

**REPORT OF THE
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL REGULATION**

**REPORT OF THE EFFICIENCY
AND EFFECTIVENESS OF
THE PROPERTY OWNERS'
ASSOCIATION ACT**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 22

**COMMONWEALTH OF VIRGINIA
RICHMOND
2000**



DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

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November 16, 1999

TO: The Honorable James S. Gilmore III, Governor of Virginia
Members of the Virginia General Assembly

SUBJECT: Property Owners' Association Act, HJR 645

The Real Estate Board (the board) respectfully submits the following report pursuant to House Joint Resolution 645, which directed the board to study the efficiency and effectiveness of the remedies available for the enforcement of the provisions of the Property Owners' Association Act (§ 55-508 et seq.) of the Code of Virginia.

The board determined that the existing statutes provide adequate protection to both the boards of directors and members of property owners' associations. The board acknowledges that the education of all involved parties in the nuances of the covenental agreements unique to this type of association is inadequate, however, a statutory solution could have detrimental consequences to the availability of the volunteers that participate in the operation of associations. It was further determined that the current statutes provide satisfactory protection to the public health, safety and welfare.

This report, approved October 28, 1999, outlines the board's findings, conclusions and recommendations. Members of the Real Estate Board would be pleased to answer any questions.

Respectfully submitted,

Joseph K. Funkhouser, II
Chairman, Real Estate Board

Department of Professional and Occupational Regulation
Real Estate Board

Report on the Efficiency and Effectiveness of the
Property Owners' Association Act

Board Members

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William F. Jones, Jr., Vice Chair
Evelena S. Carter
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PREFACE

The Real Estate Board was granted the authority to conduct this study through House Joint Resolution 645, which states in part:

RESOLVED by the House of Delegates, the Senate concurring, that the Real Estate Board be requested to study the efficiency and effectiveness of the remedies available for the enforcement of the provisions of the Property Owners' Association Act and the governing documents of these associations. In conducting its study, the Board shall conduct public hearings and otherwise solicit input from interested parties on the scope and nature of the problems related to the enforcement of the Property Owners' Association Act and the documents governing these associations.

The board, by means of three public hearings, surveys to interested parties, and the receipt of written public comments, studied the relationship between members of homeowners associations and their governing boards as well as the "scope and nature" of problems experienced by both in the enforcement of the Act.

The Real Estate Board membership included:

Joseph K. Funkhouser, II (Chair)	William F. Jones, Jr., (Vice Chair)
Evelena S. Carter	Maryann Dunn
G. William Gearhart, Jr.	Curtis G. Harrington
James T. Pappas	Terrie L. Suit
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Department of Professional and Occupational Regulation staff involved in completion of the study:

Jack E. Kotvas, Director
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The Real Estate Board would like to thank Fairfax County and the City of Chesapeake for the use of their facilities for conducting public hearings for their geographic areas.

EXECUTIVE SUMMARY

House Joint Resolution 645 requested the Real Estate Board (the board) to study “the efficiency and effectiveness of the remedies available for the enforcement of the provisions of the Property Owners’ Association Act (the Act) and the governing documents of these associations.” Within this broad request the resolution directed the board to “conduct public hearings and otherwise solicit input from interested parties on the scope and nature of the problems related to the enforcement of the Property Owners’ Association Act.”

Examining the issue of the efficiency and effectiveness of the Property Owners’ Association Act required that this study look broadly at the larger context. There is, in some instances, tension between homeowners and the boards of directors of some associations. Evidence of this tension was apparent in a portion of the public comment received during the study. For many experiencing this tension there is the perception that they are struggling to maintain some of their individual freedoms, while, at the same time, enjoying the amenities available to members of associations. This tension can lead to conflict, both of the emotional type, and occasionally of the legal type. Strengthening the statutory authority of the associations, without addressing some of the broader issues only serves to increase the conflict. Conversely, placing further statutory restrictions or responsibilities on the associations could result in difficulties locating residents who would be willing to volunteer to serve in any capacity for the association’s board of directors.

This study utilized a number of data gathering techniques to ensure that there would be no single source that could cause a skewing of the conclusions. These included three public hearings, a survey, written public comment, and a review of the statutory and regulatory practices in place in other states. Participation in the hearings, survey and written comments exceeded expectations and provided some unique perspectives of the effectiveness of the Property Owners’ Association Act as it pertains to individual situations.

In order to complete a panoramic view of the effectiveness of the Act, it was imperative to review the nearly exponential growth of property owners’ associations in the last quarter century. The population explosion experienced in many parts of the Commonwealth in the last twenty-five years, coupled with the trend of many individuals and families to migrate to the suburbs, has led to a proliferation of housing developments. Homeowner associations govern many of these developments. The concept of covenantal agreements and the responsibilities inherent with residing in a development governed by a homeowner association was unique to most homeowners as very few property owners had previous experience with this type of supervision. Additionally, the responsibilities placed on the members of the associations’ boards of directors, in most instances residents themselves, was at times, new, confusing, conflicting, and adversarial.

In conjunction with the increase in the population in Virginia, came an increase in new home construction. Developers, acutely aware of the competition in the housing market, were forced to find more unique amenities in an effort to market their subdivisions to the more demanding consumer. These features included, but were by no means limited to, swimming pools, athletic facilities, parks, playgrounds, and landscaped grounds. The developer generally completes the construction of these "common areas", however, once the developer completes the project, the responsibility of on-going maintenance must be borne by the individual homeowners. In addition to care and maintenance to common areas, other restrictions may be placed on developments in order that property values remain high and that residents are afforded certain assurances of a comfortable life style. The establishment of a property owners' association is required to ensure these requirements are met.

The statutory requirements confronted by property owners' associations in Virginia are generally comparable to those of other states in that they include basic procedures and guidelines for disclosure, record keeping, and accessibility to meetings by all association members. Information concerning the procedures followed in other states involving the registration of these associations was not always available. Additionally, it was unclear if any other states had any program comparable to the Common Interest Community Management Information Fund in place in Virginia (§ 55-528 et seq. of the *Code of Virginia*).

Most states have statutory guidelines for condominiums and time-shares, however, few have statutes addressing property owners' associations. Furthermore, some of the states have the various types of properties addressed in the same section or chapter of their statutes. While the unit owner associations of condominiums and cooperatives are similar homeowner associations, there are some inherent differences that makes it difficult to regulate them in the same statutory act. Virginia has recognized this and utilizes separate statutes to govern the various types of properties. The standards set forth in the Property Owners' Association Act in Virginia are adequate and consistent with the growing protective legislation in the limited number of states with statutes in place regarding associations.

The primary difference between current Virginia law and the laws of an increasing number of states is that Virginia does not specifically address the formation of the executive organ of the association or the specific responsibilities of the executive organ or the association itself. Further, Virginia law contains language which allows the provisions of declarations recorded prior to July 1, 1998 to remain valid (a "grandfather clause") and excludes those associations which impose mandatory assessments of less than \$150 per lot per year. Other states base exclusions, if any, on the size of the development and not the amount of the assessment. Calendar restrictions as to the applicability of the law are reserved for individual documents (e.g. California does not have a date exclusion to the entire statute, however, the section of the statute addressing the requirements of the recorded documents is restricted to those declarations filed after January 1, 1986).

While the differences between the statutes of other states are numerous, these differences are minor and the basic premise of consumer protection through disclosure is highly evident. Virginia and other states are in agreement, however, on the point of enforcement. The resolution of disputes between associations and their membership, and the enforcement of the various statutes is, in the vast majority of instances, conducted through either alternative dispute resolution, such as mediation, or the courts. The statutes of twenty states were reviewed and in no instance was the resolution of disputes or enforcement of the act directed by a regulatory agency or board.

While the Real Estate Board is aware that some consumer complaints involving property owners' associations and the enforcement of the Property Owners' Association Act are brought to the attention of both the board and members of the General Assembly, the key issue should focus on whether any of the problems, whether documented or alleged, would be prevented, remedied or otherwise addressed by modification to the current statutes. The Real Estate Board has concluded that the statutes, as currently written, provide adequate protection to the health, safety, and welfare of the public. The resolution of disputes and the enforcement of violations through alternative dispute resolution proceedings or through the court system, is consistent with the statutes of other states, and should not be changed. The board does, however, concede that education of association members and their executive organs in the provisions of the Act does need to be addressed and improved.

I. INTRODUCTION

A. Authority for Study

The Real Estate Board was given the authority to conduct this study by the 1999 Session of the General Assembly with the passage of House Joint Resolution 645. The board is directed to study the “efficiency and effectiveness of the remedies available for the enforcement of the provisions of the Property Owners’ Association Act and the governing documents of these associations.”

B. Background

The Property Owners’ Association Act (§ 55-508 et seq. of the *Code of Virginia*) was enacted into law on July 1, 1989 and has been subject to nearly annual amendments since that time. The Act applies to housing developments with declarations initially recorded after January 1, 1959. Exemptions to the Act include the exclusion of associations who require assessments of less than \$150.00 per year and the Act shall not be applied retroactively to any development with a declaration recorded prior to July 1, 1991. The Act does not affect the validity of any declaration recorded prior to July 1, 1989, however, if any elements of that declaration are silent, then the provisions of the Act are applicable, to that element.

The Act requires that associations subject to its provisions, must submit an annual report to the Real Estate Board listing the association officers and members of the boards of directors. Additionally, the annual report is accompanied by a fee, which is placed in the Common Interest Community Management Information Fund, pursuant to § 55-529 of the *Code of Virginia*. While the Real Estate Board is the only regulatory entity mentioned in the Act, its responsibility is limited to the acceptance of annual reports and fees. The board has no authority to enforce the provisions set forth in the Act. Generally, enforcement of the Act is completed through the court system, although, disputes between applicable parties can be resolved through mediation or other methods of alternative dispute resolution.

The primary intention of the Act is to provide protection to consumers who purchase properties in developments subject to the statute, by ensuring disclosure of the covenants and restrictions prior to closing, assuring access to association records, and outlining the duties, responsibilities and authority of associations. Conflicts and disagreements can arise between property owners and their associations in the interpretation of the provisions of the Act. The tension that arises as a result of these conflicts and disagreements concern, in most instances, an individual’s home and the perception that an inalienable right has been oppressed, subsequently the issue becomes very emotional.

In attempting to resolve these disagreements, members of associations, and in limited instances, association boards, become aware that there is no regulatory agency with authority to enforce the statutes, process complaints, or provide interpretation of the Act. Alternative dispute resolution procedures, such as mediation, require the agreed participation of all parties. Courts, while the ultimate authority in determining the applicability and interpretation of statutes, are not normally time sensitive in the resolution of these disputes and normally require a financial outlay or, at a minimum, legal representation. Individuals involved in the resolution process, who are experiencing difficulties are not reticent in outlining their situation to representatives of state or local governments.

It was such situations, experienced by a number of citizens that brought the issue of the enforcement of the Property Owners' Association Act to the forefront. To that end, House Joint Resolution 645 was introduced and passed by the General Assembly. (See Appendix A for a copy of House Joint Resolution 645.)

C. Methodology

The Real Estate Board, by means of three public hearings, a survey to interested parties, and written public comment, studied the Property Owners' Association Act as outlined in the joint resolution. The board's recommendations are based on an analysis of the information gathered.

II. FINDINGS

A. Profile of Associations and the Property Owners' Association Act

The right to own property and to construct a homestead on that property is, generally, unquestionable, and has been the dream of many citizens in the Commonwealth of Virginia, even decades before statehood was granted. The concept of quaint neighborhoods in quiet towns, tree lined thoroughfares, family cookouts and the sounds of children playing in the streets have been extolled by real estate salespersons as the All-American ideal. This pastoral setting was the rule in many areas in the 1950's and 1960's throughout Virginia.

United States Census Bureau statistics estimate that the population of Virginia increased 46% from 1970-1998. This 2.1 million-person population explosion, as experienced in many parts of the Commonwealth, coupled with the trend of many individuals and families to migrate to the suburbs, has led to a proliferation of housing developments. In conjunction with this increase in population came an increase in new home construction. Developers, keenly aware of the competition in the housing market, were forced to find more and more amenities in an effort to lure potential homebuyers to their subdivision. These included, swimming pools, athletic facilities, parks, playgrounds, clubhouses, and immaculately landscaped grounds.

The developer is generally responsible for the completion of these "common areas," with the responsibility of on-going maintenance being borne by the individual homeowners, through the association. A developer may impose further restrictions to ensure architectural continuity in an effort to maintain property values, or, through certain rules and regulations, ensure certain assurances of a comfortable life style to the homebuyers. The establishment of a property owners' association is required to ensure these requirements are met. The responsibilities of the association, however, are not without cost.

In order to complete the obligations set forth in the covenantal agreement with the homeowners, the association is required to have a source of revenue. The assignment and collection of assessments from the residents and property owners accomplish this. The responsibility of determining the financial requirements of, the maintenance of, the general day to day requirements of, and the assignment and collection of assessments from the residents is assigned to the association.

It is essential for the association to have an executive organ or governing board, to oversee the organization and make both routine and non-routine decisions on behalf of the association. While the subdivision is under the control of the developer, the members of the board are normally appointed to their position by the developer. Once the developer has met the requirements of control, as outlined in the original documents, the members of the association elect the board. The members elected by the association to serve on the board do so without compensation, as volunteers. In either case, however,

most board members have had a minimum of experience or education concerning the Property Owners' Association Act.

The Act currently outlines certain requirements that the board must follow in governing the association. These include disclosure of records, open meetings, collection of assessments, liens for failure to pay assessments, and adoption and enforcement of rules and regulations. The difficulties experienced by certain association members that were paramount in the decision to conduct this study, were, in a large part, the result of association members and their boards disagreeing on those listed requirements.

B. Education and training

There are currently no requirements set forth in the Property Owners' Association Act outlining educational prerequisites for members of association boards. Educational seminars, while available on a limited basis, are not attended by a large percentage of affected individuals. A grant was issued through the Common Interest Community Management Information Fund to the Community Associations Institute (CAI) to conduct a series of seminars in various locations throughout the Commonwealth. The seminars are free of charge to association members and their boards. These seminars are still being conducted and, subsequently, no data concerning attendance or comments of attendees was available during this study. As part of the grant, however, CAI will provide a report to the Real Estate Board at the conclusion of their program.

C. The Survey

As part of the data gathering process the Real Estate Board developed and distributed a survey. The survey (a copy of which appears as Appendix B to this study) was an effort to receive information from members of property owners' associations. The survey packet contained instructions on completing and returning the survey to the agency, as well as a statement indicating that copies could be made of the survey and distributed to any other members of the association for completion. Approximately 1000 packets were distributed through the mail and at the public hearings. Additionally, a small local newspaper in Northern Virginia, *The Old Bridge Observer*, published the survey and instructions.

The survey contained demographic information of the respondent, association information, accessibility information and a section for written comments concerning complaint situations and suggestions for improvement of their specific board of directors as well as the Property Owners' Association Act.

The response to the survey, while low at 9.2%, did provide adequate data to notice certain trends that were also evident at the public hearings and, to a certain extent the written comment received by the Real Estate Board. Graphic representations of the survey data are contained in Attachment C to this study.

The compilation of demographic information concerning the respondents to the survey was important in order to determine any trends, which may be important to report in the study. A continuing theme heard in the public comment was the apathy experienced in many of the associations and the resulting low participation in association activities. Demographic results of the survey indicated that nearly 85% of the respondents were 40 years old or older, with less than 15% coming from the 20-39 year old age group. This would appear consistent with observations made of the participants at the three public hearings.

The largest response to the survey (over 60%) was received from the Northern Virginia area. This too, is consistent with observations made during the public hearings where attendance at the hearing held in Fairfax County was nearly double that of the other two hearings combined.

The survey revealed that the vast majority of respondents were very active in their associations with over 90% attending meetings and close to two-thirds actually having held an elected or appointed position within the board or on the committee level. This data was not surprising as it is understandable that those individuals who are active in their community associations would be the ones most likely to respond to a survey or attend a public hearing concerning the investigation of possible changes to the law that may have an effect on those associations.

Complaints were filed by half of the participants in the survey and of those who filed complaints, nearly two-thirds were not satisfied with the handling of the complaint by the association or the association's board of directors. Written remarks by those individuals not satisfied with the handling of their complaints ranges from disagreement with the board's interpretation of the bylaws to questions concerning the entire complaint disposition process. Written comments contained within the individual surveys are included in the public comment section of the study.

D. Public Comment

The Real Estate Board conducted three public hearings to gather information and opinions for the study. The first public hearing was held in Chesapeake, on June 2, 1999, with over 50 individuals in attendance. The second was held in Richmond on June 10, 1999 and was attended by nearly 70 individuals. The third hearing, held in Fairfax on June 22, 1999, was, by far, the largest, with over 200 attendees. In addition to the public hearings, written comment was solicited from interested parties until July 30, 1999. Approximately 100 pieces of written comment were received during the public comment period.

The comment received at the public hearings was fervent as some individuals outlined difficulties they were experiencing with their association, while others had nothing but praise for the way their association operated in their development. Interspersed among the individuals were representatives of management companies and

associations extolling the positive aspects of Property Owners Association Act and imploring the Real Estate Board recommend no changes to the present statutes.

Representatives of the Community Associations Institute (CAI) attended each of the public hearings and urged the board to recommend no change in the Property Owners' Association Act. CAI believes that the key to the success of the Act relies primarily on the education of both association board members and property owners. In their opinion, education would result in an increase in the level of understanding of all parties, and such understanding could lead to a decrease in complaints and disagreements. CAI also explained to the board that the Act, as currently written, provides adequate protection through the court system.

Well over half of the comment received, both written and testimony at the public hearings conveyed the opinion that there should be no further restrictions placed on associations and that the Act is sufficient as written. However, many of these individuals conceded that there is a need for additional education and outreach. The majority of the difficulties experienced by homeowners and associations are the result of a lack of understanding of the nuances of living under a covenantal agreement.

A common thread prevalent through a large amount of the public comment dealt with the apathy experienced by many associations and the difficulties they experience in finding enough volunteers to fill the committee and officer positions. One particular individual stated that their association had been forced, on more than one occasion, to amend the by-laws in order to lower the number of board and committee members, as just not enough property owners were interested in serving. Liz Rucker, President of the Board of Trustees of Franklin Farm Foundation, introduced the term "hapathy" to the Real Estate Board. She explained that hapathy occurs when the residents of a subdivision become so happy and satisfied with the day to day operations of the association that they do not become involved in any of the meetings or committees. In his testimony at the public hearing held in Richmond, Mr. Bruce Adams stated, "When I moved there [Newberry Towne], we had bylaws, we had covenants, and we had rules and regulations. I would not be standing here tonight if those rules, regulations, covenants were followed."

Approximately one quarter of the public comment dealt directly or indirectly with increasing the extent of control the current statutes have over association boards of directors. These comments tended to center around the perception that these boards have unrestricted power, especially in the areas of the assignment of fines (§ 55-513.B of the *Code of Virginia*), and the board's power of non-judicial foreclosure (§ 55-516.I of the *Code of Virginia*). The Real Estate Board was reminded that local and state governments do not have the right to take a citizen's property without going to court, however, the board of directors of a property owners' association can, in certain instances, foreclose on a piece of property. The statute does, however, require that the lien be perfected prior to the proceeding taking place.

Other comments addressing the desire to have the Act strengthened centered around the issue of disclosure. The law is very specific in the requirements of informing the buyer of the existence of a property owners' association and delivery of certain documents, including budget information, rules and regulations, by-laws, declarations and other legal documents. It is the responsibility of the seller to provide this information to the buyer. Testimony at the public hearings, however, indicates that this particular provision of the Act is being followed sporadically at best, and that, with no penalties in place for the failure to provide disclosure information, the trend will continue. Suggestions included extending the responsibility of disclosure to the seller's real estate agent or other legal representative.

It is undeniable that the Real Estate Board has no enforcement authority of the Property Owners' Association Act, such enforcement of the Act is the responsibility of the court system. Comment from a small number of individuals addressed this fact, indicating the difficulty of achieving enforcement in a reasonable time at a reasonable cost. The courts provide the ultimate authority and remedy to any disagreement between property owners and their association or any claim of a violation of the act by an association's board. These individuals voiced a concern, however, that the current law is unenforceable, in part because enforcement, through the court system, while ultimate, is unattainable by the vast majority of association residents, due, in large part, to the cost of taking an association to court. Many of these persons indicate that the solution to this situation would be the formation of some sort of authority, with the statutory authority to regulate the operation of property owners' associations, including the resolution of disputes and the responsibility of taking disciplinary action against associations that violate the Act.

Some comments were directed at the resolution itself, particularly the language, which was perceived as being presumptive of associations not being competent. These comments specifically addressed the statement made in the resolution that an increasing number of association boards may not fully understand their obligations under the Act. These individuals believed that the assumption was not only erroneous, but possibly demeaning and insulting to those board members who strive to work hard for their associations. It was agreed that there may be some dysfunctional boards that are experiencing difficulty and producing hardships for their members, but these boards are, by far, in the minority.

Other suggestions received during the public comment period included the implementation of mandatory mediation provisions in the association by-laws, a suggestion to drop the exemptions so that all property owner associations be required to adhere to the act, not just those who charge \$150 or more per year in assessments, the request that management companies become licensed/certified, and the request that the statute be modified to establish a statutory end to the control a developer has over an association, based on time, not on the amount of lots conveyed.

E. Regulation by Other States

The Real Estate Board's research indicated that the majority of states regulated property owners' associations that were incorporated through their equivalent of the State Corporation Commission. However, few states had specific statutory guidelines for property owners' associations, sometimes referred to as Common Interest Community Associations. This study reviewed the statutory requirements of the following twelve states: Arizona, California, Connecticut, Georgia, Kansas, Maine, Nevada, North Carolina, Oregon, Vermont, Washington, and West Virginia.

Virginia's statutory requirements for property owners' associations are in line with most of the states reviewed, especially whereby resolution of disputes and enforcement of the law are routinely conducted through the court system. Disclosure requirements in Virginia are also consistent with the majority of states with disclosure requirements.

Some states have statutes that are much more complex and detailed than Virginia's. For example, California breaks down the definition of "exclusive use common area" to address "shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors, door frames, and hardware incident thereto...." (California Civil Code Section 1351.i). Nevada's statutes contain instructions for adjusting dollar amounts, specified in exemption statutes, "to the extent of the changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers" (NRS 116.1115.1)

Nevada does, however, appear to be the only state that has established a position in government, specifically designed to assist owners in a common-interest community. Nevada's ombudsman program, contained in NRS 116.1116, provides an unclassified position within the Department of Business and Industry, which assists in mediation and education. The text of the law is contained in Appendix D.

The surrounding states of North Carolina and West Virginia have statutory requirements for property owners' associations that are more specific than those in Virginia, primarily in their dealings with eminent domain, merger or consolidation of communities, and conveyances and encumbrances. West Virginia statutes also deal with the formation of the community itself, regulating the developer, and in that respect closely match the Virginia Condominium Act. However, both North Carolina and West Virginia statutes, when specifically dealing with property owners' associations are very similar, especially in that enforcement and dispute resolution are the responsibility of the court system.

Specific information and comparisons of the statutory requirements of the other states reviewed are contained in Appendix D.

III. CONCLUSIONS

The Real Estate Board clearly finds that the need to amend the Property Owners' Association Act (§ 55-508 et seq. of the *Code of Virginia*) is not necessary at this time.

The board cannot conclude that changes to the Act would provide any additional protection to the citizens of the Commonwealth, nor is the board able to recognize any potential harm to the health, safety, or welfare of the public by leaving the Act intact, as is. The board agrees with a statement made by Mr. Drew Mulhare at the public hearing in Richmond, who said, "I feel that there are a few states that are examples of overregulation, but Virginia is a model of sufficient regulations concerning disclosure of essential governing documents and due process for alleged violations of rules that may result in monetary charges. Virginia has not succumbed to a relatively small sample of complaints in comparison to the large number of owners and tenants in common interest communities."

The board does, however, concede that there is undeniable evidence of the existence of executive organs of property owners' association that are violating the provisions of the act, especially concerning disclosure, open board meetings, and record keeping. The current statutes, however, clearly address these issues and amending the law with additional restrictions or requirements will not necessarily solve the problem. It would not be in the best interest of either the associations or their governing bodies to add to statutes that they do not currently understand.

Subsequently, education appears to be a viable option that would preclude the addition of amendments to the current law, while serving to increase the level of understanding of all involved parties. This could be accomplished through an expanded use of the Common Interest Community Management Information Fund. This fund, created through the annual registration fees of associations and administered by the Real Estate Board is currently used to "promote the improvement and more efficient operation of common interest communities through research and education" (§ 55-529 of the *Code of Virginia*). A more aggressive approach to informing various educational organizations, association members and their boards, could lead to the awarding of more grants from the fund, thus increasing the level of education throughout the Commonwealth.

Finally, the board finds that if the General Assembly were to approve more restrictive amendments to the current Property Owners' Association Act, it would increase the already difficult task that many associations currently face in finding an adequate number of volunteers to fill vital positions within the governing body. This could, in essence, doom many of the smaller associations by diminishing the already small pool of individuals to draw from.

Appendix A

House Joint Resolution 645

GENERAL ASSEMBLY OF VIRGINIA -- 1999 SESSION

HOUSE JOINT RESOLUTION NO. 645

Requesting the Real Estate Board to study the efficiency and effectiveness of the remedies available for enforcement of the provisions of the Property Owners' Association Act and the governing documents of these associations.

Agreed to by the House of Delegates, February 4, 1999

Agreed to by the Senate, February 18, 1999

WHEREAS, property owners' associations, commonly known as homeowner associations, are the fastest growing segment of housing in the country and have been established and operate in the Commonwealth to serve and administer subdivisions governed by restrictive covenants and other governing documents; and

WHEREAS, these governing documents require the payment of a mandatory assessment to the association for the maintenance and upkeep of common areas for the common good of the members of the association; and

WHEREAS, there are many reasons for creating property owners' associations: scarcity of land, protection of property values through aesthetic controls, lifestyle choices, and affordability; and

WHEREAS, homeowner associations, through their member-elected boards of directors, operate as quasi-governmental bodies over their members and as such, are relied upon to act in the best interest of the membership; and

WHEREAS, increasingly, the boards of directors may not fully understand or may misconstrue their obligations to their membership under the associations' governing documents or the law requiring, for example, access to association records and meetings of the board of directors; and

WHEREAS, there is a growing concern among individual members about the increasing number of violations of the association's governing documents and state law by boards of directors; and

WHEREAS, enhancing the accountability of the boards of directors to their respective memberships is necessary to ensure compliance with governing documents and state law; and

WHEREAS, although current law allows aggrieved parties to file a lawsuit for damages or injunctive relief, or for any other remedy available at law or in equity, this remedy is costly and may not be the most effective way to resolve association disputes; and

WHEREAS, it is in the interest of the Commonwealth to provide for the lawful operation and management of property owners' associations and to ensure the rights of individual members of these associations; and

WHEREAS, careful examination of the existing remedies afforded under the Property Owners' Association Act is essential to effectively determine the need for any additional or alternative dispute resolution mechanisms; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Real Estate Board be requested to study the efficiency and effectiveness of the remedies available for the enforcement of the provisions of the Property Owners' Association Act and the governing documents of these associations. In conducting its study, the Board shall conduct public hearings and otherwise solicit input from interested parties on the scope and nature of the problems related to the enforcement of the Property Owners' Association Act and the documents governing these associations.

All agencies of the Commonwealth shall provide assistance to the Board for this study, upon request.

The Board shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Appendix B
Association Survey

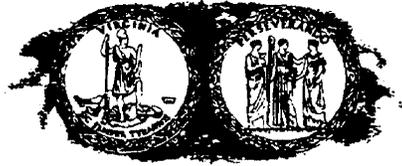
Property Owners' Association Act

Membership Survey



Real Estate Board
Department of Professional and Occupational Regulation

COMMONWEALTH OF VIRGINIA



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Administration & Finance

Property Owners Association Membership Survey

House Joint Resolution Number 645 of the 1999 session of the Virginia General Assembly tasked the Real Estate Board to study the efficiency and effectiveness of the remedies available for enforcement of the provisions of the Property Owners' Association Act and the governing documents of these associations.

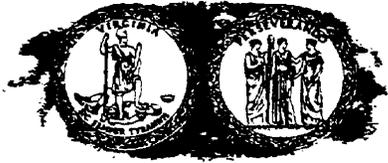
In order to gather the information required to complete this study the Real Estate Board will be participating in a town meeting in Prince William County, scheduling two public hearings (one in Richmond and one in Chesapeake), and conducting a survey of members of property owners' associations.

The attached survey is part of this information gathering process and your cooperation is greatly appreciated. Please complete the attached survey and return it to the Real Estate Board prior to June 15, 1999, in one of three ways:

1. Mail it to:
Real Estate Board POA Survey
Department of Professional and Occupational Regulation
3600 West Broad Street
Richmond, Va 23230
2. Fax it to: (804) 367-2475 (Attn: Eric Olson)
3. Bring it to any of the scheduled meetings

If you have any questions or require any assistance with the survey, please contact us at (804) 367-8510 or email us at proreg@dpor.state.va.us

COMMONWEALTH OF VIRGINIA



DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

3600 West Broad Street, Richmond, Virginia 23230-4917

Telephone: (804) 367-8500 TDD: (804) 367-9753

<http://www.state.va.us/dpor>

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Property Owners' Association Act Membership Survey

1. Type of Association: Condo _____ Home Owner _____ Co-op _____
2. Your Zip Code: _____
3. Age of Head of Household: _____
4. Number of persons living in home: _____
5. Is a member of household working fulltime: _____
6. Number of units/homes in association:
Less than 10 ___ 10-50 ___ 51-75 ___ More than 75 ___
7. Have you ever attended an association meeting? Yes ___ No ___
8. If answer to 7 is yes, how many? _____
9. When was the last meeting attended? _____
10. Have you ever served in an elected or appointed position in your
association? Yes ___ No ___
11. If answer to 10 is yes, what position(s) did you hold?

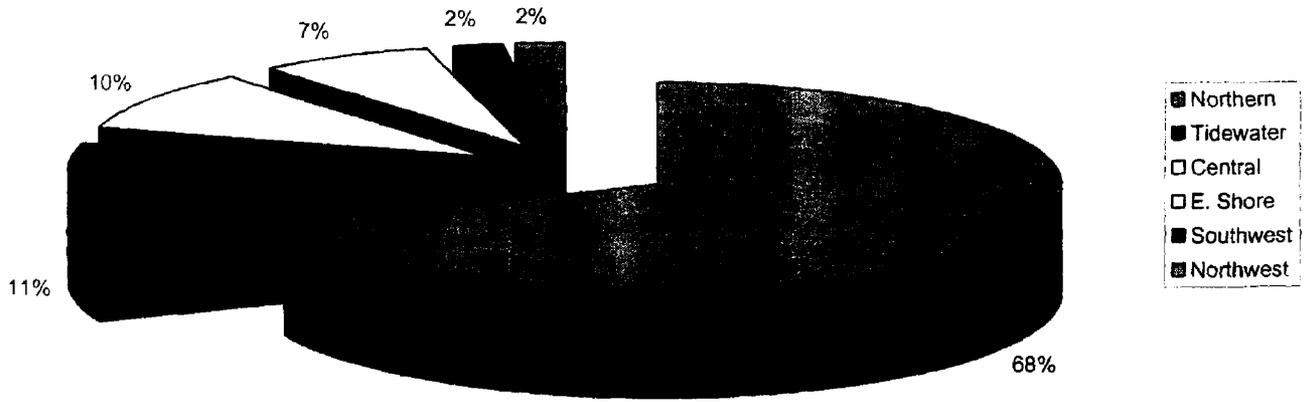
19. How do you feel your Board of Directors and Association could improve the job they currently perform for you? _____

20. What provisions of the Property Owners' Association Act (§ 55-508 et seq of the *Code of Virginia*, do you feel, could be modified to enhance the accountability of the boards of directors to their respective memberships? _____

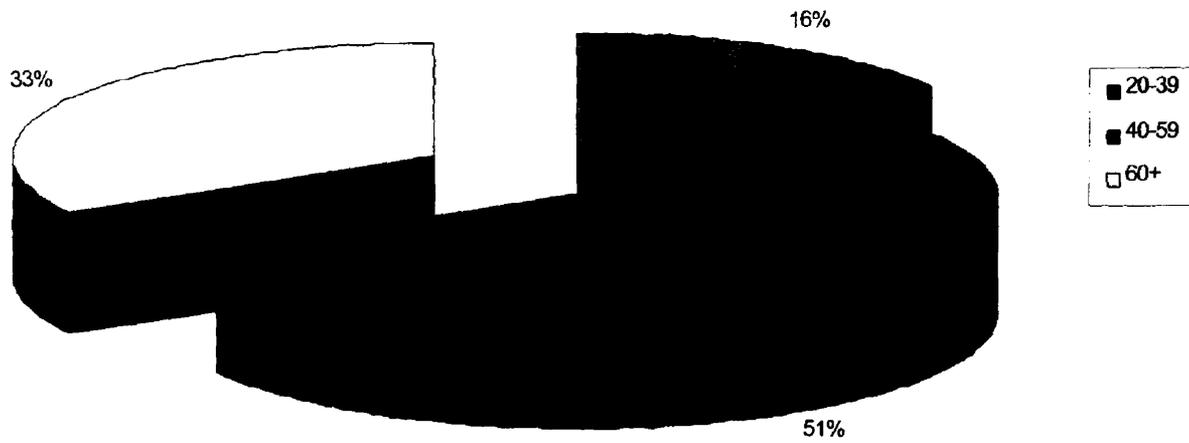
Appendix C

Survey Data Summaries

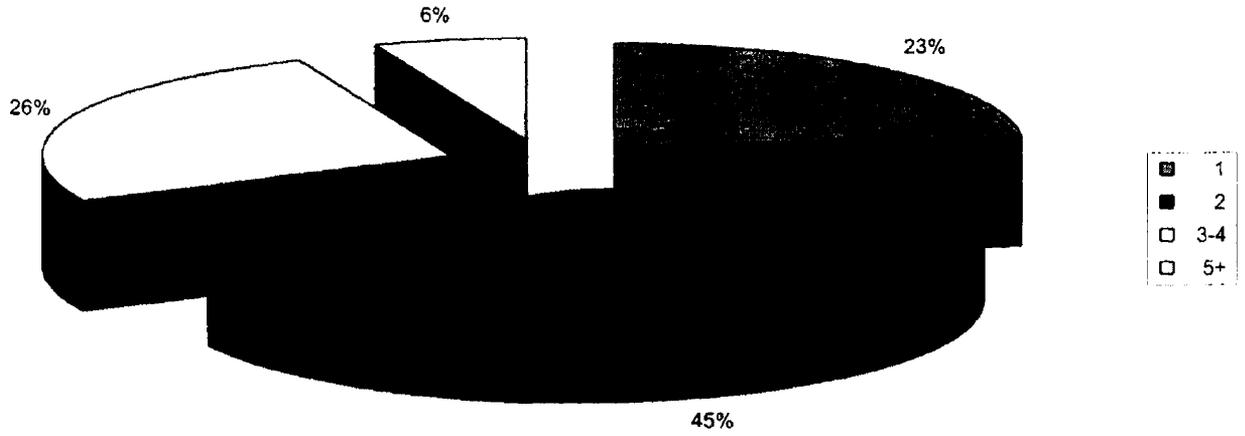
Geographic Location of Respondent



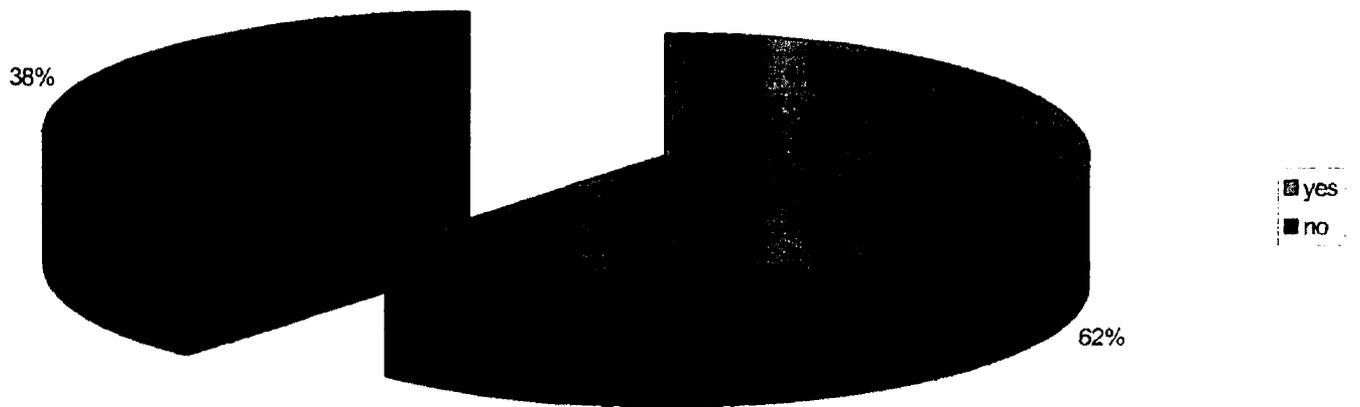
Age of Head of Household



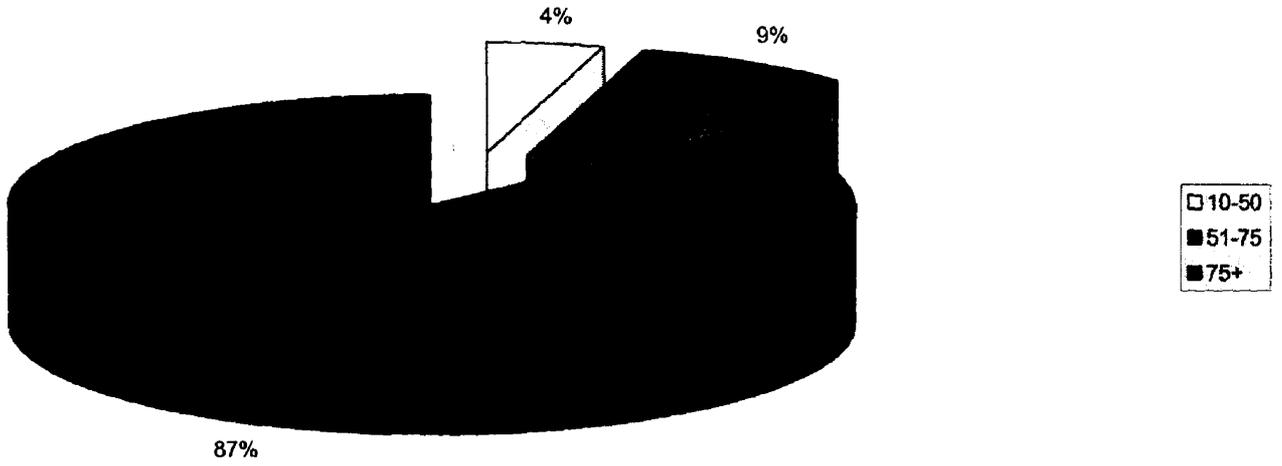
Household Size



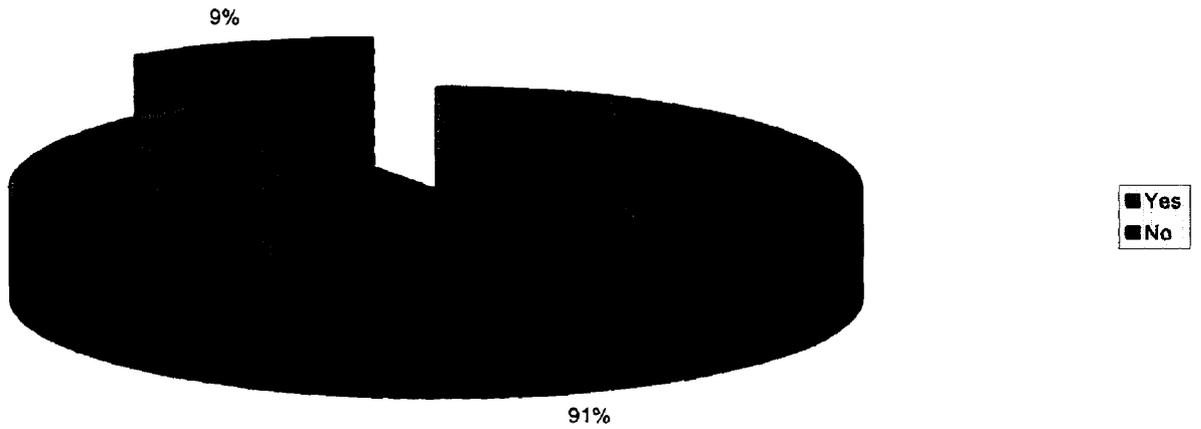
Employment of household member



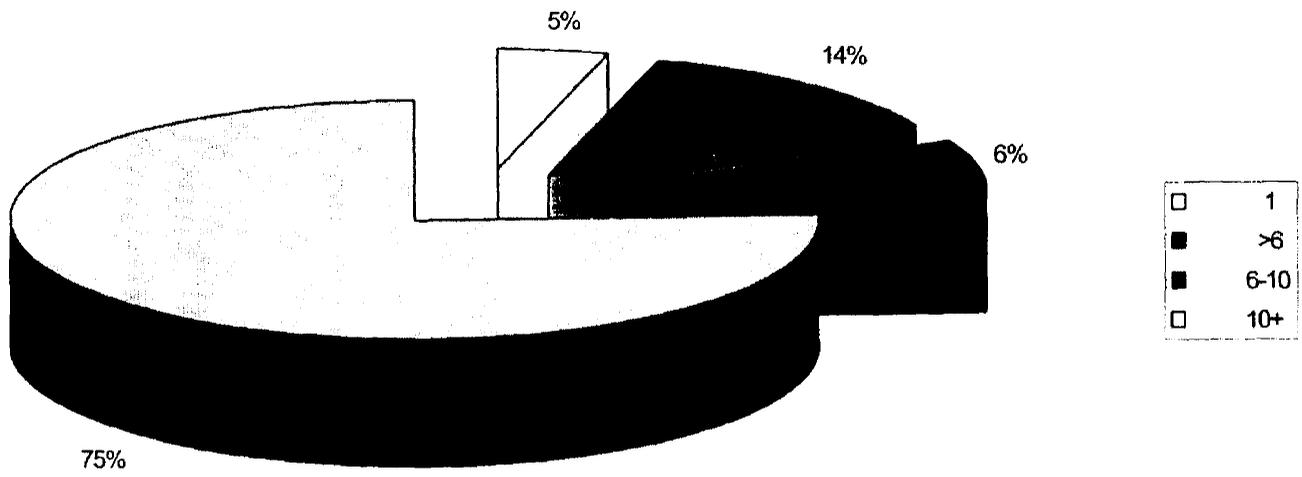
Association Size



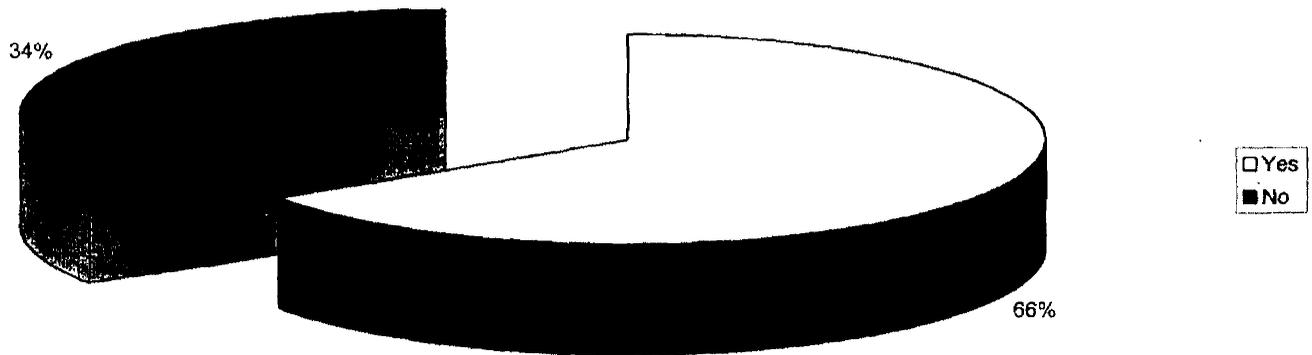
Ever attend an association meeting?



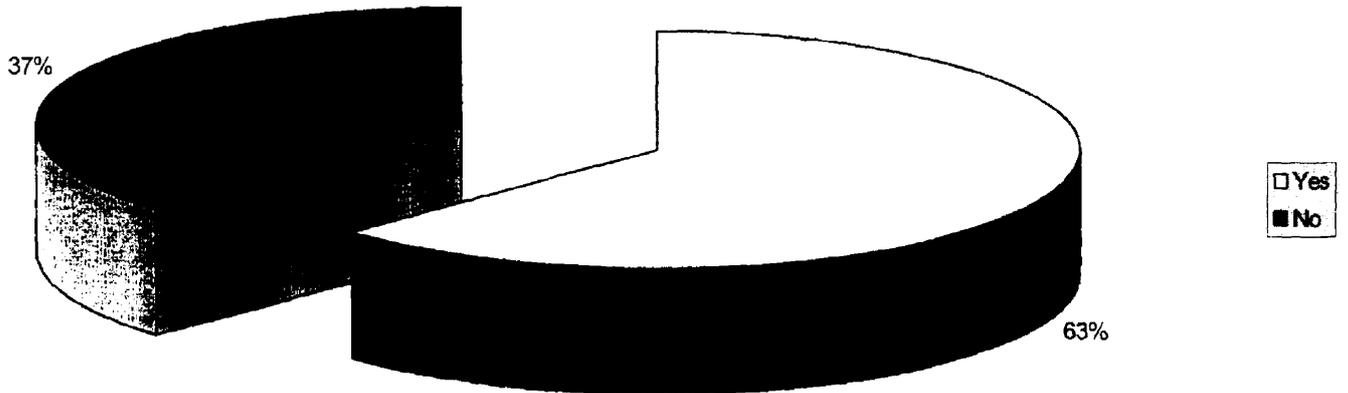
How many have you attended?



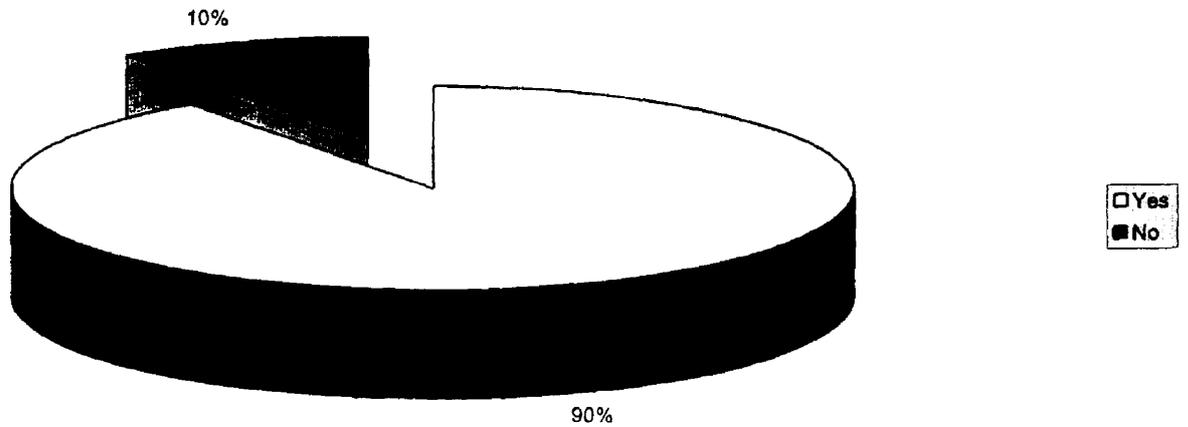
Served in elected/appointed position



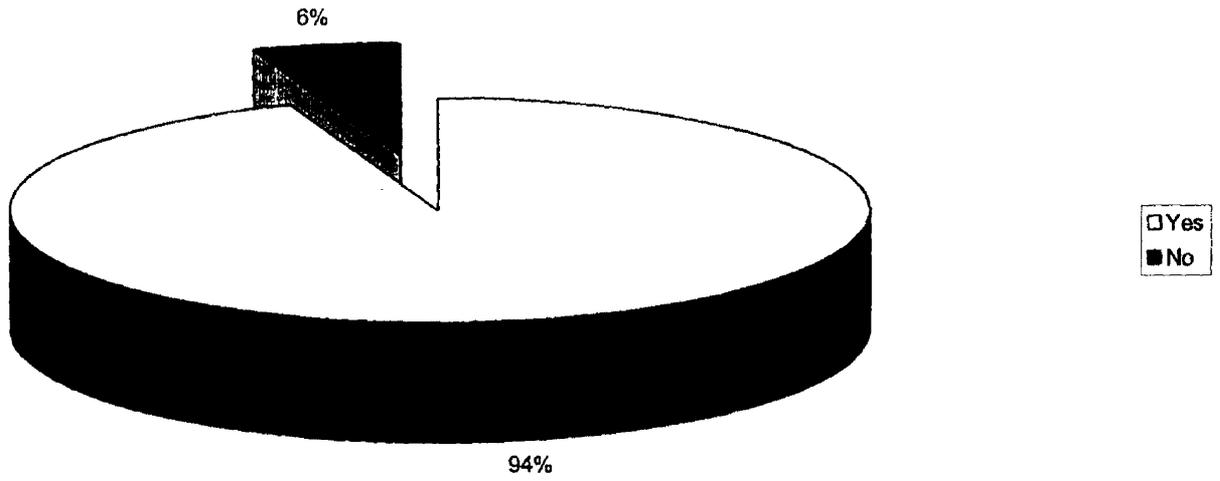
Are you kept informed of your board's activities?



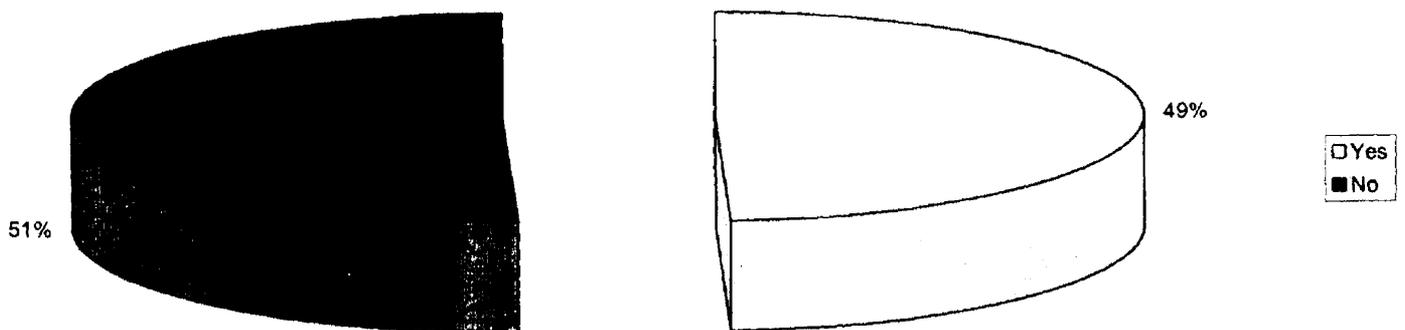
Do you know how to contact your board?



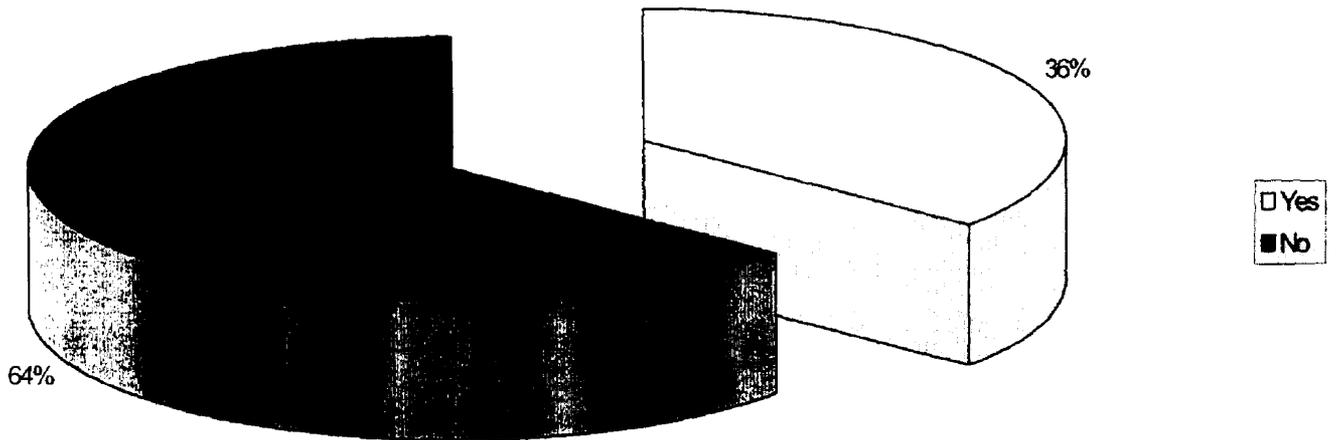
Do you have a copy of your association by-laws and rules and regulations?



Have you ever filed a complaint with your association or board?



Was the complaint handled to your satisfaction?



Appendix D

Summary of Other State's Laws

APPENDIX D

State Property Owner's Association Laws

The following summaries are derived largely from the results of a search of the statutes and codes of the individual states listed. Access to these statutes was conducted via the internet primarily utilizing each individual state's home page. Other access information was obtained using the search engine provided on the Legal Information Institute of Cornell Law School's home page.

State: Arizona
Source: Arizona Legislative Information System
Citation: § 33-1801 et seq.

Summary: Arizona statutes are consistent with those other states with disclosure and access requirements. These statutes do not contain information or guidance concerning resolution of disputes or violations of the law by associations or their governing authority. Provisions of the code require all meetings of the association and board of directors to be open to all association members with the exception of those involving: 1) employment or personnel matters; 2) legal advice from an attorney for the board; 3) pending or contemplated litigation; or, 4) pending or contemplated matters relating to enforcement of the association's documents or rules.

The Arizona Code also contains provisions providing for the disclosure and examination of association records, ensuring that all financial and other records of the association be made "reasonably available" for examination by any association member or his agent. Exemptions for this section are similar to those in the section addressing open meetings. The term "reasonably available" is not defined in the statute.

Other provisions of the statutes contain the requirements of disclosure packets to be provided to buyers during resale of units and statutory guidance concerning liens of assessments, mechanics' liens and materialmen's liens. These statutes are consistent with most other states, including Virginia.

State: California
Source: California Civil Code
Citation: §§ 1350-1376 (Davis-Stirling Common Interest Development Act)

Summary: California statutes contain statutory regulation for all forms of common interest communities, there is not separate section for the various types of associations. California law specifically addresses enforcement of the Act or disagreements between parties through the court system or through alternative dispute resolution (§ 1354).

The Davis-Stirling Common Interest Development Act provides protection to citizens of California through disclosure and accessibility requirements, similar to the protection offered by most other states. California differs, however, in that the statutes are very specific and restrictive on a number of issues. These include, management companies (§ 1363), insurance requirements (§1365), assessments (§ 1366), and procedures for associations to seek damages against a builder (§ 1375).

State: Connecticut
Source: General Statutes of Connecticut
Citation: Title-47 Land and Land Titles

Summary: Connecticut statutes contain statutory regulation for all forms of common interest communities, there is not a separate title for the various types of associations. Connecticut addresses enforcement of its statutes in § 47-210 which reads, in part: “It is the intent of the General Assembly that this section is remedial and does not create any new cause of action...” further instructing courts as to the addressing of the “unconscionable contracts” involving the use of common facilities by residents of common interest communities.

Connecticut law is similar to Virginia’s in dealing with communities formed prior to the promulgation of the statute. Section 47-216 of the Connecticut Statutes indicate that the law is applicable to communities created prior to January 1, 1984, but that the law does not invalidate existing provisions.

These statutes address the formation of a development, including condominiums, and in that respect is very similar to the Virginia Condominium Act. This includes statutory regulation of declarant’s rights, filing of required documents by the developer/declarant, and control of the association by the developer/declarant.

State: Georgia
Source: Georgia Code
Citation: § 44-3-220 et seq. (Georgia Property Owners’ Association Act)

Summary: Similar to the statutes of other states, Georgia addresses the disclosure requirements of associations, lists required documentation to be provided at association meetings, and identifies the court as the venue for “substantial compliance” with the Act after the initial recordation of the documents.

State: Kansas
Source: Kansas Statutes
Citation: § 58-3701 et seq. (Townhouse Ownership Act)

Summary: The Kansas Townhouse Ownership Act provides protection to members of associations and addresses the authority of the associations, however, it is restricted to single-family townhouse residential units.

State: Maine
Source: Maine Statutes
Citation: Title 33 § 560 et seq. (Unit Ownership Act)

Summary: § 566 of the Maine Statutes specifically addresses a property owner's responsibility to comply with the bylaws and rules and regulations of the association. Failure to do so is grounds for an action to recover damages or for injunctive relief, both of which would be obtained from the appropriate court.

§ 577 requires the manager of the board of directors to maintain specific records of receipts and expenditures and requires that such records be "available for examination by the unit owners at convenient hours of weekdays."

Other sections of the statutes address the contents of the bylaws and rules and regulations, placement of liens by the association, foreclosure of property by the association for unpaid common expenses, and insurance.

State: Nevada
Source: Nevada Statutes
Citation: NRS Chapter 116 Common-Interest Ownership (Uniform Act)

Summary: Nevada Common-Interest Ownership (Uniform Act) includes all types of communities, including condominiums, time-shares, and property owners' associations. Nevada law is similar in principal to California law in its attention to detail and its specificity.

Nevada has established an ombudsman program to assist in the enforcement of the Act. NRS 116.1116 states:

1. *The office of the ombudsman for owners in common-interest communities is hereby created within the real estate division of the department of business and industry.*
2. *The administrator of the real estate division shall appoint the ombudsman for owners in common-interest communities. The ombudsman for owners in common-interest communities is in the unclassified service of the state.*
3. *The ombudsman for owners in common-interest communities must be qualified by training and experience to perform the duties and functions of his office.*

4. *The ombudsman for owners in common-interest communities shall:*

(a) Assist in processing claims submitted to mediation or arbitration pursuant to NRS 38.300 to 38.360 inclusive;

(b) Assist owners in common-interest communities to understand rights and responsibilities as set forth in this chapter and the governing documents of their associations, including, without limitation, publishing materials related to those rights and responsibilities; and

(c) Assist persons appointed or elected to serve on executive boards of associations to carry out their duties.

State: North Carolina
Source: North Carolina Statutes
Citation: Chapter 47F North Carolina Planned Community Act (§ 47-F-1-101 et seq.)

Summary: The North Carolina Planned Community Act includes all types of communities including, condominiums, cooperatives, and common interest communities. North Carolina, like Virginia, exempts certain associations, however, the exemptions in North Carolina are based on the size of the association, with communities of less than twenty being exempt from the provisions of the Act.

The North Carolina statutes address the formation of the community and the responsibilities of the developer/declarant, similar to the Virginia Condominium Act. In addressing the responsibilities of the executive board of the association, however, North Carolina differs from Virginia in placing the following restrictions and following rights to the association membership as found in § 47F-3-103(b) of the Act:

(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47F-2-117), to terminate the planned community (G.S. 47F-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (G.S. 47F-3-103(f)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

State: Oregon
Source: 1997 Oregon Revised Statutes
Citation: Chapter 94, Real Property Development

Summary: Oregon statutes are similar to those of other states concerning consumer protection and disclosure. Oregon does, however, specifically address violations of the law in § 94.780, which states:

(1) Intentional and deliberate failure of the declarant, association, any association member or any other person subject to ORS 94.550 to 94.783 to comply with applicable sections of ORS 94.550 to 94.785 shall be cause for suit or action to remedy the violation or to recover actual damages. The prevailing party is entitled to reasonable attorney fees and court costs.

(2) Failure of an association to accept administrative responsibility under ORS 94.616 shall be a defense for the declarant against an action brought under this section.

(3) A receipt signed by the purchaser for documents required to be delivered by the seller in ORS 94.740 shall be a defense for the seller in an action against the seller for nondelivery of the documents.

(4) A suit or action arising under this section must be commenced within one year after the discovery or identification of the alleged violation.

State: Vermont
Source: Vermont Statutes Online
Citation: Title 27a § 1-101 (Vermont Common Interest Ownership Act)

Summary: The Vermont Common Interest Ownership Act includes all types of communities including condominiums, cooperatives, time-shares, and common interest communities. § 4-117 of the Vermont Statute addresses the effect of violations on rights of action:

(a) If a declarant or any other person subject to this title fails to comply with any provision of this title or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney fees.

(b) Parties to a dispute arising under this title, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

(1) a declarant may agree with the association to do so only

after the period of declarant control passes unless the agreement is made with an independent committee of the executive board elected pursuant to subsection 4-116(d) of this title; and

(2) an agreement to submit to any form of binding alternative dispute resolution must be in a writing signed by the parties.

State: Washington
Source: Revised Code of Washington
Citation: Chapter 64.38 RCW (Homeowners' Associations)

Summary: The Washington Code is consistent with the Virginia Property Owners' Association Act as it pertains to open meetings and availability of records. RCW 64.38.045 indicates that all financial and other records are the property of the association and must be available for examination by all owners, including holders of mortgages on the lots, and their respective authorized agents on "reasonable notice during normal working hours at the offices of the association or its managing agent." No definition of "reasonable notice" is given in the code.

Concerning remedies available to associations or their members RCW 64.38.050 states, "Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party."

State: West Virginia
Source: West Virginia Statutes
Citation: Chapter 36B (Uniform Common Interest Ownership Act)

Summary: The West Virginia Act provides statutory regulation to all types of associations including, condominiums, cooperatives, time-shares and common interest communities.

The West Virginia Act allows courts to award punitive damages for willful failure to comply with the statutes as well as reasonable attorney's fees. Other statutes were consistent with those of other states with similar programs.