is stricken following**  
803 **the term "including" on the basis of § 1-218, which states that throughout the Code**  
804 **"'Includes' means includes, but not limited to." In subdivision C 3, the word "party" is**  
805 **stricken and replaced with the word "person" because there are no "parties" if there is no**  
806 **pending litigation. In subdivision C 9, the word "unit" is stricken and replaced with "lot"**  
807 **to use the defined term "lot owner." Technical changes are made.**

808 § ~~55-510.1~~ 55.1-xxx. Meetings of the board of directors.

809 A. All meetings of the board of directors, including any subcommittee or other  
810 committee ~~thereof of the board of directors, where the business of the association is discussed or~~  
811 ~~transacted~~ shall be open to all members of record. The board of directors shall not use work  
812 sessions or other informal gatherings of the board of directors to circumvent the open meeting  
813 requirements of this section. Minutes of the meetings of the board of directors shall be recorded  
814 and shall be available as provided in subsection B of § ~~55-510~~ 55.1-xxx.

815 B. Notice of the time, date, and place of each meeting of the board of directors or of any  
816 subcommittee or other committee ~~thereof of the board of directors~~ shall be published where it is  
817 reasonably calculated to be available to a majority of the lot owners.

818 A lot owner may make a request to be notified on a continual basis of any such meetings  
819 ~~which request. Such request~~ shall be made at least once a year in writing and include the lot  
820 ~~owners' owner's~~ name, address, zip code, and any e-mail address as appropriate. Notice of the  
821 time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or e-  
822 mail in the case of meetings of the board of directors or (ii) by e-mail in the case of meetings of  
823 any subcommittee or other committee of the board of directors.

824 Notice, reasonable under the circumstances, of special or emergency meetings shall be  
825 given contemporaneously with the notice provided to members of the association's board of

826 directors or any subcommittee or other committee ~~thereof~~ of the board of directors conducting  
827 the meeting.

828 Unless otherwise exempt as relating to an executive session pursuant to subsection C, at  
829 least one copy of all agenda packets and materials furnished to members of an association's  
830 board of directors or subcommittee or other committee ~~thereof~~ of the board of directors for a  
831 meeting shall be made available for inspection by the membership of the association at the same  
832 time such documents are furnished to the members of the board of directors or any  
833 subcommittee or committee ~~thereof~~ of the board of directors.

834 Any member may record any portion of a meeting that is required to be open. The board  
835 of directors or subcommittee or other committee ~~thereof~~ of the board of directors conducting the  
836 meeting may adopt rules ~~(i)~~ (a) governing the placement and use of equipment necessary for  
837 recording a meeting to prevent interference with the proceedings and ~~(ii)~~ (b) requiring the  
838 member recording the meeting to provide notice that the meeting is being recorded.

839 If a meeting is conducted by telephone conference or video conference or similar  
840 electronic means, at least two members of the board of directors shall be physically present at  
841 the meeting place included in the notice. The audio equipment shall be sufficient for any  
842 member in attendance to hear what is said by any member of the board of directors participating  
843 in the meeting who is not physically present.

844 ~~Voting-Except for the election of officers, voting~~ by secret or written ballot in an open  
845 meeting shall be a violation of this chapter ~~except for the election of officers~~.

846 C. The board of directors or any subcommittee or other committee ~~thereof~~ of the board  
847 of directors may (i) convene in executive session to consider personnel matters; (ii) consult with  
848 legal counsel; (iii) discuss and consider contracts, pending or probable litigation, and matters  
849 involving violations of the declaration or rules and regulations adopted pursuant ~~thereto~~ to such  
850 declaration for which a member, or his family members, tenants, guests, or other invitees are  
851 responsible; or (iv) discuss and consider the personal liability of members to the association,  
852 upon the affirmative vote in an open meeting to assemble in executive session. The motion shall



853 state specifically the purpose for the executive session. Reference to the motion and the stated  
854 purpose for the executive session shall be included in the minutes. The board of directors shall  
855 restrict the consideration of matters during such portions of meetings to only those purposes  
856 specifically exempted and stated in the motion. No contract, motion, or other action adopted,  
857 passed, or agreed to in executive session shall become effective unless the board of directors or  
858 subcommittee or other committee ~~thereof~~ of the board of directors, following the executive  
859 session, reconvenes in open meeting and takes a vote on such contract, motion, or other action,  
860 which shall have its substance reasonably identified in the open meeting. The requirements of  
861 this section shall not require the disclosure of information in violation of law.

862 D. Subject to reasonable rules adopted by the board of directors, the board of directors  
863 shall provide a designated period of time during a meeting to allow members an opportunity to  
864 comment on any matter relating to the association. During a meeting at which the agenda is  
865 limited to specific topics or at a special meeting, the board of directors may limit the comments  
866 of members to the topics listed on the meeting agenda.

867 **Drafting note: In subsection A, the phrase "where the business of the association is**  
868 **discussed or transacted" is added based on the definition of "meeting" in § 55.1-xxx [§ 55-**  
869 **509], which is proposed to be deleted. Technical changes are made.**

870 ~~§ 55-510.2~~ § 55.1-xxx. Distribution of information by members.

871 The board of directors shall establish a reasonable, effective, and free method,  
872 appropriate to the size and nature of the association, for lot owners to communicate among  
873 themselves and with the board of directors regarding any matter concerning the association.

874 **Drafting note: No change.**

875 ~~§ 55-510.3~~ § 55.1-xxx. Common areas; notice of pesticide application.

876 The association shall post notice of all pesticide applications in or upon the common  
877 areas. Such notice shall consist of conspicuous signs placed in or upon the common areas where  
878 the pesticide will be applied at least 48 hours prior to the application.

879 **Drafting note: No change.**

880 [§ 55-511. Repealed.](#)

881 **Drafting note: Repealed by Acts 2008, cc. 851 and 871, cl. 5.**

882 [§ 55-513 55.1-xxx.](#) Adoption and enforcement of rules.

883 A. Except as otherwise provided in this chapter, the board of directors shall have the  
884 power to establish, adopt, and enforce rules and regulations with respect to use of the common  
885 areas and with respect to such other areas of responsibility assigned to the association by the  
886 declaration, except where expressly reserved by the declaration to the members. Rules and  
887 regulations may be adopted by resolution and shall be reasonably published or distributed  
888 throughout the development. A majority of votes cast, in person or by proxy, at a meeting  
889 convened in accordance with the provisions of the association's bylaws and called for that  
890 purpose shall repeal or amend any rule or regulation adopted by the board of directors. Rules  
891 and regulations may be enforced by any method normally available to the owner of private  
892 property in Virginia, including, ~~but not limited to,~~ application for injunctive relief or actual  
893 damages, during which the court may award to the prevailing party court costs and reasonable  
894 attorney fees.

895 B. The board of directors shall also have the power, to the extent the declaration or rules  
896 and regulations duly adopted pursuant ~~thereto~~ [to such declaration](#) expressly so provide, to (i)  
897 suspend a member's right to use facilities or services, including utility services, provided  
898 directly through the association for nonpayment of assessments ~~which that~~ are more than 60  
899 days past due, to the extent that access to the lot through the common areas is not precluded and  
900 provided that such suspension shall not endanger the health, safety, or property of any owner,  
901 tenant, or occupant, and (ii) assess charges against any member for any violation of the  
902 declaration or rules and regulations for which the member or his family members, tenants,  
903 guests, or other invitees are responsible.

904 C. Before any action authorized in this section is taken, the member shall be given a  
905 reasonable opportunity to correct the alleged violation after written notice of the alleged  
906 violation to the member at the address required for notices of meetings pursuant to [§ 55-510](#)

907 [55.1-xxx](#). If the violation remains uncorrected, the member shall be given an opportunity to be  
908 heard and to be represented by counsel before the board of directors or other tribunal specified  
909 in the documents.

910 Notice of a hearing, including the actions that may be taken by the association in  
911 accordance with this section, shall be hand delivered or mailed by registered or certified mail,  
912 return receipt requested, to the member at the address of record with the association at least 14  
913 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand  
914 delivered or mailed by registered or certified mail, return receipt requested, to the member at the  
915 address of record with the association.

916 D. The amount of any charges so assessed shall not be limited to the expense or damage  
917 to the association caused by the violation, but shall not exceed \$50 for a single offense or \$10  
918 per day for any offense of a continuing nature, and shall be treated as an assessment against the  
919 member's lot for the purposes of § ~~55-516~~ [55.1-xxx](#). However, the total charges for any offense  
920 of a continuing nature shall not be assessed for a period exceeding 90 days.

921 E. The board of directors may file or defend legal action in general district or circuit  
922 court that seeks relief, including injunctive relief arising from any violation of the declaration or  
923 duly adopted rules and regulations.

924 F. After the date a lawsuit is filed in the general district or circuit court by (i) the  
925 association, by and through its counsel, to collect the charges or obtain injunctive relief and  
926 correct the violation or (ii) the lot owner challenging any such charges, no additional charges  
927 shall accrue. If the court rules in favor of the association, ~~it~~ [the association](#) shall be entitled to  
928 collect such charges from the date the action was filed as well as all other charges assessed  
929 pursuant to this section against the lot owner prior to the action. In addition, if the court finds  
930 that the violation remains uncorrected, the court may order the ~~unit~~ [lot](#) owner to abate or remedy  
931 the violation.

932 G. In any suit filed in general district court pursuant to this section, the court may enter  
933 default judgment against the lot owner on the association's sworn affidavit.

934           **Drafting note: In subsection A, the phrase "but not limited to" is stricken following**  
935 **the term "including" on the basis of § 1-218, which states that throughout the Code**  
936 **"'Includes' means includes, but not limited to." In subsection F, the word "it" is stricken**  
937 **and replaced with "the association" for clarity, and the word "unit" is stricken and**  
938 **replaced with "lot" to use the defined term, "lot owner". Technical changes are made.**

939           § ~~55-513.1~~ 55.1-xxx. Display of the flag of the United States; necessary supporting  
940 structures; affirmative defense.

941           A. In accordance with the federal Freedom to Display the American Flag Act of 2005,  
942 no association shall prohibit any lot owner from displaying upon property to which the lot  
943 owner has a separate ownership interest or a right to exclusive possession or use the flag of the  
944 United States whenever such display is in compliance with Chapter 1 of Title 4 of the United  
945 States Code (4 U.S.C. § 1 et seq.), or any rule or custom pertaining to the proper display of the  
946 flag. The association may, however, establish reasonable restrictions as to the size, place,  
947 duration, and manner of placement or display of the flag on such property, provided that such  
948 restrictions are necessary to protect a substantial interest of the association.

949           B. The association may restrict the display of such flag in the common areas.

950           C. In any action brought by the association under § ~~55-513~~ 55.1-xxx for violation of a  
951 flag restriction, the association shall bear the burden of proof that the restrictions as to the size,  
952 place, duration, and manner of placement or display of such flag are necessary to protect a  
953 substantial interest of the association.

954           D. In any action brought by the association under § ~~55-513~~ 55.1-xxx, the lot owner shall  
955 be entitled to assert as an affirmative defense that the required disclosure of any limitations  
956 pertaining to the display of flags or any flagpole or similar structure necessary to display such  
957 flags was not contained in the disclosure packet required pursuant to § ~~55-509.5~~ 55.1-xxx.

958           **Drafting note: Technical changes.**

959           § ~~55-513.2~~ 55.1-xxx. Home-based businesses permitted; compliance with local  
960 ordinances.

961 Except to the extent that the declaration provides otherwise, no association shall prohibit  
962 any lot owner from operating a home-based business within his personal residence. The  
963 association may, however, establish (i) reasonable restrictions as to the time, place, and manner  
964 of the operation of a home-based business and (ii) reasonable restrictions as to the size, place,  
965 duration, and manner of the placement or display of any signs on the owner's lot related to such  
966 home-based business. Any home-based business shall comply with all applicable local  
967 ordinances.

968 **Drafting note: Technical change.**

969 [§ 55.1-xxx. Use of for sale signs in connection with sale.](#)

970 [Except as expressly authorized in this chapter or in the declaration or as otherwise](#)  
971 [provided by law, no property owners' association shall require the use of any for sale sign that is](#)  
972 [\(i\) an association sign or \(ii\) a real estate sign that does not comply with the requirements of the](#)  
973 [Real Estate Board. An association may, however, prohibit the placement of signs in the common](#)  
974 [area and establish reasonable rules and regulations that regulate \(a\) the number of real estate](#)  
975 [signs to be located on real property upon which the owner has a separate ownership interest or a](#)  
976 [right of exclusive possession, so long as at least one real estate sign is permitted; \(b\) the](#)  
977 [geographical location of real estate signs on real property in which the owner has a separate](#)  
978 [ownership interest or a right of exclusive possession, so long as the location of the real estate](#)  
979 [signs complies with the requirements of the Real Estate Board; \(c\) the manner in which real](#)  
980 [estate signs are affixed to real property; and \(d\) the period of time after settlement when the real](#)  
981 [estate signs on such real property shall be removed.](#)

982 **Drafting note: Proposed § 55.1-xxx contains language properly relocated to an**  
983 **independent section from existing subdivision J 1 of § 55.1-xxx [§ 55-509.4] because it**  
984 **deals with limitations placed upon property owners' associations regarding their ability to**  
985 **mandate the placement and use of for sale signs connected with the resale by a lot owner.**

986 [§ 55.1-xxx. Designation of authorized representative.](#)

987 Except as expressly authorized in this chapter or in the declaration or as otherwise  
988 provided by law, no property owners' association shall require any lot owner to execute a formal  
989 power of attorney if the lot owner designates a person licensed under the provisions of § 54.1-  
990 2106.1 as the lot owner's authorized representative, and the association shall recognize such  
991 representation without a formal power of attorney, provided that the association is given a  
992 written authorization signed by the lot owner designating such representative. Notwithstanding  
993 the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act (§ 13.1-  
994 801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be  
995 satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

996 **Drafting note: Proposed § 55.1-xxx contains language properly relocated to an**  
997 **independent section from existing subdivision J 2 of § 55.1-xxx [§ 55-509.4] because it**  
998 **deals with limitations placed upon property owners' associations regarding their ability to**  
999 **interfere with a lot owner's designation of an authorized representative.**

1000 § ~~55-513.3~~ 55.1-xxx. Assessments; late fees.

1001 Except to the extent that the declaration or any rules or regulations promulgated pursuant  
1002 ~~thereto provides to such declaration provide~~ otherwise, the board may impose a late fee ~~for, that~~  
1003 does not ~~to~~ exceed the penalty provided in § 58.1-3915; for any assessment or installment  
1004 ~~thereof~~ that is not paid within 60 days of the due date for payment of such assessment.

1005 **Drafting note: Technical changes.**

1006 § ~~55-514~~ 55.1-xxx. Authority to levy special assessments.

1007 A. In addition to all other assessments ~~which that~~ are authorized in the declaration, the  
1008 board of directors shall have the power to levy a special assessment against its members if (i)  
1009 the purpose in so doing is found by the board to be in the best interests of the association and (ii)  
1010 the proceeds of the assessment are used primarily for the maintenance and upkeep of the  
1011 common area and such other areas of association responsibility expressly provided for in the  
1012 declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a  
1013 meeting of the membership convened in accordance with the provisions of the association's

1014 bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce  
1015 the special assessment. No director or officer of the association shall be liable for failure to  
1016 perform his fiduciary duty if a special assessment for the funds necessary for the director or  
1017 officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the  
1018 association shall indemnify such director or officer against any damage resulting from any such  
1019 claimed breach of fiduciary duty ~~arising therefrom~~.

1020 B. The failure of a member to pay the special assessment allowed by subsection A shall  
1021 entitle the association to the lien provided by § ~~55-514.1~~ 55.1-xxx as well as any other rights  
1022 afforded a creditor under law.

1023 C. The failure of a member to pay the special assessment allowed by subsection A will  
1024 provide the association with the right to deny the member access to any or all of the common  
1025 areas. ~~Notwithstanding the immediately preceding sentence~~ However, the member shall not be  
1026 denied direct access to the member's lot over any road within the development ~~which that~~ is a  
1027 common area ~~shall not be denied the member~~.

1028 **Drafting note: Technical changes.**

1029 § ~~55-514.1~~ 55.1-xxx. Reserves for capital components.

1030 A. Except to the extent otherwise provided in the declaration and unless the declaration  
1031 imposes more stringent requirements, the board of directors shall:

1032 1. Conduct at least once every five years a study to determine the necessity and amount  
1033 of reserves required to repair, replace, and restore the capital components;

1034 2. Review the results of that study at least annually to determine if reserves are  
1035 sufficient; and

1036 3. Make any adjustments the board of directors deems necessary to maintain reserves, as  
1037 appropriate.

1038 B. To the extent that the reserve study conducted in accordance with this section  
1039 indicates a need to budget for reserves, the association budget shall include ~~without limitation~~:

1040 1. The current estimated replacement cost, estimated remaining life, and estimated useful  
1041 life of the capital components;

1042 2. As of the beginning of the fiscal year for which the budget is prepared, the current  
1043 amount of accumulated cash reserves set aside, to repair, replace, or restore capital components  
1044 and the amount of the expected contribution to the reserve fund for that year; and

1045 3. A general statement describing the procedures used for the estimation and  
1046 accumulation of cash reserves pursuant to this section and the extent to which the association is  
1047 funding its reserve obligations consistent with the study currently in effect.

1048 **Drafting note: In subsection B, the phrase "without limitation" is stricken**  
1049 **following the term "include" on the basis of § 1-218, which states that throughout the**  
1050 **Code "'Includes' means includes, but not limited to." Technical changes are made.**

1051 ~~§ 55-514.2~~ 55.1-xxx. Deposit of funds; fidelity bond.

1052 A. All funds deposited with a managing agent shall be handled in a fiduciary capacity  
1053 and shall be kept in a fiduciary trust account in a federally insured financial institution separate  
1054 from other assets of the managing agent. The funds shall be the property of the association and  
1055 shall be segregated for each account in the ~~records of the~~ managing ~~agent~~ agent's records in a  
1056 manner that permits the funds to be identified on an individual association basis.

1057 B. Any association collecting assessments for common expenses shall obtain and  
1058 maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the  
1059 association against losses resulting from theft or dishonesty committed by the officers, directors,  
1060 or persons employed by the association, or committed by any managing agent or employees of  
1061 the managing agent. Such bond or insurance policy shall provide coverage in an amount equal  
1062 to the lesser of \$1 million or the amount of the reserve balances of the association plus one-  
1063 fourth of the aggregate annual assessment income of such association. The minimum coverage  
1064 amount shall be \$10,000. The board of directors or managing agent may obtain such bond or  
1065 insurance on behalf of the association.

1066 **Drafting note: Technical changes.**



1067 § ~~55-515~~ 55.1-xxx. Compliance with declaration.

1068 A. Every lot owner, and all those entitled to occupy a lot, shall comply with all lawful  
1069 provisions of this chapter and all provisions of the declaration. Any lack of such compliance  
1070 shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or  
1071 for any other remedy available at law or in equity, maintainable by the association, or by its  
1072 board of directors or any managing agent on behalf of such association, or, in any proper case,  
1073 by one or more aggrieved lot owners on their own behalf or as a class action. Except as provided  
1074 in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs  
1075 expended in the matter, and interest on the judgment as provided in § 8.01-382. This section  
1076 shall not preclude an action against the association and authorizes the recovery, by the  
1077 prevailing party in any such action, of reasonable attorney fees, costs expended in the matter,  
1078 and interest on the judgment as provided in § 8.01-382 in such actions.

1079 B. In actions against a lot owner for nonpayment of assessments in which the lot owner  
1080 has failed to pay assessments levied by the association on more than one lot or in which such lot  
1081 owner has had legal actions taken against him for nonpayment of any prior assessment, and the  
1082 prevailing party is the association or its board of directors or any managing agent on behalf of  
1083 the association, the prevailing party shall be awarded reasonable attorney fees, costs expended  
1084 in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is  
1085 settled prior to judgment. The delinquent owner shall be personally responsible for reasonable  
1086 attorney fees and costs expended in the matter by the association, whether any judicial  
1087 proceedings are filed.

1088 C. A declaration may provide for arbitration of disputes or other means of alternative  
1089 dispute resolution. Any such arbitration held in accordance with this subsection shall be  
1090 consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.  
1091 The place of any such arbitration or alternative dispute resolution shall be in the county or city  
1092 in which the development is located, or as mutually agreed to by the parties.

1093 **Drafting note: Technical changes.**

1094 | § ~~55-515.1~~ 55.1-xxx. Amendment to declaration and bylaws; consent of mortgagee.

1095 | A. In the event that any provision in the declaration requires the written consent of a  
1096 | mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to  
1097 | have received the written consent of a mortgagee if the association sends the text of the  
1098 | proposed amendment by certified mail, return receipt requested, or by regular mail with proof of  
1099 | mailing to the mortgagee at the address supplied by such mortgagee in a written request to the  
1100 | association to receive notice of proposed amendments to the declaration and receives no written  
1101 | objection to the adoption of the amendment from the mortgagee within 60 days of the date that  
1102 | the notice of amendment is sent by the association, unless the declaration expressly provides  
1103 | otherwise. If the mortgagee has not supplied an address to the association, the association shall  
1104 | be deemed to have received the written consent of a mortgagee if the association sends the text  
1105 | of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the  
1106 | address filed in the land records or with the local tax assessor's office, and receives no written  
1107 | objection to the adoption of the amendment from the mortgagee within 60 days of the date that  
1108 | the notice of amendment is sent by the association, unless the declaration expressly provides  
1109 | otherwise.

1110 | B. Subsection A shall not apply to amendments ~~which that~~ alter the priority of the lien of  
1111 | the mortgagee or ~~which that~~ materially impair or affect a lot as collateral or the right of the  
1112 | mortgagee to foreclose on a lot as collateral.

1113 | C. Where the declaration is silent on the need for mortgagee consent, no mortgagee  
1114 | consent shall be required if the amendment to the declaration does not specifically affect  
1115 | mortgagee rights.

1116 | D. A declaration may be amended by a two-thirds vote of the lot owners. This subsection  
1117 | may be applied to an association subject to a declaration recorded prior to July 1, 1999, if the  
1118 | declaration is silent on how it may be amended or upon the amendment of that declaration in  
1119 | accordance with its requirements.

1120 E. An action to challenge the validity of an amendment adopted by the association may  
1121 not be brought more than one year after the amendment is effective.

1122 F. Agreement of the required majority of lot owners to any amendment of the declaration  
1123 shall be evidenced by their execution of the amendment, or ratifications ~~thereof of such~~  
1124 amendment, and the same shall become effective when a copy of the amendment is recorded  
1125 together with a certification, signed by the principal officer of the association or by such other  
1126 officer or officers as the declaration may specify, that the requisite majority of the lot owners  
1127 signed the amendment or ratifications ~~thereof of such amendment~~.

1128 **Drafting note: Technical changes.**

1129 § ~~55-515.2~~ 55.1-xxx. Validity of declaration; corrective amendments.

1130 A. All provisions of a declaration shall be deemed severable, and any unlawful provision  
1131 ~~thereof of the declaration~~ shall be void.

1132 B. No provision of a declaration shall be deemed void by reason of the rule against  
1133 perpetuities.

1134 C. No restraint on alienation shall discriminate or be used to discriminate on any basis  
1135 prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

1136 D. Subject to the provisions of subsection C, the rule of property law known as the rule  
1137 restricting unreasonable restraints on alienation shall not be applied to defeat any provision of a  
1138 declaration restraining the alienation of lots other than such lots as may be restricted to  
1139 residential use only.

1140 E. The rule of property law known as the doctrine of merger shall not apply to any  
1141 easement included in or granted pursuant to a right reserved in a declaration.

1142 F. The declarant may unilaterally execute and record a corrective amendment or  
1143 supplement to the declaration to correct a mathematical mistake, an inconsistency, or a  
1144 scrivener's error; or clarify an ambiguity in the declaration with respect to an objectively  
1145 verifiable fact ~~(, including without limitation~~ recalculating the liability for assessments or the  
1146 number of votes in the association appertaining to a lot), within five years after the recordation

1147 of the declaration containing or creating such mistake, inconsistency, error, or ambiguity. No  
1148 such amendment or supplement may materially reduce what the obligations of the declarant  
1149 would have been if the mistake, inconsistency, error, or ambiguity had not occurred. Regardless  
1150 of the date of recordation of the declaration, the principal officer of the association may also  
1151 unilaterally execute and record such a corrective amendment or supplement upon a vote of two-  
1152 thirds of the members of the board of directors. All corrective amendments and supplements  
1153 recorded prior to July 1, 1997, are hereby validated to the extent that such corrective  
1154 amendments and supplements would have been permitted by this subsection.

1155 **Drafting note: In subsection F, the phrase "without limitation" is stricken following**  
1156 **the term "including" on the basis of § 1-218, which states that throughout the Code**  
1157 **"'Includes' means includes, but not limited to." Technical changes are made.**

1158 § ~~55-515.2-1~~ 55.1-xxx. Reformation of declaration; judicial procedure.

1159 A. An association may petition the circuit court in the county or city ~~wherein the~~  
1160 development in which all or the greater part ~~thereof of the development~~ is located to reform a  
1161 declaration where the association, acting through its board of directors, has attempted to amend  
1162 the declaration regarding ownership of legal title of the common areas or real property using  
1163 provisions outlined ~~therein in such declaration~~ to resolve (i) ambiguities or inconsistencies in the  
1164 declaration that are the source of legal and other disputes pertaining to the legal rights and  
1165 responsibilities of the association or individual lot owners or (ii) scrivener's errors, including  
1166 incorrectly identifying the association, incorrectly identifying an entity other than the  
1167 association, or errors arising from oversight or from an inadvertent omission or mathematical  
1168 mistake.

1169 B. The court shall have jurisdiction over matters set forth in subsection A regarding  
1170 ownership of legal title of the common areas or real property to:

- 1171 1. Reform, in whole or in part, any provision of a declaration; and
- 1172 2. Correct ~~mistakes or~~ any mistake or other error in the declaration that may exist with  
1173 respect to the declaration for any other purpose.

1174 C. A petition filed by the association with the court setting forth any inconsistency or  
1175 error made in the declaration, or the necessity for any change ~~therein~~ in the declaration, shall be  
1176 deemed sufficient basis for the reformation, in whole or in part, of the declaration, provided  
1177 that:

1178 1. The association has made three good faith attempts to convene a duly called meeting  
1179 of the association to present for consideration amendments to the declaration for the reasons  
1180 specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit  
1181 verified by oath of the principal officer of the association;

1182 2. There is no adequate remedy at law as practical and effective to attain the ends of  
1183 justice as may be accomplished in the circuit court;

1184 3. Where the declarant of the development still owns a lot or other property in the  
1185 development, the declarant joins in the petition of the association;

1186 4. A copy of the petition is sent to all owners at least 30 days before the petition is filed  
1187 as evidenced by an affidavit verified by oath of the principal officer of the association; and

1188 5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is  
1189 filed as evidenced by an affidavit verified by oath of the principal officer of the association.

1190 D. Any mortgagee of a lot in the development shall have standing to participate in the  
1191 reformation proceedings before the court. No reformation pursuant to this section shall affect  
1192 mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any  
1193 lot as collateral for a mortgage, or affect a mortgagee's right to foreclose on a lot as collateral  
1194 without the prior written consent of the mortgagee. Consent of a mortgagee required by this  
1195 section may be deemed received pursuant to § ~~55-515.1~~ 55.1-xxx.

1196 **Drafting note: Language is clarified and technical changes are made.**

1197 § ~~55-515.3~~ 55.1-xxx. Use of technology.

1198 A. Unless the declaration expressly provides otherwise, (i) any notice required to be sent  
1199 or received or (ii) any signature, vote, consent, or approval required to be obtained under any  
1200 declaration or bylaw provision or any provision of this chapter may be accomplished using ~~the~~

1201 ~~most advanced technology available at that time if such use is a generally accepted business~~  
1202 ~~practice. This section shall govern the use of technology in implementing the provisions of any~~  
1203 ~~declaration or bylaw provision or any provision of this chapter dealing with notices, signatures,~~  
1204 ~~votes, consents, or approvals~~ electronic means.

1205 B. ~~Electronic transmission and other equivalent methods.~~ The association, the lot  
1206 owners, and those entitled to occupy a lot may perform any obligation or exercise any right  
1207 under any declaration or bylaw provision or any provision of this chapter by use of ~~any~~  
1208 ~~technological means providing sufficient security, reliability, identification, and verifiability.~~  
1209 ~~"Acceptable technological means" shall include without limitation electronic transmission over~~  
1210 ~~the Internet, or the community or other network, whether by direct connection, intranet,~~  
1211 ~~telecopier, or electronic mail~~ electronic means.

1212 C. ~~Signature requirements.~~ An electronic signature meeting the requirements of  
1213 applicable law shall satisfy any requirement for a signature under any declaration or bylaw  
1214 provision or any provision of this chapter.

1215 D. ~~Voting rights.~~ Voting on, consent to, and approval of any matter under any  
1216 declaration or bylaw provision or any provision of this chapter may be accomplished by  
1217 electronic ~~transmission or other equivalent technological means,~~ provided that a record is  
1218 created as evidence ~~thereof of such vote, consent, or approval~~ and maintained as long as such  
1219 record would be required to be maintained in nonelectronic form.

1220 E. ~~Acknowledgment not required.~~ Subject to other provisions of law, no action required  
1221 or permitted by any declaration or bylaw provision or any provision of this chapter need be  
1222 acknowledged before a notary public if the identity and signature of such person can otherwise  
1223 be authenticated to the satisfaction of the executive organ.

1224 F. ~~Nontechnology alternatives.~~ If any person does not have the capability or desire to  
1225 conduct business using electronic ~~transmission or other equivalent technological~~ means, the  
1226 association shall make reasonable accommodation, at its expense, for such person to conduct  
1227 business with the association without use of such electronic ~~or other~~ means.

1228 G. This section shall not apply to any notice related to an enforcement action by the  
1229 association, an assessment lien, or foreclosure proceedings in enforcement of an assessment  
1230 lien.

1231 **Drafting note: Throughout the section, references to "electronic transmission or**  
1232 **other equivalent technological means" have been changed simply to "electronic means"**  
1233 **for accuracy and consistency with the Uniform Electronic Transactions Act (§ 59.1-479 et**  
1234 **seq.). In subsection B, the phrase "shall include without limitation" is stricken and**  
1235 **replaced with the word "includes" on the basis of § 1-218, which states that throughout**  
1236 **the Code "'Includes' means includes, but not limited to." Technical changes are made.**

1237 § ~~55-516~~ 55.1-xxx. Lien for assessments.

1238 A. ~~Once perfected, the~~ The association shall have a lien, once perfected, on every lot for  
1239 unpaid assessments levied against that lot in accordance with the provisions of this chapter and  
1240 all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other  
1241 subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and  
1242 encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and  
1243 owing under any mortgage or deed of trust recorded prior to the perfection of ~~said~~ such lien. The  
1244 provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.  
1245 Notice of a memorandum of lien to a holder of a credit line deed of trust under § ~~55-58.2~~ 55.1-  
1246 xxx shall be given in the same fashion as if the association's lien were a judgment.

1247 B. The association, in order to perfect the lien given by this section, shall file a before the  
1248 expiration of 12 months from the time the first such assessment became due and payable in the  
1249 clerk's office of the circuit court in the county or city in which such development is situated, a  
1250 memorandum, verified by the oath of the principal officer of the association~~;~~ or such other  
1251 officer or officers as the declaration may specify, which contains the following:

1252 1. The name of the development;

1253 2. A description of the lot;

1254 3. The name or names of the persons constituting the owners of that lot;

1255 4. The amount of unpaid assessments currently due or past due relative to such lot  
1256 together with the date when each fell due;

1257 5. The date of issuance of the memorandum;

1258 6. The name of the association and the name and current address of the person to contact  
1259 to arrange for payment or release of the lien; and

1260 7. A statement that the association is obtaining a lien in accordance with the provisions  
1261 of the ~~Virginia~~ Property Owners' Association Act as set forth in Chapter ~~26~~ XX (§ ~~55-508~~ 55.1-  
1262 xxx et seq.) of Title ~~55~~ 55.1.

1263 It shall be the duty of the clerk in whose office such memorandum is filed as ~~hereinafter~~  
1264 provided in this section to record and index the same as provided in subsection D, in the names  
1265 of the persons identified ~~therein~~ in such memorandum as well as in the name of the association.  
1266 The cost of recording and releasing the memorandum shall be taxed against the person found  
1267 liable in any judgment or decree enforcing such lien.

1268 C. Prior to filing a memorandum of lien, a written notice shall be sent to the property  
1269 owner by certified mail, at the property owner's last known address, informing the property  
1270 owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable  
1271 ~~city or county~~ or city. The notice shall be sent at least 10 days before the actual filing date of the  
1272 memorandum of lien.

1273 D. Notwithstanding any other provision of this section, or any other provision of law  
1274 requiring documents to be recorded in the miscellaneous lien books or the deed books in the  
1275 clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this  
1276 section shall be recorded in the deed books in the clerk's office. Any memorandum shall be  
1277 indexed in the general index to deeds, and the general index shall identify the lien as a lien for  
1278 lot assessments.

1279 E. No suit to enforce any lien perfected under subsection B shall be brought or action to  
1280 foreclose any lien perfected under subsection I shall be initiated after 36 months from the time  
1281 when the memorandum of lien was recorded; however, the filing of a petition to enforce any



1282 such lien in any suit ~~wherein in which~~ the petition may be properly filed shall be regarded as the  
1283 institution of a suit under this section. Nothing ~~herein in this subsection~~ shall extend the time  
1284 within which any such lien may be perfected.

1285 F. The judgment or decree in an action brought pursuant to this section shall include,  
1286 ~~without limitation,~~ reimbursement for costs and reasonable ~~attorneys'~~ attorney fees of the  
1287 prevailing party. If the association prevails, it may also recover interest at the legal rate for the  
1288 sums secured by the lien from the time each such sum became due and payable.

1289 G. When payment or satisfaction is made of a debt secured by the lien perfected by  
1290 subsection B ~~hereof~~, the lien shall be released in accordance with the provisions of § ~~55-66.3~~  
1291 55.1-xxx. Any lien ~~which that~~ is not so released shall subject the lien creditor to the penalty set  
1292 forth in subdivision A 1 of § ~~55-66.3~~ 55.1-xxx. For the purposes of § ~~55-66.3~~ 55.1-xxx, the  
1293 principal officer of the association, or any other officer or officers as the declaration may  
1294 specify, shall be deemed the duly authorized agent of the lien creditor.

1295 H. Nothing in this section shall be construed to prohibit actions at law to recover sums  
1296 for which subsection A ~~hereof~~ creates a lien, maintainable pursuant to § ~~55-515~~ 55.1-xxx.

1297 I. At any time after perfecting the lien pursuant to this section, the property owners'  
1298 association may sell the lot at public sale, subject to prior liens. For purposes of this section, the  
1299 association shall have the power both to sell and convey the lot and shall be deemed the lot  
1300 owner's statutory agent for the purpose of transferring title to the lot. A nonjudicial foreclosure  
1301 sale shall be conducted in compliance with the following:

1302 1. The association shall give notice to the lot owner prior to advertisement required by  
1303 subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action  
1304 required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days  
1305 from the date the notice is given to the lot owner, by which the debt secured by the lien must be  
1306 satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date  
1307 specified in the notice may result in the sale of the lot. The notice shall further inform the lot

1308 owner of the right to bring a court action in the circuit court of the county or city where the lot is  
1309 located to assert the nonexistence of a debt or any other defense of the lot owner to the sale.

1310 2. After expiration of the 60-day notice period specified in subdivision 1, the association  
1311 may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the  
1312 clerk's office of the circuit court in the county or city in which such development is situated. It  
1313 shall be the duty of the clerk in whose office such appointment is filed to record and index the  
1314 same as provided in subsection D, in the names of the persons identified ~~therein in such~~  
1315 appointment as well as in the name of the association. The association, at its option, may from  
1316 time to time remove the trustee and appoint a successor trustee.

1317 3. If the lot owner meets the conditions specified in this subdivision prior to the date of  
1318 the foreclosure sale, the lot owner shall have the right to have enforcement of the perfected lien  
1319 discontinued prior to the sale of the lot. Those conditions are that the lot owner: (i) satisfy the  
1320 debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) ~~pays pay~~  
1321 expenses and costs incurred in perfecting and enforcing the lien, including ~~but not limited to~~  
1322 advertising costs and reasonable ~~attorneys' attorney~~ fees.

1323 4. In addition to the advertisement required by subdivision 5, the association shall give  
1324 written notice of the time, date, and place of any proposed sale in execution of the lien, ~~and~~  
1325 including the name, address, and telephone number of the trustee, by ~~personal hand~~ delivery or  
1326 by mail to (i) the present owner of the property to be sold at his last known address as such  
1327 owner and address appear in the records of the association, (ii) any lienholder who holds a note  
1328 against the property secured by a deed of trust recorded at least 30 days prior to the proposed  
1329 sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note  
1330 secured by a deed of trust, provided that the assignment and address of the assignee are likewise  
1331 recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the  
1332 notice containing the same information to the owner by certified or registered mail no less than  
1333 14 days prior to such sale and to lienholders and their assigns, at the addresses noted in the

1334 memorandum of lien, by ~~ordinary~~ United States mail, postage prepaid, no less than 14 days  
1335 prior to such sale, shall be a sufficient compliance with the requirement of notice.

1336 5. The advertisement of sale by the association shall be in a newspaper having a general  
1337 circulation in the ~~city or~~ county wherein or city in which the property to be sold, or any portion  
1338 thereof of such property, ~~lies is located~~ pursuant to the following provisions:

1339 a. The association shall advertise once a week for four successive weeks; however, if the  
1340 property or some portion thereof of such property is located in a city or in a county immediately  
1341 contiguous to a city, publication of the advertisement on five different days, which may be  
1342 consecutive days, shall be deemed adequate. The sale shall be held on any day following the day  
1343 of the last advertisement ~~which that~~ is no earlier than eight days following the first  
1344 advertisement nor more than 30 days following the last advertisement.

1345 b. Such advertisement shall be placed in that section of the newspaper where legal  
1346 notices appear or where the type of property being sold is generally advertised for sale. The  
1347 advertisement of sale, in addition to such other matters as the association finds appropriate, shall  
1348 set forth a description of the property to be sold, which description need not be as extensive as  
1349 that contained in the deed of trust, but shall identify the property by street address, if any, or, if  
1350 none, shall give the general location of the property with reference to streets, routes, or known  
1351 landmarks. Where available, tax map identification may be used but is not required. The  
1352 advertisement shall also include the date, time, place, and terms of sale and the name of the  
1353 association. It shall set forth the name, address, and telephone number of the representative,  
1354 agent, or attorney who may be able to respond to inquiries concerning the sale.

1355 c. In addition to the advertisement required by subdivisions a and b ~~above~~, the  
1356 association may ~~give such other~~ further ~~and different advertisement~~ advertise as the association  
1357 finds appropriate.

1358 6. In the event of postponement of sale, which postponement shall be at the discretion of  
1359 the association, advertisement of such postponed sale shall be in the same manner as the original  
1360 advertisement of sale.

1361 7. Failure to comply with the requirements for advertisement contained in this section  
1362 shall, upon petition, render a sale of the property voidable by the court.

1363 8. ~~In the event of a sale, the~~ The association shall have the following powers and duties  
1364 upon a sale:

1365 a. Written one-price bids may be made and shall be received by the trustee from the  
1366 association or any person for entry by announcement at the sale. Any person other than the  
1367 trustee may bid at the foreclosure sale, including a person who has submitted a written one-price  
1368 bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be  
1369 permitted to inspect written bids. Unless otherwise provided in the declaration, the association  
1370 may bid to purchase the lot at a foreclosure sale. The association may own, lease, encumber,  
1371 exchange, sell, or convey the lot. Whenever the written bid of the association is the highest bid  
1372 submitted at the sale, such written bid shall be filed by the trustee with his account of sale  
1373 required under subdivision I ~~10-of this section~~ and § 64.2-1309. The written bid submitted  
1374 pursuant to this subsection may be prepared by the association, its agent, or its attorney.

1375 b. The association may require ~~of~~ any bidder at any sale to post a cash deposit of as  
1376 much as 10 percent of the sale price before his bid is received, which shall be refunded to him if  
1377 the property is not sold to him. The deposit of the successful bidder shall be applied to his credit  
1378 at settlement, or, if such bidder fails to complete his purchase promptly, the deposit shall be  
1379 applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the  
1380 association in connection with that sale.

1381 c. The property owners' association shall receive and receipt for the proceeds of sale, no  
1382 purchaser being required to see to the application of the proceeds, and apply the same in the  
1383 following order: first, to the reasonable expenses of sale, including ~~attorneys'~~ attorney fees;  
1384 second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to  
1385 the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of  
1386 priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds  
1387 to the owner or his assigns; provided, however, that, as to the payment of such residue, the

1388 association ~~as to such residue~~ shall not be bound by any inheritance, devise, conveyance,  
1389 assignment, or lien of or upon the owner's equity, without actual notice thereof prior to  
1390 distribution.

1391 9. The trustee shall deliver to the purchaser a trustee's deed conveying the lot with  
1392 special warranty of title. The trustee shall not be required to take possession of the property  
1393 prior to the sale ~~thereof of such property~~ or to deliver possession of the lot to the purchaser at  
1394 the sale.

1395 10. The trustee shall file an accounting of the sale with the commissioner of accounts  
1396 pursuant to § 64.2-1309, and every account of a sale shall be recorded pursuant to § 64.2-1310.  
1397 In addition, the accounting shall be made available for inspection and copying pursuant to § ~~55-~~  
1398 ~~510~~ 55.1-xxx upon the written request of the prior lot owner, the current lot owner, or any  
1399 holder of a recorded lien against the lot at the time of the sale. The association shall maintain a  
1400 copy of the accounting for at least 12 months following the foreclosure sale.

1401 11. If the sale of a lot is made pursuant to subsection I and the accounting is made by the  
1402 trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months  
1403 from the confirmation of the accounting by the commissioner of accounts; the sale is set aside  
1404 by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is ~~therein~~  
1405 entered requiring such sale to be set aside.

1406 **Drafting note: In subsection F, the phrase "without limitation" is stricken following**  
1407 **the term "include," and in subdivision I 3, the phrase "but not limited to" is stricken**  
1408 **following the term "including" on the basis of § 1-218, which states that throughout the**  
1409 **Code "'Includes' means includes, but not limited to." In subdivision I 4, the reference to**  
1410 **"personal hand delivery" is updated and replaced with "hand delivery" for accuracy and**  
1411 **consistency with the rest of the chapter. In subdivision I 4, the reference to "ordinary**  
1412 **mail" was replaced with reference to United States mail, postage prepaid, for accuracy to**  
1413 **reflect current practice and consistency with other notice provisions in this chapter.**  
1414 **Technical changes are made.**

1415 | § ~~55-516.01~~ 55.1-xxx. Notice of sale under deed of trust.

1416 | In accordance with the provisions of § 15.2-979, the association shall be given notice  
1417 | whenever a lot becomes subject to a sale under a deed of trust. Upon receipt of such notice, the  
1418 | board of directors, on behalf of the association, shall exercise whatever due diligence it deems  
1419 | necessary with respect to the lot subject to a sale under a deed of trust to protect the interests of  
1420 | the association.

1421 | **Drafting note: No change.**

1422 | § ~~55-516.1~~ 55.1-xxx. Annual report by association.

1423 | A. The association shall file an annual report in a form and at such time as prescribed by  
1424 | regulations of the Common Interest Community Board. The annual report shall be accompanied  
1425 | by a fixed fee in an amount established by the Board.

1426 | B. ~~The Common Interest Community Board may accept copies of forms submitted to~~  
1427 | ~~other state agencies to satisfy the requirements of this section if such forms contain substantially~~  
1428 | ~~the same information required by the Common Interest Community Board.~~

1429 | ~~C.~~ The association shall also remit to the agency an annual payment as follows:

1430 | 1. The lesser of:

1431 | a. \$1,000 or such other amount as established by agency regulation; or

1432 | b. Five hundredths of one percent (0.05%) of the association's gross assessment income  
1433 | during the preceding year.

1434 | 2. For the purposes of subdivision 1 b, no minimum payment shall be less than \$10.~~00~~.

1435 | ~~D.C.~~ The annual payment shall be remitted to the State Treasurer and shall be ~~placed to~~  
1436 | ~~the credit of~~ credited to the Common Interest Community Management Information Fund  
1437 | established pursuant to § ~~55-529~~ 55.1-xxx.

1438 | **Drafting note: Subsection B is removed as unnecessary; per subsection A, the**  
1439 | **referenced annual report form is prescribed by the Common Interest Community Board**  
1440 | **regulations. Technical changes are made.**

1441 | § ~~55-516.2~~ 55.1-xxx. Condemnation of common area; procedure.

