

Chapter 26. Property Owners' Association Act.

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§ 55-508. Applicability.

A. This chapter shall apply to developments subject to a declaration initially recorded after January 1, 1959, and property owners' associations incorporated or otherwise organized after such date. The provisions of this chapter which exclude the applicability of this chapter to developments which impose on the association maintenance or operational responsibilities or on the owners or occupants of lots a mandatory payment of money less than \$150 per year per lot as a regular annual assessment shall not be applied retroactively to any development subject to a declaration recorded prior to July 1, 1991. This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1989, but to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in this Commonwealth before July 1, 1989. Sections 55-511 and 55-512 shall not apply to contracts entered into prior to July 1, 1989, for the sale of a lot.

B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§ 55-79.39 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§ 59.1-311 et seq.). Nor shall this chapter apply to any nonstock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public.

(1989, c. 679; 1991, c. 667; 1992, c. 677.)

Applied in *Lake Monticello Owners' Ass'n v. Lake*, 250 Va. 565, 463 S.E.2d 652 (1995).

§ 55-509. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

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

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

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area in an amount in excess of \$150 per year per lot as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in an amount in excess of \$150 per year per lot as a regular annual assessment in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

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

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

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration. A property owners' association shall not include the association formed pursuant to the Condominium Act (§ 55-79.39 et seq.), the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or the Virginia Membership

Camping Act (§ 59.1-311 et seq.).

(1989, c. 679; 1991, c. 667; 1996, c. 618.)

The 1996 amendment added the paragraph defining "Declarant."

Law review. - For 1991 survey on property law, see 25 U. Rich. L. Rev. 859 (1991).

§ 55-509.1. Developer to pay real estate taxes attributable to the common area upon transfer to association.

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

(1993, c. 956.)

§ 55-509.2. Documents to be provided by declarant upon transfer of control.

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including without limitation, minute books and rules and regulations and all amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the home owners, not to exceed sixty days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements; (vi) any contracts in which the association is a contracting party; and (vii) a list of manufacturers of paints, roofing materials and other similar materials if specified for use on the association property.

If the association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).

(1996, c. 618.)

§ 55-510. Access to association records; meetings of the board of directors.

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

B. Subject to the provisions of subsection C of this section, all books and records kept by or on behalf of the association, including, but not limited to, the association's membership list and addresses, which shall not be used for purposes of commercial solicitation, and salary information of employees of the association, shall be available for examination and copying by a member in good standing or his authorized agent. This right of examination shall exist without reference to the duration of membership and may be exercised only during reasonable business hours or at a mutually convenient time and location and upon five days' written notice.

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

1. Personnel matters or a person's medical records;
2. Communications with legal counsel or attorney work product;
3. Transactions currently in negotiation and agreements containing confidentiality requirements;
4. Pending litigation;
5. Pending matters involving formal proceedings for enforcement of the association documents or rules and regulations promulgated pursuant thereto;
6. Disclosure of information in violation of law; or
7. Meeting minutes or other records of an executive session of the board of directors held in accordance with subsection E of this section.

D. The association may impose and collect a charge, reflecting the actual costs of materials and labor, prior to providing copies of any books and records to a member in good standing under this section.

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charge for
copies*

E. All meetings of the board of directors shall be open to all members of record. Minutes shall be recorded and shall be available as provided in subsection B of this section. The board of directors may convene in closed session to consider personnel matters, consult with legal counsel; discuss and consider contracts, potential or pending litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association upon the affirmative vote in open meeting to assemble in closed session. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in closed session shall become effective unless the board of directors, following the closed session reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

(1989, c. 679; 1991, c. 667; 1992, cc. 69, 71; 1993, cc. 365, 827.)

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

A. Subject to the provisions of subsection E of § 55-512, a person selling a lot shall disclose in the contract that (i) the lot is located within a development which is subject to the Virginia Property Owners' Association Act, (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available, and (iv) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

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

C. The information contained in the association disclosure packet shall be current as of a specified date within thirty days of the date of the contract. The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation shall be hand delivered or sent by United States mail, return receipt requested, to the owner. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser.

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

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

F. Except as expressly provided in this chapter, the provisions of this section and § 55-512 may not be varied by agreement, and the rights conferred by this section and § 55-512 may not be waived.

(1989, c. 679; 1991, c. 667; 1995, c. 573; 1997, c. 887.)

The 1995 amendment inserted "Subject to the provisions of subsection E of § 55-512" at the beginning of subsection A.

The 1997 amendment rewrote subsection F which formerly read: "The rights afforded a purchaser pursuant to this section and § 55-512 may be waived in writing by the purchaser in a separate document."

Right to cancel contract to purchase real property. - Purchaser had an unqualified right to cancel contract to purchase real property within three-day period after receiving association disclosure packet for any reason whatever, or for no reason at all. *Reistroffer v. Person*, 247 Va. 45, 439 S.E.2d 376 (1994).

§ 55-512. Association disclosure packet.

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

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

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

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

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

5. A statement or a summary of the status and amount of any reserve or replacement fund and any portion of the fund allocated by the board of directors for a specified project;

6. A copy of the association's current budget or a summary thereof, and a copy of its statement of income and expenses or statement of its financial condition for the last fiscal year for which such statement is available;

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

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

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

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

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

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

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

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

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

D. If the association has been requested to furnish the disclosure packet required by this section and has been paid the appropriate fee, its failure to provide the disclosure packet in substantially the form provided herein within fourteen days from the actual receipt of the request by an officer, director or agent of the association shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

E. The contract disclosures required by § 55-511 and the disclosure packet required by this section need not be provided in the case of:

1. A disposition of a lot by gift;
2. A disposition of a lot pursuant to court order if the court so directs;
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
4. A disposition of a lot that is zoned for or otherwise restricted to nonresidential use; or

5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

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

(1989, c. 679; 1991, c. 667; 1993, c. 96; 1995, c. 573; 1997, c. 222.)

The 1995 amendment substituted "subsections B and E" for "subsection B of this section" at the beginning of subsection A; rewrote the introductory language of subsection E which formerly read: "The contract disclosures and disclosure packet need not be prepared or delivered in the case of"; substituted "a lot that is zoned for or otherwise" for "a lot in a development where all the lots are" in subdivision E 4; and rewrote subdivision E 5 which formerly read: "A disposition of a lot to a person in the business of selling real estate who offers lots for his own account".

The 1997 amendment deleted "and" at the end of subdivision A 10, inserted "and" at the end of subdivision A 11, and added subdivision A 12.

§ 55-513. Adoption and enforcement of rules.

A. The board of directors of the association shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. A majority of votes cast, in person or by proxy, at a meeting convened in accordance with the provisions of the association's bylaws and called for that purpose, shall repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or damages, during which the court may award to the association court costs and reasonable attorneys' fees.

B. The board of directors of the association shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant thereto expressly so provide, to (i) suspend a member's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments which are more than sixty days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible. Before any such charges or suspension may be imposed, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents. Notice of a hearing shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least fourteen days prior to the hearing. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed fifty dollars for a single offense or ten dollars per day for any offense of a continuing nature and shall be treated as an assessment against the member's lot for the purposes of § 55-516.

(1989, c. 679; 1991, c. 667; 1993, c. 956; 1994, c. 368; 1997, cc. 173, 417.)

The 1994 amendment inserted "shall not be limited to the expense or damage to the association caused by the violation, but" in the last sentence of subsection B.

The 1997 amendments. - The 1997 amendments by cc. 173 and 417 are identical, and in subsection B, rewrote clause (i) of the first sentence which formerly read: "(i) suspend a member's right to use facilities or nonessential services offered by the association for nonpayment of assessments to the extent that access to the lot through the common areas is not precluded and" and substituted "charges or suspension may be imposed, the member" for "charges may be assessed, the member" in the second sentence.

Member rights. - This act vests in a majority of members, as members of a property owners' association, the right to "repeal or amend any rule or regulation adopted by the board of directors" if such rule or regulation has been adopted by the board with respect to use of the common areas. *Lake Monticello Owners' Ass'n v. Lake*, 250 Va. 565, 463 S.E.2d 652 (1995).

Given the language of this section and where association members must submit to these rules, regulations, and binding policies as long as they own homes in the community, the proposal at issue if enacted by majority vote, would merely impose limitations upon the board's powers authorized by this code section. *Lake Monticello Owners' Ass'n v. Lake*, 250 Va. 565, 463 S.E.2d 652 (1995).

§ 55-514. Authority to levy special assessments.

A. In addition to all other assessments which are authorized in the declaration, the board of directors of an association shall have the power to levy a special assessment against its members if the purpose in so doing is found by the board to be in the best interests of the association and the proceeds of the assessment are used primarily for the maintenance and upkeep, including capital expenditures, of the common area. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within sixty days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § 55-516 as well as any other rights afforded a creditor under law.

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

(1989, c. 679; 1991, c. 667; 1992, c. 450.)

The homeowner's association had the authority to assess both of debtor's lots since the declarations initially agreed upon stated that their purpose, among other things, was to require that each lot on the plat of the subdivision share equally in the annual assessments. *In re McConnell*, 198 Bankr. 181 (Bankr. E.D. Va. 1996).

§ 55-515. Compliance with declaration.

A. Every lot owner, and all those entitled to occupy a lot shall comply with all lawful provisions of this chapter and all provisions of the declaration. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association, or by its executive organ or any managing agent on behalf of such association, or in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. The prevailing party shall be entitled to recover reasonable attorneys' fees and costs expended in the matter.

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

(1989, c. 679; 1993, c. 956.)

§ 55-515.1. Amendment to declaration and bylaws; consent of mortgagee.

A. In the event that any provision in the declaration requires the written consent of a mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, or by regular mail with proof of mailing to the mortgagee at the address supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the declaration and receives no written objection to the adoption of the amendment from the mortgagee within ninety days of the date that the notice of amendment is received by the addressee.

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

(1997, c. 887.)

§ 55-516. Lien for assessments.

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

B. The association, in order to perfect the lien given by this section, shall file before the expiration of twelve months from the time such assessment became due and payable in the clerk's office in the county or city in which such development is situated, a memorandum, verified by the oath of the principal officer of the association, or such other officer or officers as

the declaration may specify, which contains the following:

1. The name of the development;
2. A description of the lot;
3. The name or names of the persons constituting the owners of that lot;
4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;
5. The date of issuance of the memorandum;
6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and
7. A statement that the association is obtaining a lien in accordance with the provisions of the Virginia Property Owners' Association Act as set forth in Chapter 26 (§ 55-508 et seq.) of Title 55.

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

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

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

E. No suit to enforce any lien perfected under subsection B shall be brought after twenty-four months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein the petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

F. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and reasonable attorney's fees, together with interest at the maximum lawful rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B hereof, the lien shall be released in accordance with the provisions of § 55-66.3. For the purposes of § 55-66.3, the principal officer of the association, or any other officer or officers

as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

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

I. At any time after perfecting the lien pursuant to this section, the property owners' association may sell the unit at public sale, subject to prior liens, conducted in compliance with the following:

1. In addition to the advertisement required by subdivision 2, the property owners' association shall give written notice of the time, date and place of any proposed sale in execution of the lien by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the property owners' association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least thirty days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least thirty days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than fourteen days prior to such sale and to lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than fourteen days prior to such sale, shall be a sufficient compliance with the requirement of notice.

2. The advertisement of sale by the property owners' association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

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

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

c. In addition to the advertisement required by subdivisions a and b above, the property owners' association shall give such other further and different advertisement as the association finds appropriate.

3. In the event of postponement of sale, which postponement shall be at the discretion of the property owners' association, advertisement of such postponed sale shall be in the same manner

as the original advertisement of sale.

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

5. In the event of a sale, the property owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the property owners' association from any person for entry by announcement at the sale. Any person other than a member of the property owners' association may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the property owners' association, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids.

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

c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale; second, to the satisfaction of all taxes, levies and assessments, with costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the owner's equity, without actual notice thereof prior to distribution.

(1989, c. 679; 1991, c. 667; 1997, cc. 760, 766.)

The 1997 amendments. - The 1997 amendments by cc. 760 and 766 are identical, and substituted "memorandum is filed" for "memorandum shall be filed" in the first sentence of the last paragraph of subsection B and added subsection I.

§ 55-516.1. Annual report by association.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the Real Estate Board.

B. The Real Estate Board may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the Real Estate Board.

C. The annual report shall be accompanied by a fixed fee in an amount established by the Real Estate Board. All fees shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

(1993, c. 958.)

§ 55-516.2. Condemnation of common area; procedure.

When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment therefor shall be paid to the association, which shall be a party in interest in the condemnation proceeding.

Except to the extent the declaration or any rules and regulations duly adopted pursuant thereto so provide, the board of directors shall have the authority to negotiate with the condemning authority and agree to an award or payment amount with the condemning authority without instituting condemnation proceedings.

A member of the association, by virtue of his membership, shall be estopped from contesting the action of the association in any proceeding held pursuant to this section.

(1995, c. 377.)
