

Code of Virginia

Title 55 - PROPERTY AND CONVEYANCES.

Chapter 19 - Subdivided Land Sales Act Code of Virginia

§ 55-336. Short title.

This chapter may be cited as the Subdivided Land Sales Act of 1978.

(1978, c. 510.)

§ 55-337. Definitions.

When used in this chapter, unless the context otherwise requires:

1. "Agent" means any person who represents or acts for or on behalf of a developer in the disposition of any lot or lots in a subdivision; but shall not include an attorney-at-law whose representation of another person consists solely of rendering legal services.
2. "Blanket encumbrance" means a trust, deed, mortgage, judgment or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land in toto comprising the subdivision to be offered and sold or leased or affecting more than ten lots or parcels of such lands, or an agreement affecting more than ten lots or parcels of such lands by which the developer holds said subdivision under option, contract, sale or trust agreement. The term shall not include mechanics' liens, taxes or assessments levied by a public authority, or easements granted to public utilities or governmental agencies for the purpose of bringing services to the lot or parcel within the subdivision.
3. "Developer" means any person who offers, directly or indirectly, for disposition, any lots in a subdivision, but shall not include a trustee under a deed of trust securing an indebtedness or other obligation who sells lots within such subdivision under foreclosure proceedings provided the purpose in so doing is not to evade the provisions of this chapter.
4. "Subdivision" means:
 - a. Any subdivision of land into one hundred or more lots, whether contiguous or not, where any lots therein are, from July 1, 1978, sold or disposed of, by land sales installment contracts, and pursuant to a common promotional plan, where lot purchasers within said subdivision have use of and access to the facilities and amenities within such subdivision for which the said lot owners are assessed on a regular or special basis for the use and enjoyment thereof.
 - b. Any existing subdivision of land of thirty or more lots wherein the developer has concluded its sales effort for a period of six consecutive months and has transferred to the association described in subdivision A 1 of § 55-344 all the title, control, and maintenance responsibilities of the common areas and common facilities.
5. "Disposition" or "sale" means any lease, assignment or exchange or any interest in any lot which is a part of or included in a subdivision.

6. "Offer" means any inducement, solicitation, media advertisement or attempt performed by or on behalf of a developer which has as its objective the disposition of a lot or lots in a subdivision.
7. "Person" means any individual, corporation, government or governmental agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.
8. "Purchaser" means a person who acquires or attempts to acquire any lot or lots in a subdivision.
9. "Lot" means any unit, parcel, division, or piece of land or interest in land except utility easements if such interest carries with it the exclusive right to use a specific portion of property.
10. "Land sales installment contract" means any installment contract for the sale or disposition of land whereby the purchaser does not receive a deed conveying the property purchased until part or all installment payments have been made as called for in the contract and record title to said property remains in another pending full performance of the contract.

(1978, c. 510; 1980, c. 546; 1996, c. 372.)

§ 55-338. Exemptions.

Unless the method of disposition is adopted for the purposes of evasion of this chapter, the provisions of this chapter shall not apply to:

1. The sale of a subdivision to a single purchaser for his own account in a single or isolated transaction;
2. The disposition of lots in a subdivision if each lot in the subdivision is at least five acres or more in size;
3. The disposition of a lot on which there is a residential, commercial or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within a period of two years from the date of disposition;
4. The disposition of land pursuant to court order, provided the court reviews and approves the disposition on an individual basis;
5. The disposition of cemetery lots;
6. Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust on real estate;
7. Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
8. Offers or dispositions of any interest in real estate, oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by this Commonwealth;
9. The disposition of a lot or lots to any person whose purpose in acquiring the land is to engage in the business of constructing residential, commercial, or industrial buildings thereon;

10. The lease of a lot where the right to possession or the rental term does not exceed one year in the aggregate and where the conditions of the lease do not obligate the lessee to renew;

11. The sale or lease of condominium units registered pursuant to the Virginia Condominium Act (§ 55-79.39 et seq.);

12. The disposition of real estate which is zoned or otherwise designated by the appropriate governmental authority for, or restricted by a valid recorded declaration of covenants to, commercial or industrial use.

(1978, c. 510; 1980, c. 546.)

§§ 55-339. through 55-340.1.

Repealed by Acts 1996, c. 372.

§ 55-341. Transfer of ownership.

It shall be unlawful for the developer to transfer fee simple ownership of lots or parcels within a subdivision to a lot purchaser by any other means than by a general or special warranty deed or other deed complying with Title 55, Chapter 4 (§ 55-48 et seq.).

(1978, c. 510.)

§ 55-342. Blanket encumbrances.

A. It shall be unlawful for any developer or agent to sell or lease lots in a subdivision that is subject to a blanket encumbrance unless the blanket encumbrance or effective supplemental agreement contains a release provision permitting legal title to individual lots or other interest contracted for to be obtained free and clear of the blanket encumbrance. Nothing herein shall be construed to limit the conditions upon which such release may be premised or the modification or amendment of such release provision as to (i) any purchaser other than a purchaser under an installment sales contract; or (ii) purchasers under installment sales contracts which are executed subsequent to the recordation of the amendment or modification.

B. Unless blanket encumbrance release provisions provide that the lien of the blanket encumbrance is subordinate to the rights of persons purchasing from the developer or agent and that those purchasers have the unconditional right to obtain legal title or other interest contracted for free and clear of the blanket encumbrance upon compliance with the terms and conditions of the purchase or lease, it shall be unlawful for a developer or agent to sell or lease lots unless one of the following conditions is complied with:

1. Any earnest money deposit or advance or other payment made by the purchaser on account of the purchase of a lot is placed in an escrow account which fully protects the interest of the purchaser until either:

a. Fee title or other interest contracted for is conveyed to the purchaser free and clear of the blanket encumbrance; or

b. Either the developer or purchaser defaults under the contract and a final determination as to the dispersal of sums paid is made by either a court of competent jurisdiction; or

c. The developer voluntarily orders the return of the money to the purchaser. Such escrow shall be held in a trust account maintained in a federally insured depository located in the Commonwealth of Virginia.

2. Title to the subdivision is held in trust under a trust agreement until a proper release is obtained and legal title or other interest contracted for is conveyed to the purchaser.

(1978, c. 510; 1980, c. 546; 1996, c. 372.)

§ 55-343. Restraints on alienation.

It shall be unlawful to restrain the owner of a lot in a subdivision from offering that lot for sale or lease, provided leasing of the lot is not specifically prohibited by recorded covenant, or from selling or leasing such lot. Any deed restriction or recorded covenant which creates a right of first refusal in excess of thirty days or creates a sales restraint which denies lot owners the right to post for-sale signs of reasonable size, shall be null and void.

(1978, c. 510.)

§ 55-344. Management, regulation and control of subdivisions in which there are common facilities or property owners' associations.

A. The covenants, deed restrictions, articles of incorporation, bylaws or other instruments for the management, regulation and control of subdivisions which include facilities or amenities for which the lot owners are assessed on a regular or special basis for the use, enjoyment, and maintenance thereof shall provide for, but need not be limited to:

1. Formation of an association to be composed of lot owners within the subdivision, such formation occurring prior to the sale of the first lot within the subdivision by the developer;

2. A description of the areas or interests to be owned or controlled by the association, which shall include those facilities or amenities for which the lot owners are subject to special or regular assessments;

3. The transfer of title and control and maintenance responsibilities of common areas and common facilities to the association, which transfer is to take place no later than at such time as the developer transfers legal or equitable ownership of at least seventy-five percent of the lots within the subdivision to purchasers of such lots or when all of the amenities and facilities are completed, whichever shall first occur, but in no event any sooner than two years from the date the developer sells his first lot within the subdivision should the developer elect to retain title to the common areas and common facilities for such period. The transfer herein required of the developer shall not exonerate him from the responsibility of completion of the common areas and facilities once the transfer takes place.

Nothing herein shall preclude the developer from transferring the common areas and common facilities for consideration, provided, (i) that such consideration does not exceed the lesser of the fair market value thereof at the time of transfer or the actual cost expended by the developer therefor, and (ii) that the developer affirmatively discloses the following information to the purchaser, in writing, at the time the initial contract of purchase is signed:

a. That the common areas and common facilities will be transferred only upon payment of consideration by the association;

- b. The terms upon which such transfer will be made; and
- c. An estimate of the amount of consideration to be paid by the association.

In the event the developer seeks payment for the areas or facilities transferred, the association shall have the option of deferring payment therefor evidenced by a deed of trust note covering a period of not less than five years at the legal rate of interest allowed in this Commonwealth, and secured by a deed of trust covering the facilities or areas transferred;

- 4. Procedures for determining and collecting regular assessments to defray expenses attributable to the ownership, use, enjoyment and operation of common areas and facilities transferred to the association;
- 5. Procedures for establishing and collecting special assessments for capital improvements or other purposes;
- 6. Procedures to be employed upon the annexation of additional land to the existing subdivision which procedures shall disclose whether or not per capita assessments on account of such annexation shall be subject to an increase, in the event additional amenities or common facilities are provided lot owners within the subdivision;
- 7. Such procedures and restrictions, if any, as apply with respect to the voluntary or involuntary resale of a lot within a subdivision by a purchaser or his agent, which procedures and restrictions, if any, shall be established prior to the sale of the first lot by the developer within the subdivision;
- 8. Monetary penalties or use privilege and voting suspension of members for breaches of the restrictions, bylaws or other instruments for management and control of the subdivision, or for nonpayment of regular or special assessments, with procedures for hearings for the disciplined members;
- 9. Creation of a board of directors or other governing body for the association with the members of the board or body to be elected by a vote of members of the association in good standing at an annual meeting or special meeting to be held not later than six months after the transfer of the areas of facilities outlined in subdivision 3 above;
- 10. Enumeration of the power of the board of directors or governing body which are consistent with and not otherwise provided by law;
- 11. The preparation of an annual balance sheet and operating statement for each fiscal year with provision for distribution of a copy of the reports to each member of the association in good standing within ninety days after the end of the fiscal year;
- 12. Quorum requirements for meetings of members of the association who are in good standing; and
- 13. Such other provisions as may be required by Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, if the association is a Virginia nonstock corporation.

B. Any developer of a subdivision, successor or otherwise, which subdivision is subject to the provisions of this chapter, shall be obligated to complete the facilities and amenities as promised and outlined in subsection A of this section by the initial developer of the subdivision subject to the transfer of title and control and maintenance responsibilities of common areas and common facilities to the lot owners'

association. The foregoing shall not be deemed to apply to any purchaser at foreclosure or grantee in a deed in lieu of foreclosure, provided the purchaser or grantee is a financial institution and the mortgagee, creditor, or beneficiary under the instrument being foreclosed or giving rise to the deed in lieu of foreclosure. The term financial institution shall mean a bank, savings institution, real estate investment trust, insurance company, pension or profit sharing trust, or other institution regularly engaged in the business of making real estate loans. For purposes of this subsection, the lot owners' association shall not be deemed a developer if at a meeting of its members in good standing a vote is taken whereby at least fifty percent of the members vote to be exempt from the requirements of this subsection.

C. The association, once formed and in existence and the title owner of the common areas and common facilities within the subdivision and which has been in existence for a period of at least five years, shall have the authority to pass special assessments against and raise the annual assessments of the members of the association and to collect said assessments from such members according to law, if the purpose in so doing is for the maintenance of the aforesaid common areas and common facilities. The authority hereby granted and conferred upon the association shall exist only where the restrictions and covenants of record have no specific language contained therein which precludes the adoption of special assessments or increases the annual dues or assessments.

D. The association shall have a lien on every lot within its subdivision for unpaid regular or special assessments levied against that lot in accordance with the provisions of this chapter. The lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that lot (ii) liens and encumbrances recorded prior to the perfected lien and (iii) any sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of the lien for regular or special assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

Notwithstanding any other provision of this chapter, or any other provisions of law requiring documents to be recorded in the miscellaneous lien books or the deed books of the clerk's office of any court, from July 1, 1978, all memoranda of liens arising under this subsection shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for subdivision regular or special assessments.

The association, in order to perfect the lien given by this subsection, shall file before the expiration of ninety days from the time such special or regular assessment became due and payable in the clerk's office of the county or city in which the subdivision is situated, a memorandum, verified by the oath of the president of the association, which memorandum shall contain:

1. A description of the subdivision;
2. The name or names of the persons constituting the owners of the lot;
3. The amount of unpaid special or regular assessments currently due or past due applicable to the lot, together with the date when each fell due; and
4. The date of issuance of the memorandum.

It shall be the duty of the clerk in whose office the memorandum shall be filed as hereinabove provided to record and index the same as provided in this subsection, in the names of the persons identified therein as

well as in the name of the association. The cost of recording such memorandum shall be taxed against the person found liable for any judgment or decree enforcing such lien. It shall be lawful for such memorandum to be filed as one statement listing therein the above required information and each of the lot owners whose property within the subdivision is liened thereby. The cost of filing shall be as provided in subdivision A 2 of § 17.1-275.

No suit to enforce any lien perfected under this subsection shall be brought after one year 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 such petition may be properly filed shall be regarded as the institution of a suit under this subsection; and provided, further, that nothing herein shall extend the time within which any such lien may be perfected. Nothing shall preclude the association from filing a single suit listing all unpaid delinquent and enumerated lot owners as defendants, and obtaining judgment against those so adjudicated by the court hearing the cause.

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

When payment or satisfaction is made of a debt secured by the lien perfected by this subsection, the lien shall be released in accordance with the provisions of § 55-66.3. For the purposes of § 55-66.3, the president or secretary of the association shall be deemed the duly authorized agent of the lien creditor.

Nothing in this subsection shall be construed to prohibit the recovery of sums for which this subsection creates a lien.

Any lot owner within the subdivision having executed a contract for the disposition of the lot, shall be entitled, upon request, to a recordable statement setting forth the amount of unpaid regular or special assessments currently levied against that lot. Such request shall be in writing, directed to the president of the association and delivered to the principal office of the association. Failure of the association to furnish or make available such a statement within five business days from the receipt of such written request shall extinguish the lien created by this subsection as to the lot involved. Payment of a fee not exceeding fifteen dollars may be required as a prerequisite to the issuance of such a statement if the bylaws of the association so provide.

E. Upon July 1, 1978, and a subdivision becoming subject to the terms thereof and the requirements outlined in subdivisions 1 through 8 of subsection A of this section have not been performed then the requirements shall have to be fully complied with within a period of ninety days from July 1, 1978, and upon failure to fully perform all of such requirements within the ninety-day period the failure so to do shall constitute a violation of this subsection.

F. Each lot owner within a subdivision which falls within the definition of this chapter shall be responsible for his pro rata share of the cost of maintaining the common areas and common facilities owned by the association. For purposes of this subsection, common facilities and common areas shall be defined to mean only the roads and lakes within the subdivision and maintenance shall include any orderly program for the continued upkeep and improvement of such roads and lakes. The association shall have the responsibility of determining the pro rata share assessed against each lot owner and such amount assessed thereby shall be in addition to the annual or special assessment otherwise obligated by each member of the association.

G. Providing the definition of subdivision as detailed in subdivision 4 b of § 55-337 is complied with, the property owners' association at the subject subdivision shall have the powers and duties enumerated in subsections C, D and F of this section as well as the rights and authority to establish those procedures outlined in subdivisions A 4, A 5 and A 6 and the penalties in subdivision A 8 herein, but shall also have the obligations imposed by such subdivisions and those of subdivisions A 9 through A 12.

(1978, c. 510; 1980, c. 546; 1989, c. 68; 1993, c. 36; 1996, c. 77.)

§§ 55-345. , 55-346.

Repealed by Acts 1996, c. 372.

§ 55-347. Penalties.

Any person violating any of the provisions of §§ 55-341 through 55-344 shall be guilty of a Class 2 misdemeanor. At the discretion of the court, any imprisonment may be rendered to run concurrently with imprisonment rendered or imposed by any court for violation of any law similar to the provisions of this chapter.

(1978, c. 510; 1979, c. 243; 1996, c. 372.)

§ 55-348.

Repealed by Acts 1996, c. 372.

§ 55-349.

Not set out. (1978, c. 510.)

§ 55-350.

Repealed by Acts 1996, c. 372.

§ 55-351.

Reserved.