

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 8.01-463, 55.1-1815, 55.1-1833, 55.1-1945, 55.1-1966, 55.1-2148, 55.1-2151, and 55.1-2305 of the Code of Virginia, relating to common interest communities; foreclosure remedy.

[H 880]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-463, 55.1-1815, 55.1-1833, 55.1-1945, 55.1-1966, 55.1-2148, 55.1-2151, and 55.1-2305 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-463. Enforcement of lien when judgment does not exceed \$25,000.

If the amount of the judgment does not exceed \$25,000, exclusive of interest and costs, no bill to enforce the a lien, pursuant to § 8.01-462, ~~thereof~~ shall be entertained if the real estate is the judgment debtor's primary residence and the amount of the judgment exclusive of interest and costs does not exceed \$25,000. However, if the judgment is for assessments levied by a common interest community association pursuant to Chapter 18 (§ 55.1-1800 et seq.), 19 (§ 55.1-1900 et seq.), 21 (55.1-2100 et seq.), or 23 (§ 55.1-2300 et seq.) of Title 55.1, no bill to enforce a lien shall be entertained if the total amount secured by one or more judgments exclusive of interest and costs does not exceed \$5,000.

§ 55.1-1815. Access to association records; association meetings; notice.

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices. *The association shall maintain individual assessment account records. The association shall maintain a record of any recorded lien at least as long as the lien remains effective.*

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

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

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

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

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

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55.1-1819;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55.1-1816;

8. Documentation, correspondence, or management or board reports compiled for or on behalf of the

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association or the board by its agents or committees for consideration by the board in executive session; or

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

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

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

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

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

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot. In lieu of sending such notice by United States mail, notice may instead be (i) hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the member, or (ii) sent to the member by electronic mail, provided that the member has elected to receive such notice by electronic mail and, in the event that such electronic mail is returned as undeliverable, notice is subsequently sent by United States mail. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (a) within 60 days from the conclusion of the meeting to which such minutes appertain or (b) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

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

§ 55.1-1833. Lien for assessments; foreclosure.

A. The association shall have a lien, once perfected, on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of such lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under § 55.1-318 shall be given in the same fashion as if the association's lien were a judgment.

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

1. The name of the development;
2. A description of the lot;

3. The name or names of the persons constituting the owners of that lot;
 4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;

5. The date of issuance of the memorandum;

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

7. A statement that the association is obtaining a lien in accordance with the provisions of the Property Owners' Association Act as set forth in Chapter 18 (§ 55.1-1800 et seq.) of Title 55.1.

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

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

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

E. *Any lien perfected pursuant to subsection B may be enforced by filing a civil action to conduct a judicial foreclosure in the circuit court in the county or city where the lot is located or by nonjudicial foreclosure pursuant to subsections I and J. No action to enforce foreclosure of any lien perfected under subsection B this section shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 120 months from the time when the memorandum of lien was recorded; however, the. The filing of a petition a civil action to enforce any such lien in any action in which the petition may be properly filed by foreclosure through judicial means or issuance of notice of nonjudicial foreclosure under subdivision J 1 shall be regarded as the institution of an action under this section. Nothing in this subsection shall extend the time within which any such lien may be perfected.*

F. The judgment or order in an action brought pursuant to this section shall include reimbursement for costs and reasonable attorney fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by ~~the~~ any lien perfected ~~by~~ pursuant to subsection B, ~~the~~ such lien shall be released in accordance with the provisions of § 55.1-339. Any lien that is not so released shall subject the lien creditor to the penalty set forth in subdivision B 1 of § 55.1-339. For the purposes of § 55.1-339, the principal officer of the association, or any other officer or officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55.1-1828.

I. ~~At any time after perfecting the lien pursuant to this section, the property owners' association may sell the lot at public sale, subject to prior liens. The association may conduct a judicial or nonjudicial foreclosure sale upon a lot against which the association has perfected one or more liens pursuant to this section if the total sums secured are in excess of \$5,000, exclusive of attorney fees and costs.~~ For purposes of this section, the association shall have the power both to sell and convey the lot and shall be deemed the lot owner's statutory agent for the purpose of transferring title to the lot.

J. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The association shall give notice to the lot owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the lot owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the lot. The notice shall further inform the lot owner of the right to bring a court action in the circuit court of the county or city where the lot is located to assert the nonexistence of a debt or any other defense of the lot owner to the sale.

2. After expiration of the 60-day notice period specified in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which such development is situated. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection D, in

the names of the persons identified in such appointment as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the lot owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the lot owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the lot. Those conditions are that the lot owner (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pay all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees.

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

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

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

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

c. In addition to the advertisement required by subdivisions a and b, the association may further advertise as the association finds appropriate.

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

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

8. The association shall have the following powers and duties upon a sale:

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

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

c. The ~~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, including attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the owner or his assigns, provided, however, that, as to the payment of such residue, the association shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the owner's equity, without actual notice thereof prior to distribution.

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

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309, and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55.1-1815 upon the written request of the prior lot owner, the current lot owner, or any holder of a recorded lien against the lot at the time of the sale. The association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a lot is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts the sale is set aside by the court or an appeal is filed in the Court of Appeals or granted by the Supreme Court and an order is entered requiring such sale to be set aside.

§ 55.1-1945. Books, minutes, and records; inspection.

A. The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices. *The unit owners' association shall maintain individual assessment account records. The unit owners' association shall maintain a record of any recorded lien at least as long as the lien remains effective.*

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;
5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive board held pursuant to subsection C of § 55.1-1949;
8. Documentation, correspondence or management or executive board reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for

consideration by the executive board in executive session; or

9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, not to exceed the reasonable costs of materials and labor, incurred to provide such copies. Charges may be imposed only in accordance with a cost schedule adopted by the executive board in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

§ 55.1-1966. Lien for assessments; foreclosure.

A. The unit owners' association shall have a lien on each condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of such lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. 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, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. In order to perfect the lien given by this section, the unit owners' association shall file a memorandum verified by the oath of the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, before the expiration of 90 days from the time the first such assessment became due and payable. The memorandum shall be filed in the clerk's office of the circuit court in the county or city in which such condominium is situated. The memorandum shall contain the following:

1. A description of the condominium unit in accordance with the provisions of § 55.1-1909.
2. The name or names of the persons constituting the unit owners of that condominium unit.
3. The amount of unpaid assessments currently due or past due together with the date when each fell due.
4. The date of issuance of the memorandum.

The clerk in whose office such memorandum is filed shall record and index the memorandum as provided in subsection B, in the names of the persons identified in such memorandum as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment enforcing such lien.

D. *Any lien perfected pursuant to this section may be enforced by filing a civil action to conduct a judicial foreclosure in the circuit court in the county or city where the condominium is or a nonjudicial foreclosure pursuant to subsections I and J. No action to enforce foreclosure of any lien perfected under subsection C this section shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 120 months from the time when the memorandum of lien was recorded; however, the. The filing of a petition civil action to enforce any such lien in any action in which such petition may be properly filed by foreclosure through judicial means or issuance of notice of nonjudicial foreclosure under subdivision J 1 shall be regarded as the institution of an action under this section. Nothing in this subsection shall extend the time within which any such lien may be perfected.*

E. The judgment in an action brought pursuant to this section shall include reimbursement for costs and attorney fees of the prevailing party. If the unit owners' association prevails, it such unit owners' association may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by pursuant to

subsection C, such lien shall be released in accordance with the provisions of § 55.1-339. Any lien that is not so released shall subject the lien creditor to the penalty set forth in subdivision B 1 of § 55.1-339. For the purposes of that section, the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55.1-1915.

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of such condominium unit, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

I. ~~At any time after perfecting the lien pursuant to this section, the unit owners' association may sell the unit at public sale, subject to prior liens~~ *The unit owners' association may conduct a judicial or nonjudicial foreclosure sale upon a unit against which the unit owners' association has perfected one or more liens pursuant to this section if the total sums secured are in excess of \$5,000, exclusive of attorney fees and costs.* For purposes of this section, the unit owners' association shall have the power both to sell and convey the unit and shall be deemed the unit owner's statutory agent for the purpose of transferring title to the unit.

J. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The unit owners' association shall give notice to the unit owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the unit owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the unit. The notice shall further inform the unit owner of the right to bring a court action in the circuit court of the county or city where the condominium is located to assert the nonexistence of a debt or any other defense of the unit owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the unit owners' association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the condominium is located. The clerk in whose office such appointment is filed shall record and index the appointment as provided in subsection C, in the names of the persons identified therein as well as in the name of the unit owners' association. The unit owners' association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the unit owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the unit. Those conditions are that the unit owner (a) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees.

4. In addition to the advertisement required by subdivision 5, the unit owners' association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, and shall include the name, address, and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the condominium unit to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the condominium unit secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the locality in which the condominium unit to be sold, or any portion of such unit, is located pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the condominium unit or some portion of such unit 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 that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the condominium unit to be sold, which description need not be as extensive as that contained in the deed of trust but shall identify the condominium unit by street address, if any, or, if none, shall give the general location of the condominium unit 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 unit owners' association. The advertisement shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

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

6. In the event of postponement of a sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

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

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

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell, or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 of this subsection and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the unit owners' association or its agent or attorney.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the condominium unit 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 unit owners' association in connection with that sale.

c. The unit 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, including reasonable attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit 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 unit 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 unit owner's equity, without actual notice of such encumbrance prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with special warranty of title. The trustee shall not be required to take possession of the condominium unit prior to the sale or to deliver possession of the unit to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309 and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55.1-1945 upon the written request of the prior unit owner, current unit owner, or any holder of a recorded lien against the unit at the time of the sale. The unit owners' association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a unit is made pursuant to this subsection and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is filed in the Court of Appeals or granted by the Supreme Court and an order is entered requiring such sale to be set aside.

§ 55.1-2148. Remedies for nonpayment of assessments; lien; foreclosure.

A. The association has a lien on a cooperative interest for any assessment levied against that cooperative interest or fines imposed against its owner from the time the assessment or fines become due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions A 11 and 12 of § 55.1-2133 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. Upon nonpayment of the assessment, the proprietary lessee may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section. The association's lien may be foreclosed (i) by judicial sale in like manner as a mortgage on real estate or (ii) by power of sale as provided in subsection I.

B. A lien under this section is prior to all other liens and encumbrances on a cooperative interest except (i) liens and encumbrances on the cooperative that the association creates, assumes, or takes subject to; (ii) any first security interest encumbering only the cooperative interest of a proprietary lessee and perfected before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the cooperative or the cooperative interest. The lien is also prior to the security interests described in clause (ii) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection A of § 55.1-2133 that would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to homestead or other exemptions.

C. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

D. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation or filing of any claim of lien for assessment under this section is required.

E. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within ~~three years~~ 120 months after the full amount of the assessment becomes due.

F. This section does not prohibit actions to recover sums for which subsection A creates a lien or prohibit an association from taking a transfer in lieu of foreclosure.

G. A judgment in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

H. Upon written request, the association shall furnish to a proprietary lessee a statement setting forth the amount of unpaid assessments against his cooperative interest. The statement shall be in recordable form. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every proprietary lessee.

I. ~~The association, upon nonpayment of assessments and compliance with this subsection, may sell the cooperative interest~~ *The association may conduct a judicial or nonjudicial foreclosure sale of the cooperative interest against which the association has perfected one or more liens pursuant to this section if the total sums secured are in excess of \$5,000, exclusive of attorney fees and costs. Sale may be at a public sale or by private negotiation and at any time and place, but every aspect of the sale, including the method, advertising, time, place, and terms, must be reasonable. The association shall give to the proprietary lessee and any sublessees of the proprietary lessee reasonable written notice of the time and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the cooperative interest that would be cut off by the sale, but only if the interest was on record seven weeks before the date specified in the notice as the date of any public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until five weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.*

J. The proceeds of a sale under subsection I shall be applied in the following order:

1. The reasonable expenses of sale;
2. The reasonable expenses of securing possession before sale; holding, maintaining, and preparing the cooperative interest for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the proprietary lessee, reasonable attorney fees and other legal expenses incurred by the association;
3. Satisfaction in the order of priority of any prior claims of record;
4. Satisfaction of the association's lien;
5. Satisfaction in the order of priority of any subordinate claim of record; and

6. Remittance of any excess to the proprietary lessee. Unless otherwise agreed, the proprietary lessee is liable for any deficiency.

K. If a cooperative interest is sold under subsection I, a good faith purchaser for value acquires the proprietary lessee's interest in the cooperative interest free of the association's debt that gave rise to the lien under which the sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section. The person conducting the sale under subsection I shall execute a conveyance to the purchaser sufficient to convey the cooperative interest that states that the conveyance is executed by him, after a foreclosure by power of sale of the association's lien and that he has power to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by subsection I are sufficient proof of the facts recited and of his authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

L. At any time before the association has disposed of the cooperative interest or entered into a contract for its disposition under the power of sale, the proprietary lessee or the holder of any subordinate security interest may cure the proprietary lessee's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney fees of the creditor.

§ 55.1-2151. Association records.

The association shall keep financial records sufficiently detailed to enable the association to comply with § 55.1-2309. All financial and other records shall be made reasonably available for examination by any proprietary lessee and his authorized agents. *The association shall maintain a record of any recorded lien at least as long as the lien remains effective.*

§ 55.1-2305. Management, regulation, and control of subdivisions with common facilities or property owners' associations; assessments; liens.

A. The covenants, deed restrictions, articles of incorporation, bylaws, or other instruments for the management, regulation, and control of subdivisions that include facilities or amenities for which the lot owners are assessed on a regular or special basis for the use, enjoyment, and maintenance of such facilities or amenities shall provide for at a minimum:

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, including those facilities or amenities for which the lot owners are subject to regular or special assessments;

3. The transfer of title, 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 75 percent of the lots within the subdivision to purchasers of such lots or when all of the amenities and facilities are completed, whichever occurs first, 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 of such title, control, and maintenance responsibilities required of the developer shall not exonerate the developer from the responsibility of completion of the common areas and facilities once the transfer takes place.

Nothing in this section shall preclude the developer from transferring the common areas and common facilities for consideration, provided that (i) such consideration does not exceed the lesser of the fair market value of such common areas and common facilities at the time of transfer or the actual cost expended by the developer for such common areas and common facilities and (ii) 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 such payment, evidence by a deed of trust note covering a period of not less than five years at the legal rate of interest allowed in the Commonwealth and secured by a deed of trust covering the areas or facilities 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 that 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, that apply to the voluntary or involuntary resale of a lot within a subdivision by a purchaser or his agent, which 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 provided for in subdivision 3;

10. Enumeration of the power of the board of directors or governing body that is 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 90 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 the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) if the association is a Virginia nonstock corporation.

B. Any developer of a subdivision, successor or otherwise, when such 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 by the initial developer of the subdivision subject to the transfer of title, 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 that 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. For the purposes of this subsection, "financial institution" means 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 and at least 50 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 such assessments from such members according to law, if the purpose in so doing is for the maintenance of such common areas and common facilities. The authority granted and conferred upon the association by this subsection exists only where the restrictions and covenants of record do not contain specific language that 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 such 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 such 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 90 days from the time such regular or special 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 shall contain:

1. A description of the subdivision;
2. The name or names of the owners of the lot;
3. The amount of unpaid regular or special 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.

The clerk in whose office the memorandum is filed shall record and index such memorandum as provided in this subsection, in the names of the persons identified in such memorandum, as well as in the name of the association. The cost of recording the memorandum shall be taxed against the person found liable for any judgment or order enforcing such lien. It is lawful for the memorandum to be filed as one statement listing the information required in subdivisions 1 through 4 and each of the lot owners whose property within the subdivision is liened. The cost of filing shall be as provided in subdivision A 2 of § 17.1-275.

Any lien perfected pursuant to this section may be enforced by filing a civil action to conduct a judicial foreclosure in the circuit court in the county or city where the lot is located or a nonjudicial foreclosure. No action to enforce foreclosure of any lien perfected under this subsection shall be brought initiated after one year 120 months from the time when the memorandum of lien was recorded; however, the. The filing of a petition civil action to enforce any such lien in any action in which such petition may be properly filed by foreclosure through judicial means or issuance of notice of nonjudicial foreclosure shall be regarded as the institution of an action under this subsection. Nothing in this subsection shall be construed to extend the time within which any such lien may be perfected. Nothing shall preclude the association from filing a single action listing all unpaid delinquent and enumerated lot owners as defendants and obtaining judgment against those so adjudicated by the court hearing the action. The association may conduct a judicial or nonjudicial foreclosure sale upon a lot against which the association has perfected one or more liens pursuant to this section if the total sums secured are in excess of \$5,000, exclusive of attorney fees and costs.

The judgment in an action brought pursuant to this subsection shall include, without limitation, reimbursement for costs and attorney fees, together with the interest at the maximum lawful rate for the sums secured by the lien from the time each 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 § 55.1-339. For the purposes of § 55.1-339, the president or secretary of the association is 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 is 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 \$15 may be required as a prerequisite to the issuance of such a statement if the bylaws of the association so provide.

E. If, upon July 1, 1978, and a subdivision becoming subject to the terms and requirements outlined in subdivisions A 1 through 8 have not been performed, then the requirements shall have to be fully complied with within a period of 90 days from July 1, 1978, and upon failure to fully perform all of such requirements within the 90-day period the failure so to do shall constitute a violation of this subsection.

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

G. If a subdivision of land meets the requirement in subdivision 2 of the definition of subdivision as provided in § 55.1-2300, then the property owners' association of the subject subdivision has the powers and duties enumerated in subsections C, D, and F as well as the rights and authority to establish those procedures outlined in subdivisions A 4, 5, and 6 and the penalties in subdivision A 8, and also has the obligations imposed by such subdivisions and those of subdivisions A 9 through 12.