REPORT ON
RECREATIONAL LAND DEVELOPMENT
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 5

COMMONWEALTH OF VIRGINIA

Department of Purchases and Supply

Richmond

1978

I. INTRODUCTION

Virginia has been a leading state in promoting fair and ethical treatment of the consuming public. In February of 1977, seeing a new need for an examination of the problems presented by the sales of recreational land to citizens of the Commonwealth, the General Assembly passed Joint Resolution No. 254 requesting the Virginia Real Estate Commission to appoint a committee to study recreational land development and sales as follows:

> WHEREAS: it has been reported that several states have encountered widespread fraud and deceit in the sale of recreational property;and
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> WHEREAS: there are reports that developers of certain recreational homesites and campsites in this Commonwealth have misrepresented the facilities available or planned for these developments; and
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> WHEREAS: certain developers of recreational homesites and campsites in this Commonwealth have been unable to deliver unencumbered general warranty deeds to buyers; and
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> WHEREAS: certain land developers of recreational homesites and campsites in this Commonwealth have used so-called "land sales contracts" which offer little protection to the buyer; and
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> WHEREAS: at least one developer of recreational campsites has been unable to pay county real estate taxes despite payment for these taxes to him by the buyers; now, therefore be it
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> RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Real Estate Commission is requested to appoint a committee to study recreational land developments in this Commonwealth to determine their number, and methods of doing business, and the need, if any, for corrective legislation.
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> The Virginia Real Estate Commission, shall forward the report to this committee, together with its comments and recommendations, to the Governor and the General Assembly on or before November one, nineteen hundred seventy-seven.

Appointed to serve as Chairperson of the Committee authorized by Joint Resolution No. 254 was Helen A. Kent, Real Estate Commissioner from Waynesboro.

Other members appointed were S. Jeannie Dorman (Shenandoah Farms Property Owners Association), Francis T. Eck (Attorney and Secretary-Treasurer, Virginia Land Association), Ralph C. Gibson (Developer and President, Virginia Land Association), W. H. Groseclose (mortgage lender), J. A. Gustin, P.E. C.L.S. (member of Virginia State Board of Architects, Professional Engineers and Land Surveyors), Thomas F. Johnson, Ph.D. (President of Indian Acres Club of Thornburg, Inc.), Ronald I. Tull (auctioneer), and P. Ann Lawhead (Virginia Citizens Consumer Council and U. S. Department of Housing and Urban Development).

The Committee is grateful to Ruth J. Herrink, Secretary of the Real Estate Commission, the Assistant Secretary William W. Dennis, Jr., and to John Purcell and David Seitz of the Attorney General's Office for their assistance to the Committee.

The Committee met seven times between May 25 and November 1, 1977, including public hearing sessions held in Norfolk and in Alexandria.

II. SYNOPSIS OF THE PROPOSED SUBDIVIDED LAND SALES ACT

Three years ago, legislation sponsored by the Virginia Land Association was introduced to the General Assembly, endorsed by the Virginia Real Estate Commission and the Office of the Attorney General. While the proposed legislation did not become law, it was apparent from the legislative hearings that concern existed in the Commonwealth for real or potential abuses of consumer interests due to the practices of some in the land development and sales industry. Since that time, complaints continue to be received by the Governor's Office, the Real Estate Commission, the Attorney General's Office in Virginia, by the U. S. Department of Housing and Urban Development and by the United States Attorneys in Virginia. These complaints seem to indicate that the problems which were of concern in 1974 have not totally abated and that some types of consumer abuses still are taking place in the land industry.

According to available records, there are at least 365 subdivisions of unimproved land located in Virginia, each containing 50 or more lots. Forty of these contain 500 or more lots; some contain thousands. In addition to these subdivisions which are marketed to Virginia residents, reports indicate that thousands of lots in many other subdivisions located in other states are offered within the Commonwealth.

Many of these subdivisions are required to be registered with the Department of Housing and Urban Development (HUD); however, HUD registration requirements are limited by statute to full disclosure. HUD levies no substantive requirements. A developer need only disclose all the facts about his land offering and method of operation in order to become registered. Even a developer who has been guilty

of tremendous frauds upon purchasers, who has gone bankrupt several times or who has been indicted for criminal offenses, can register simply be setting forth the facts in black and white. HUD has no authority to require the developer to adopt any other special measures to protect purchasers. The Study Committee found that the subdivisions located in Virginia and in which the most glaring problems were evident, were registered with HUD. Although many are now suspended by HUD for lack of adequate disclosure, the suspension provides no relief for abused purchasers, nor can it correct the abuses themselves, only require their disclosure. Recognizing its limitations, HUD encourages states to enact substantive legislation to complement the Federal disclosure requirements.

The consensus of the Committee was that legislation is needed in Virginia-----simple legislation-----because land purchasing consumers are not adequately protected by existing legislation. The legislation proposed three years ago was the result of the interest of interested Virginia land developers who felt that the unscrupulous practices of a few could create a negative image affecting the entire industry. The Committee took careful note of the previous proposal and upon consideration believes that the jurisdictional thresholds proposed by the Virginia Land Association were appropriate. While the legislative concept of that earlier Virginia Land Association proposal has been used in part, it has been changed, abandoning the state registration aspects in favor of clear and simple substantive requirements. The Committee wishes to avoid duplicating the registration and full disclosure requirements of the Federal Government. The legislation proposed by the Committee retains only a short filing requirement, i.e. filing a Notice of Intention to sell or lease

land, providing a copy of the HUD Property Report if the developer has one, submitting a copy of a recorded subdivision plat, and providing a means for service of process upon out-of-state developers.

The Committee settled upon a jurisdictional threshold of 50 lots, finding the problem of defining the word "recreational" too difficult to overcome in any other way which would not in itself operate as a fraud upon purchasers. Since the measures contemplated to safeguard purchasers' interest were felt to be of a general benefit and non-burdensome to legitimate developers, it seemed the measures could not be applied unreasonably to sales of vacant lots in all of the 50 or more lot subdivisions. Indeed, the purchasers would in any case have the same basic needs.

The exemptions in the previously proposed Virginia Land Association legislation closely paralleled those guiding HUD, and the Committee adopted nearly identical provisions, adding an exemption for short term (one year) land leases. The primary exemptions are those addressed to situations where purchasers usually are sophisticated enough to protect their own interests (sales to builders) or where purchasers ordinarily would have competent counsel (sales of lots on which buildings already exist or as to which there is a binding contractual agreement to complete a building within a period of two years). Also exempt are the sales of lots in subdivisions in which all of the lots are five acres or more in size.

Recognizing the impossibility of creating legislation which would protect the consumer from all possible harm and considering what measures would provide the greatest benefits to consumers, the Committee directed its attention to seven specific areas of abuses in land sales. These are: failure to deliver clear title;

failure of developers to pay taxes and resultant liens on lots and common areas; misrepresentation; completion of amenities and facilities; control of property owners'associations; ownership of common facilities; and unreasonable deed restrictions or restrictions unfavorable to the interests of individual lot owners.

It was the unanimous opinion of the Committee that the land sale agreements known as "land sales installment contracts" are an inappropriate and unreliable means for purchasers of obtaining interest in land. Many lot sales occuring today are made pursuant to these kinds of contracts which set forth a host of purchaser obligations, but commit the developer to little or nothing beyond the promise to deliver a deed to the property upon completion of payments by the purchaser; providing that's possible when the time comes. Some of these instruments can be recorded, while others cannot; but at best, they provide the purchaser only with an equitable interest in the land during the period prior to transfer of title. This interest easily can be defeated by the developer's mortgagees or creditors and by mechanics and subcontractors whom the developer retains to construct or repair facilities.

Most land sales contracts contain "liquidated damages" clauses which allow the developer, upon default by the purchaser, to retain all sums paid by the purchaser as the agreed upon liquidated damages. A purchaser may pay his installments faithfully for years and then just before the contract is paid in full, default as a result of factors beyond his control. The so-called damages then retained by the seller far exceed any administrative expenses which may have been incurred in servicing the purchaser's account, and the retained damages represent nothing short of unjust enrichment to the developer.

Charging interest under these circumstances seems unconscionable, but is a common practice.

The purchasers' problems are compounded when the land sales contracts, or ancillary notes, are factored or discounted to a bank, investment trust, or other financial institution. The purchasers then may find themselves legally obligated to pay the notes in full despite the fact that the developer may have failed utterly to provide promised facilities and that they may never be able to obtain valid deeds to their property. This is where the holder-in-due course doctrine has application to the recreational land development industry.

To rectify this problem, the Committee proposes Section 55-343 dealing with Blanket Encumbrances. The thrust of this provision is to discourage the use of land sale installment contracts by creating substantive safeguards for purchase money paid prior to delivery of title. The developer is given a number of alternatives to work with, but the end result should be assurance that the purchaser will obtain either the title contracted for or his money back. The Committee feels that the alternative most likely to be chosen by developers is that of an escrow of purchase money with an independent institution or organization with trust powers pending conveyance, and has been advised that this should present no problems to the many developers who close sales within 30 to 60 days after the initial offer is accepted.

Section 55-342 was added to control the means by which ownership should be transferred, in order to complement the Blanket Encumbrances Section and close any loopholes which might be found by delivering less than adequate marketable title.

The second abused area, which the Committee addressed was that of nonpayment of taxes by developers. It was brought to the Committee's attention that some developers have neglected to satisfy tax liens even though they have themselves assessed purchasers or made special collections from them for this specific purpose. This problem is related to the land sales installment contract issue since the developer would be responsible for taxes while he held legal and record title during the term of installment contracts. In spite of the fact that taxes and assessments are specifically excluded from the meaning of "Blanket Encumbrances" in the definitions section of the proposed legislation, the Committee felt that the proposed Blanket Encumbrances section was likely to resolve the perceived tax problem. Once the purchaser had received a deed and recorded it, he would receive notice of any overdue tax lien and could pay it personally. He would no longer be in danger of losing title to property due to a developer's failure to pay taxes or to lack of awareness of the situation.

The third abused problem, misrepresentation, is one which continues to emanate from some segments of the industry---primarily from the out-of-state segment. This is a problem which the combined forces of HUD and the Federal Trade Commission have apparently been unable to resolve thus far, and the Committee too is stymied by the complexity of the problem. In order to give the Real Estate Commission a means of dealing with the problem, particularly when flagrant abuses appear in complaints or via action taken by other agencies, the Committee proposed for inclusion among the enforcement powers of the Commission the authority to issue cease and desist orders. Such orders would be applicable when a developer or its agent engages in false, deceptive or misleading advertising,

promotion or sales methods.

As to completion of amenities and facilites, the Committee decided to defer consideration of any assurance of completion requirements, such as performance and completion bonding, letters of credit or enforceable contracts, until such time as the effectiveness of the Land Subdivision & Development Act of 1977 (Chapter 11, Article 7, § 15.1-465 et seq of the Virginia Code) can be assessed. Basically, the problem has been the failure of developers to complete the facilities or amenities, the anticipated cost of which often is included in lot prices. As previously stated, however, the lot purchaser often finds himself in a position where he is obligated to continue paying even though the promised improvements are not being completed. Suit against a developer in this situation can be impractical or impossible for many reasons, such as the inability to locate the developer who has abandoned the subdivision, the potential cost of suit to an individual purchaser as compared with the amount invested in the property, or developer bankruptcy.

The problems with control of property owners' associations, common facilities and amenities and deed restrictions or subdivision convenants all relate closely to one another and are strikingly similar to problems in condominium ownership with which the Commonwealth previously has dealt very effectively. Land purchasers need assurance that control of property owners' associations will be turned over to them within a reasonable time, and that common facilities for which the lot owners are assessed for use, enjoyment or maintenance (the initial costs of which was included in their lot purchase price) will be theirs permanently and not sold by the developer. The land purchasers also need the assurance that the

developer cannot maintain indefinite control and escalate assessments unreasonably or use the revenues as it pleases for purposes other than care and upkeep of the facilities. They need protection from unreasonable interference or restriction in transferring their interests in property to others, both when the transfer is voluntary and when involuntary due to foreclosure proceedings. If a lot owner cannot post a sign of reasonable size on his lot, or if prospective purchasers are refused entry into a subdivision to view specific lots being offered for sale, the individual lot owner is unlikely to be able to obtain a fair price for his property. The Committee's proposed legislation requires the developer to form an association prior to the sale of his first lot; the association is to be composed of the lot owners of the subdivision only. This being the case, the developer will be the initial major voice in the handling of the affairs of the association, and rightfully so. This voice should gradually diminish, and in theory will, as the lots in the subdivision are sold until the effectiveness of the developer yields to that of the majority of the lot owners. At a point in time when 75% of the lots are sold, the developer is required to transfer to the association those amenities and common facilities it has assessed the lot owners for their use and enjoyment. This 75% is limited in time to a point when the amenities and facilities promised are completed so as to prevent a protracted period of sales and a delay tactic on the developer in making the transfer. The responsibility of maintenance and upkeep rests with the association upon the transfer.

The option still remains with the developer as to what constitutes an amenity and common facility which is subject to the transfer. However, if it charges the lot owners for the right to the use and enjoyment and maintenance of the area or facility, then it is subject to the required transfer. If, on the other hand, the lot owner is allowed the use and enjoyment only upon paying a specific fee, then it's the developer's option as to whether or not it will transfer the facility or amenity.

Lot owners within the subdivision are subject to both regular and special assessments imposed by the association. The proposed legislation requires that procedures be established by the Association for the levy and collection of these assessments; nothing precludes these procedures from being established by the association when it is controlled by the lot owners themselves and not the developer. The assessment emanates from the association, and funds collected belong to the association, not the developer.

The Committee felt that a provision making unreasonable restraints or alienation unlawful is needed and proposes Section 55-344 and also Section 55-345 to establish general parameters for the management, regulation and control of subdivisions in which there are common facilities or property owners' associations.

The legislation the Committee proposes gives the Commission broad investigative powers, optional rulemaking authority and cease and desist authority in the case of violations or "false, deceptive or misleading advertising, promotion or sales practices." It would make unlawful any representation by a developer or agent that the Commonwealth, the Commission or any employee thereof had approved or recommended a subdivision. Violation of certain

provisions of the Act will result in a Class 2 Misdeameanor. A moderate fee provision is included to defray the Commission's costs in administering the legislation and making whatever investigations are necessary.

The Committee believes that the Commonwealth has an obligation to its citizens to take reasonable measures to assure that real estate is offered in the State in a responsible way. It feels that this statutory scheme offers the Commission sufficient authority and responsibility at this time, in that the proposal contains only a few substantive requirements designed to counteract the worst of abuses. The Committee deliberately avoided duplicating Federal and other States' efforts at disclosure requirements and feels that the proposed legislation will not be objectionable or overly burdensome for any legitimate developer.

Respectfully submitted,

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Francis T. Eck
Ralph C. Gibson
W. H. Groseclose
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A BILL

To amend the Code of Virginia by adding in Title 55 a chapter number 19, consisting of Sections numbered 55-336 through 55-351 relating to subdivided land sales; prohibiting certain acts and prescribing penalties for violations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF VIRGINIA:

(1) That the Code of Virginia be amended by adding in Title 55 a Chapter 19, consisting of Section numbered 55-336 through 55-351 as follows:

Chapter 19

SUBDIVIDED LAND SALES

§ 55-336 PREAMBLE

The legislature finds and declares that the offering and sale or lease of land touches and affects a great number of the citizens of the Commonwealth. The legislature also finds and declares that remedial measures are needed in order to protect both the economic and physical welfare of the people. It is the purpose of this to provide for reasonable substantive requirements for the offering and sale or lease of any interest in significant land developments situated within or without the State of Virginia. The legislature intends that prospective purchasers or lessees will have some assurance of receiving the interests contracted for, free from the unreasonable interference or control of other persons.

§ 55-337 TITLE

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

§ 55-338 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 soley of rendering legal services.

(2) "Blanket encumbrance" means a trust deed, mortgage, mechanic's lien, judgment or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land to be offered and sold or leased or affecting more than one lot or parcel of the land, or an agreement affecting more than one such lot or parcel by which the developer holds said subdivision under option, contract, sale or trust agreement. The term shall not include 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) "Commission" means the Virginia Real Estate Commission, or its designated subordinate.

(4) "Developer" means any person who offers, directly or indirectly, for disposition any lots in a subdivision.

(5) "Subdivision" means land which is divided or proposed to be divided into 50 or more lots whether contiguous or not, for the purpose of disposition as part of a common promotional plan. A common promotional plan shall be presumed to exist when subdivided land is offered by the same developer, or by a group of developers acting in concert, and when such land is either contiguous or is known, designated or advertised as a common unit or by a common name. This definition includes existing subdivisions in which 50 or more lots remain available for disposition by the developer on or after the effective date of this Chapter.

(6) "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.

(7) "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.

(8) "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.

(9) "Purchaser" means a person who acquires or attempts to acquire any lot or lots in a subdivision.

(10) "Lot" means any unit, parcel, division, or piece of land or interest in land if such interest carries with it the exclusive right to use a specific portion of property.

§ 55-339 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 evidences 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 rental term does not exceed one year and where the conditions of the lease do not obligate the lessee to renew.

§ 55-340 NOTICE OF INTENTION

It shall be unlawful for any developer or agent directly or indirectly to offer or dispose of any lots in a subdivision, whether located in or out of this State, without first filing with the Commission a Notice of Intention to Offer and Dispose of Real Property. Such Notice of Intention shall include:

(1) An irrevocable appointment of the Commission to receive service of any lawful process in any proceeding arising under this Chapter against the developer and the developer's agent in any proceeding arising under this Chapter, but nothing in this Section shall be construed to limit or prohibit the lawful service of process on individual principals as allowed by the laws of this Commonwealth;

(2) A legal description of the lots offered for disposition, together with a plat showing the division made, the dimensions of the lots, parcels, units, or interests therein, and the relationship of the lots to existing streets, roads, and other off-site improvements, which plat shall have been filed pursuant to Virginia Code Section 15.1-466 in the case of Virginia subdivisions;

(3) The name and address of each principal,officer, director, partner, or trustee of the developer, along with a list of any violations, bankruptcy or disciplinary actions in which each such principal, officer, director, partner, or trustee is or has been involved within the past five years of filing of the aforesaid Notice of Intention;

(4) A certified copy of the developer's effective HUD Property Report, if such has been filed in compliance with the registration requirements of the Interstate Land Sales Full Disclosure Act (82 Stat. 590-599; 15 U.S.C. Sec. 1701-1720). If a Property Report filed with HUD is amended subsequent to its submission to the Commission, the developer shall have an affirmative obligation to tender a copy of the amended Property Report to the Commission.

§ 55-341 FILING FEE

Each Notice of Intention to Offer and Dispose of Real Property shall be accompanied by a fee in an amount equal to one dollar per lot offered for sale within the subdivision, except that said fee shall not be less that $150.00 nor more than $300.00. Any developer who has a subdivision situated outside of this Commonwealth but subject to the provisions of this Chapter shall also be responsible for payment of all costs incurred by the Virginia Real Estate Commission in enforcing or administering the provisions of this Chapter with respect to such subdivisions. All fees shall be remitted to the Treasurer of the Commonwealth, and shall be placed to the credit of the special fund of the Virginia Real Estate Commission.

§ 55-342 TRANSFER OF OWNERSHIP

It shall be unlawful for the developer to transfer legal ownership of lots or parcels within a development by any other means than by a general warranty deed or a deed complying with Title 55, Chapter 4 of the Virginia Code, 1950, as amended.

§ 55-343 BLANKET ENCUMBRANCES

(1) 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.

(2) Unless blanket encumbrance release provisions provide that the lien of the blanket encumbrance is suboridnate 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:

(a) 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 meeting the requirement of the Commission and fully protecting the interest of the purchaser until either:

(i) fee title or other interest contracted for is conveyed to the purchaser free and clear of the blanket encumbrance; or

(ii) either the developer or purchaser defaults under the contract and a final determination as to the dispursal of sums paid is made by either a court of competent jurisdiction or by the Commission; or

(iii) 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.

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

(c) A bond, or irrevocable letter of credit payable to the State of Virginia and issued by a bank authorized to do business in this State is furnished to the Commission in such amount, form and terms as are acceptable to the Commission. The bond or letter of credit shall provide for the return of all moneys paid or advanced by any purchaser or lessee for or on account of the purchase or lease of any lot if a proper release from the blanket encumbrance is not obtained. However, should it be determined by the Commission that the purchaser or lessee by reason of default or otherwise is not entitled to the refund of all or part of the sums paid or advanced, then the bond or letter of credit shall be exonerated to such extent.

(3) In the case of a subdivision which is not subject to any blanket encumbrance, it shall be unlawful for the developer or agent to sell or lease lots unless the conditions of subsection (2)(a) or (2)(b) above are met.

(4) In lieu of the other requirements of this section, the Commission may accept a certificate from another State positively evidencing that comparable requirements have been met in that State and that the interests of purchasers, regardless of domicile, are fully protected.

§ 55-344 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 or creates other sales restraints such as denying lot owners the right to post for sale signs of reasonable size, shall be null and void.

§ 55-345 MANAGEMENT, REGULATION AND CONTROL OF SUBDIVISIONS IN WHICH THERE ARE COMMON FACILITIES OR PROPERTY OWNERS' ASSOCIATIONS

(A) The covenants, deed restrictions, articles of incorporation, by-laws 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 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;

(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 include suitable substantive and procedural safeguards against increased per capital assessments on account of such annexation;

(7) procedures for the voluntary or involuntary resale of a lot within a subdivision by a purchaser or his agent, which procedures shall be established prior to the sale of the first lot by the developer within the subdivision;

(8) monetary penalties and/or use privilege and voting suspension of members for breaches of the restrictions, by-laws or other instruments for management and control of the subdivision, or for non-payment 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 said 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 subparagraph (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 said reports to each member of the Association in good standing within ninety days after the end of the said fiscal year;

(12) quorum requirements for meetings of members of the Association who are in good standing;

(13) such other provisions as may be required by Chapter 2 article 13, §§ 13.1-201 et seq of the Virginia Code, 1950, as amended.

(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 subject to the transfer outlined in subparagraph A(3) above and as promised by the initial developer of said subdivision. For purposes of this Paragraph (B), the Association outlined in subparagraph A(1) above 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 said members vote to be exempt from the requirements of this paragraph (B).

§ 55-346 ENFORCEMENT

(1) If the Commission determines after legal notice and opportunity for hearing that a person has:

(a) violated any provision of this Chapter;

(b) directly or through an agent or employee engaged in any false, deceptive or misleading advertising, promotional for sales methods to offer or dispose of an interest in developed lands;

(c) disposed of any interest in a development without first complying with the requirements of this Chapter, or

(d) violated any lawful order, rules or regulation of the Commission,

it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Commission will carry out the purposes of this Chapter.

(2) If the Commission makes a finding of fact that the public interest will be irreparably harmed by delay in issuing an order, as prescribed in the immediately preceding subsection, it may issue a temporary cease and desist order. With the issuance of a temporary cease and desist order the Commission, by registered mail or other personal written service, shall give notice of the issuance to the person. Every temporary cease and desist order shall include in its terms:

(a) a provision that a hearing by the Commission shall be held, after due notice, but not more than 15 days from the date such temporary cease and desist order is effective, to determine whether or not a cease and desist order as called for in the immediately preceding subsection shall be issued;

(b) a provision that such temporary cease and desist order shall remain in full force and effect for a period of not more than fifteen days from the date of its issuance or the date on which the Commission has determined that an order as prescribed in subsection (1) of this section is to be issued, whichever, shall first occur; and

(c) a provision that failure to comply with such temporary cease and desist order will be a violation of the Act and make the person to whom such order is issued subject to the penalties prescribed in this Chapter.

The Commission shall not issue more than one temporary cease and desist order with reference to such finding of fact as prescribed in this subsection.

(3) If it appears that a person has engaged in an act or practice constituting a violation of a provision of this Chapter, or a rule or order hereunder, the Commission, with or without prior administrative proceedings, may bring an action in the appropriate Circuit Court in Richmond, Virginia, to enjoin the acts or practices and to enforce compliance with this Chapter or any rule, regulation, or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted.

(4) The Commission shall not be required to post a bond in any court proceedings, nor shall it be required to prove that it has elsewhere no adequate remedy at law.

§ 55-347 INVESTIGATIONS

(1) The Commission may:

(a) make necessary public or private investigations within or outside this State to determine whether any person has violated or is about to violate any provision of this Chapter or any rule, regulation or order issued hereunder, or to aid in the enforcement of this Chapter in prescribing rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the Commission determines, as to all facts and circumstnaces concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this Chapter, the Commission may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Any proceeding or hearing under this Chapter wherein witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place in Richmond, Virginia, and such proceeding shall be held before the Commission sitting in regular session, but not less frequently than monthly.

(4) Upon failure to obey a subpoena or to answer questions propounded by the Commission and upon reasonable notice to all persons affected thereby, the Commission may apply to the appropriate Circuit Court in Richmond, Virginia, for an order compelling compliance.

(5) Except as otherwise provided in this Chapter, all proceedings under this Chapter shall be in accordance with the Administrative Process Act.

§ 55-348 PENALTIES

Any person who violates any of the provisions of Sections 55-340 through 55-345 or 55-351 or any order issued pursuant to Section 55-346 shall be guilty of a Class 2 misdeameanor. 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.

§ 55-349 RULES AND REGULATIONS

The Commission shall prescribe reasonable rules and regulations in order to implement this Chapter and such rules and regulations shall be adopted, amended, or repealed in compliance with the General Administrative Agencies Act.

§ 55-350 SERVERABILITY

If any provisions of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given without the invalid provision or application, and to this end, the provisions of this Act are severable.

§ 55-351 NO REPRESENTATION OF APPROVAL

It shall be unlawful for any developer or agent to represent, advertise, offer or dispose of any lots in a subdivision in such a way as to imply that the Commonwealth of Virginia or the Commission, or any employee thereof, has passed upon the merits of, or given approval to, or recommends, such subdivision or the method of disposition.