

Virginia State Bar Informational Brochures

Legal Issues in Association-Governed Sales and Resale

*A Public Information Pamphlet from the Virginia State Bar
Real Property Section Common Interest Community Committee*

The process of buying or selling a home is exciting and should be a positive event. But, we know that buying a home can also be stressful and confusing. To ensure a positive experience, it is important to exercise a level of due diligence, taking reasonable steps to prepare for your purchase. Whether you are a homebuyer or seller, or are otherwise involved in the home-buying process, there are certain rights and responsibilities that you should be aware of and exercise.

For the sale of homes that are part of a condominium or property owners' association (sometimes referred to as an HOA), resale disclosure documents (a resale certificate for condominium unit owners' associations and an association disclosure packet for property owners' associations) are essential tools to ensure that all relevant information that may impact a decision to purchase a home in a particular community is provided. Resale disclosure documents will also educate buyers about your rights — and responsibilities — as an owner in the community.

What is a resale disclosure document?

Resale disclosure documents (a *resale certificate* for condominium unit owners' associations and an *association disclosure packet* for property owners' associations) is a generic term used to describe the collection of documents required by Virginia law to be obtained from a common interest community association by the seller of a unit or lot and provided to a potential purchaser.

When should I request and review a resale disclosure document?

Resale disclosure documents must be delivered by an association within fourteen days of the receipt of a request, unless a rush delivery is requested. Resale disclosure documents are *typically* requested after ratification of a sales contract on a lot or unit, but may also be requested before an offer is extended or a sales contract is ratified.

What must be included in resale disclosure documents?

Resale disclosure documents for condominium unit owners' associations and property owners' associations are similar in many respects, both requiring the following disclosure statements:

- A statement of any expenditure of funds approved by the association or board of directors that shall require an assessment in addition to the regular assessment during the

current or the immediately succeeding fiscal year;

- A statement, including the amount, of all assessments and any other fees or charges currently imposed by the association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition and maintenance of the unit or lot and the use of the common elements or common areas, and the status of the account;
- A statement whether there is any other entity or facility to which the owner may be liable for fees or other charges;
- The current reserve study or a summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the board of directors;
- A copy of the association's current budget or a summary thereof prepared by the association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due on any outstanding loans of the association;
- A statement of the nature and status of any pending suits or unpaid judgments to which the association is a party, which either could or would have a material impact on the association or the owners or which relates to the lot or unit being purchased;
- A statement setting forth what insurance coverage is

provided for all owners by the association, including the fidelity bond maintained by the association, and what additional insurance coverage would normally be secured by each individual owner;

- A statement that any improvements or alterations made to the lot or unit, or the common area or limited common elements assigned thereto, are or are not in violation of the governing documents (declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the property owners' association) or condominium instruments;
- A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the unit owners' association and the amendments thereto, or for property owners' associations, a copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;
- A copy of the notice given to the owner by the association of any current or pending rule or architectural violation;
- A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request;
- Certification that the unit owners' association has filed with the Common Interest Community Board the annual report, which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing;
- A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display any flag, including, but not limited to reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;
- A statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on the owner's property; and,
- A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies.

Resale certificates, issued by condominium unit owners' associations have several disclosures that are not required in an association disclosure packet issued by a property owners' association:

- A statement of unpaid assessments and statement of the association right of first refusal, if appropriate;
- A statement of whether the condominium or any portion

thereof is located within a development subject to the Property Owners' Association Act; and,

- A statement of any limitation on the number of persons who may occupy a unit as a dwelling.

Similarly, association disclosure packets, issued by property owners' associations have several disclosures that are not required in a resale certificate issued by a condominium unit owners' association:

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

How may resale disclosure documents be delivered?

Resale disclosure documents must be delivered in accordance with the written request of the seller or seller's authorized agent (usually, the seller's realtor). The seller may request the resale disclosure documents be delivered electronically or in hard copy and must specify the complete contact information for the parties who should receive the documents.

Once requested, the resale disclosure documents must be delivered within fourteen days.

Can I request an update to a resale disclosure document?

Yes, if resale disclosure documents were issued within the twelve-month period immediately prior to the request, a seller or the seller's agent may request an update. Updates to the resale disclosure documents must be provided within ten days of the written request. Additionally, a settlement agent may request a financial update, which must be delivered within three business days of the written request.

A fee of up to \$54.66 may be charged by the preparer of any resale disclosure document update or financial update.

What fees may be charged for providing resale disclosure documents?

The preparer the resale disclosure documents (the association, managing agent, or a third party) may charge a reasonable fee for preparation (for condominium unit owners' associations and professionally managed property owners' association) and actual cost for preparation, with limitations, for self-managed

property owners' associations (see the chart below).

	Condominium Unit Owners' Associations and Professionally Managed Property Owners' Associations	Self-Managed Property Owners' Associations
Inspection of Unit or Lot	\$109.31	\$50.00
Preparation and Delivery of Resale Disclosure Document in Paper Format (Hard Copy)	\$163.97 (no more than two copies)	Actual cost, not to exceed \$0.10 per page or a total of \$100.00
Preparation and Delivery of Resale Disclosure Document in Electronic Format	\$136.64	Actual cost, not to exceed \$100.00
Expedite Fee (with agreement of preparer)	\$54.66	
Additional Hard Copy	\$27.33	
Post-Closing Fee (For Establishing Purchaser as Owner in Association Records)	\$54.66	
Update (including financial or resale disclosure document)	\$54.66	\$50.00

For condominium unit owners' associations and professionally-managed property owners' associations, the allowable fees described above adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor. The next mandatory CPI-U adjustment will occur in 2018.

Who must pay for a resale disclosure document?

Fees for resale disclosure documents for condominium unit owners' associations and professionally-managed property owners' associations are collected at the time of settlement on the sale and are payable out of the settlement proceeds. The settlement agent handling the sale must escrow enough money to pay those costs from sums due to the seller.

The seller is responsible for all costs associated with the preparation and delivery of the resale disclosure documents, except for the costs of any update, which are the responsibility of the requester (either the seller or purchaser), payable at settlement.

If settlement does not occur within sixty days of the delivery of the resale disclosure document, or funds are not collected at settlement and disbursed to the association or the common

interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be:

- (i) assessed within one year after delivery of the against the owner,
- (ii) the personal obligation of the lot owner, and
- (iii) an assessment collectible as any other assessment.

In self-managed property owners' associations, fees for resale disclosure documents are charged to the seller and must be paid at the time of delivery of the disclosure packet. If unpaid, these fees are an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and Section 55-516 of the Virginia Property Owners' Association Act. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association.

I received a resale disclosure document, now what?

Documents and information provided in a resale disclosure document describe the rights and responsibilities of living in a particular community and must be carefully reviewed before a purchase. These documents are invaluable consumer information tools because it is vital that buyers know what they are buying.

As with any real estate transaction, it is important to exercise adequate due diligence. Purchasers should carefully read the entirety of the resale disclosure documents, no matter how long they are. Questions about information provided in the resale disclosure documents should be raised quickly, within the cancellation period provided by statute. If possible, consult with an attorney familiar with these documents and transactions.

What to look for in a resale disclosure document?

As provided above, purchasers should carefully read the entirety of the resale disclosure documents. Certain questions, however, should be given careful attention and investigated.

Is the association in good financial standing?

The association budget (or summary of the budget) and related information should be carefully reviewed to ensure the association is in sound financial condition. Purchasers should remain particularly aware of any special assessments, loan payments, and reserves (used to finance future

capital improvements and repairs). The association reserve study should also be carefully reviewed and may include recommendations for future funding. These recommendations should be compared to the actual reserve fund balances and contributions.

Is the association involved in litigation?

Associations will, from time to time, become involved in litigation. Many types of litigation, including the routine collection of unpaid assessments, are not required to be expressly disclosed. But, any suit or judgment that would have a material impact on the association or owners or relates to the property being sold must be disclosed. Litigation may affect the ability to finance or sell and the nature of litigation should be researched carefully and quickly.

Are there specific restrictions that concern you?

Purchasers should consider any specific restrictions that are of concern. Restrictions on pets, leasing, and smoking may impact certain owners more than others. Use restrictions may be found in the recorded documents for the association or rules and regulations adopted by the board.

Can I cancel my contract after receiving a resale disclosure document?

Yes. A purchaser may cancel a sales contract, for any reason (or no reason) within three days after receiving the resale disclosure document or being notified that the resale disclosure document will not be available.

What if the seller fails to provide a resale disclosure document upon request?

If the association or its common interest community manager has been requested in writing to prepare a resale disclosure document, but fails to provide the resale disclosure document substantially in the form as required by statute, the association shall be deemed to waive any claim for delinquent assessments

or violation of the declaration, bylaws, rules, and regulations, or architectural guidelines existing *as of the date of the request* with respect to the subject property. If the seller sustains actual damages for the failure to provide the resale disclosure documents, the association may be liable for those actual damages in an amount not to exceed \$1,000.00 (\$500.00 for self-managed property owners' associations).

And, effective July 1, 2017, any person aggrieved by an association's failure to deliver a resale certificate or disclosure packet within any time-period required under § 55-79.97, 55-79.97:1, 55-484, 55-509.5, 55-509.6, or 55-509.7 may complain directly to the Virginia Common Interest Community Board.

I wasn't provided a resale disclosure document, do I still have to pay assessments and comply with lawfully adopted rules and regulations?

Yes, failure to receive resale disclosure document does not excuse any failure to comply with the provisions of the recorded documents, articles of incorporation, rules, or regulations.

Are there any exemptions to the requirement for resale disclosure?

Yes, Virginia law exempts certain transactions from the requirement for resale disclosure. These exemptions include: (1) transfer of the property by gift; (2) transfers directed by court order; (3) foreclosures; (4) auctions (if provided as part of the auction package); or, (5) certain non-residential and investment transactions.

This Public Information Pamphlet from the Virginia State Bar Real Property Section Common Interest Community Committee is offered as a public service to answer certain basic questions about resale disclosure in Virginia common interest community associations and provide general guidance about important portions of a resale disclosure document that should be given careful attention.

By its nature, a pamphlet of this type cannot address or anticipate every consideration that must be given during the purchase of a home, but hopefully this information will provide an introduction that can be discussed more extensively with an attorney.

Public Information Brochures

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