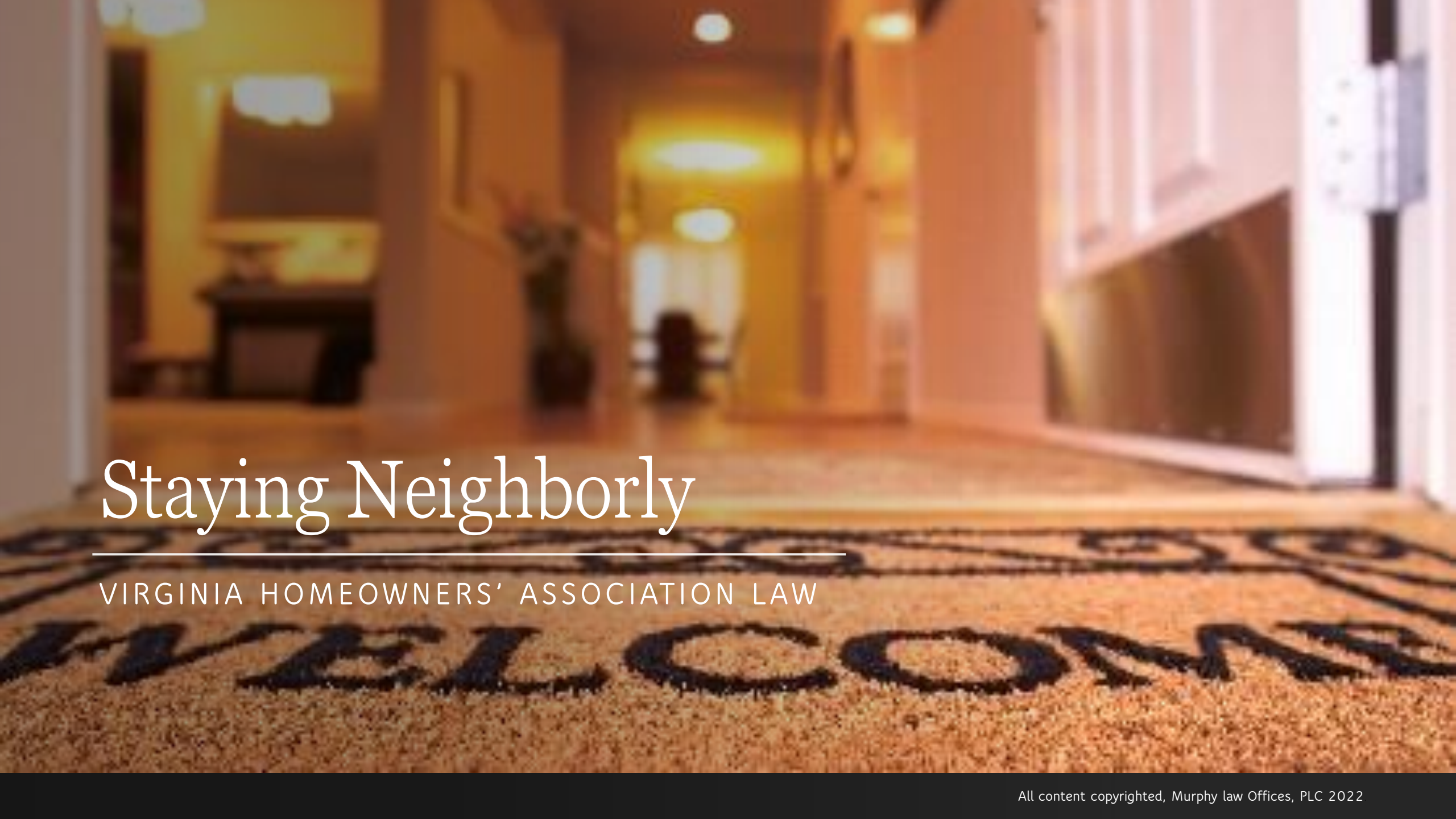




Staying Neighborly

VIRGINIA HOMEOWNERS' ASSOCIATION LAW

Remember this guy?



Vice Adm. James B. Stockdale, 1992

1992 Vice Presidential debate.

“Your opening statement, sir.”

“Who am I?”

“Why am I here?”

With apologies to Admiral Stockdale.
But his questions give us a starting point.



Vice Adm. James B. Stockdale, 1992



Some assumptions about why you are here.

- You have been elected to the board of your community association.
- You are a committee member or chairperson for your association.
- You are interested in serving as a board member or committee member.
- You are new to living in a common interest community and trying to learn the ropes.
- You have lived here for a long time and don't even know where the ropes are.
- You can make a difference simply by understanding the rules for association living and contributing to the community.

Terms we will use tonight

“Property Owners Association” =
“Homeowners Association”

“POA” = “HOA”

“Common Interest Association”

“Declaration” and

“Covenants”

- They are not the same.

“Association”



Terms we will use tonight.

Associations are all about amenities.

Amenities = Common Elements

Common elements are jointly owned by Members of the association.

Members agree to pay for the operation, maintenance, repair and replacement of amenities through Assessments.

Responsibility to maintain + Assessment Right = Property Owners' Association regulated by Virginia POAA.



Terms we will use tonight.

Restrictive Covenants

- Square footage requirements
- Design restrictions
- Use restrictions
- Signage restrictions

But not all covenants are created equal.





TRENTON, NJ

Three big ideas.

Associations are private taxing authorities.

Associations are private zoning authorities.

Associations can feel coercive.

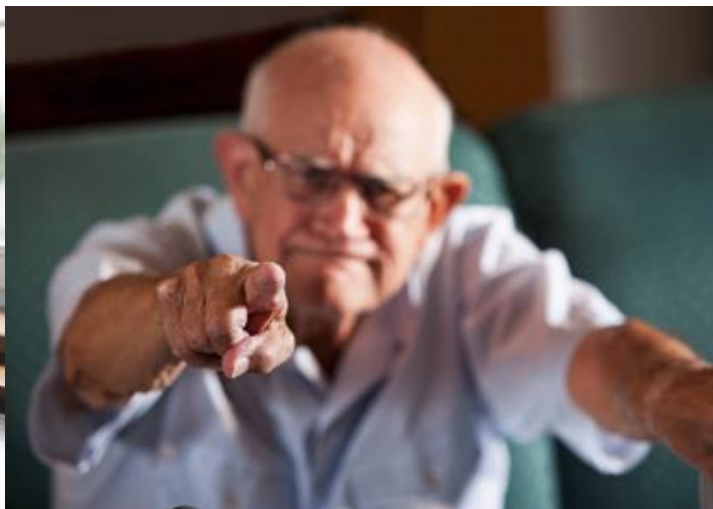
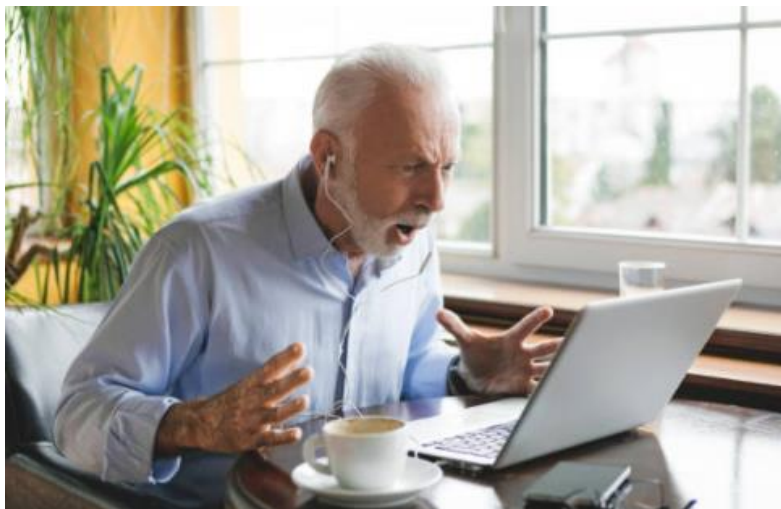
And four big
imperatives for
HOA boards.

- Be friendly.
- Be transparent.
- Remember that you are spending your neighbors' money and taking care of everyone's property.
- Remember that you will be neighbors long after any HOA disputes.

Don't be these guys.



Or this owner.



And especially don't be
this board of directors.

“Change is not a four-letter word.”





Preliminary legal thoughts.

“The Life of the law has not been logic. It has been experience.”

-Oliver Wendell Holmes, Jr.

Introducing my favorite law professor.

Be honest.

Be fair.

Be faithful.

Treat people the way you would expect to be treated.

Listen respectfully. Really listen.

Before you criticize, understand the rules.

And the other person's point of view.



And my favorite law book.

Not on the bar exam but should be.

ALL I REALLY
NEED TO KNOW
I LEARNED IN
KINDERGARTEN

UNCOMMON THOUGHTS
ON COMMON THINGS

ROBERT FULGHUM

NUMBER 1
NATIONAL
SELLER

HOA governance
(and living in an HOA)
is easy if we remember
the simple things.

And just do what our
mothers taught us to do.

All I really need to know. . . I learned in Kindergarten

Share everything. Play **fair**. Don't hit people.
Put things back where you found them. **Clean up**
your own mess. Don't take things that aren't yours.

Say you're sorry when you hurt somebody.

Wash your hands before you eat. **Flush**.

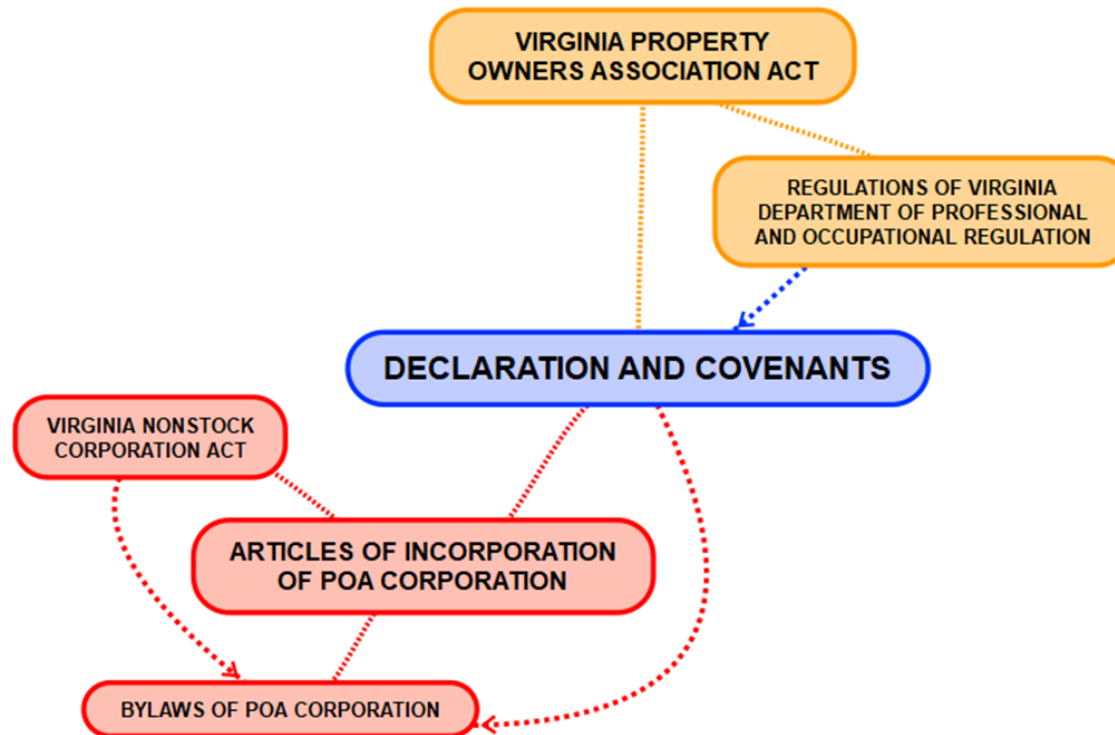
Warm cookies and cold milk are good for you. **Live**
a balanced life — **learn** some and **think** some and
draw and **paint** and **sing** and **dance** and **play** and
work every day some. **Take a nap** every afternoon.

When you go out into the world, watch out for traffic,
hold hands, and stick together. Be aware of **wonder**.

Remember the little seed in the Styrofoam cup: The
roots go down and the plant goes up and nobody really
knows **how** or **why**, but we are all like that. Goldfish
and hamsters and white mice and even **the little seed**

in the Styrofoam cup — they all die. So do we. And
then **remember** the Dick-and-Jane books and the first
word you learned — the biggest word of all — **LOOK**.

But running an HOA also can be hard.



What you won't learn tonight.



Legal jargon.



Details of the 250 statutes that govern Virginia HOAs.



Or the dozens of regulations.



The answer to every HOA question that has ever arisen.



Our goals tonight.

Understand the big picture so that you can spot problems.

Recognize that leading an HOA is important service to the community.

Develop an awareness of how to work with your neighbors.

Learn how to work with your lawyer economically.

For owners: Learn how to work with your board.

First things first.

What is a POA?

Type of ownership

Type of “Common Interest Association”

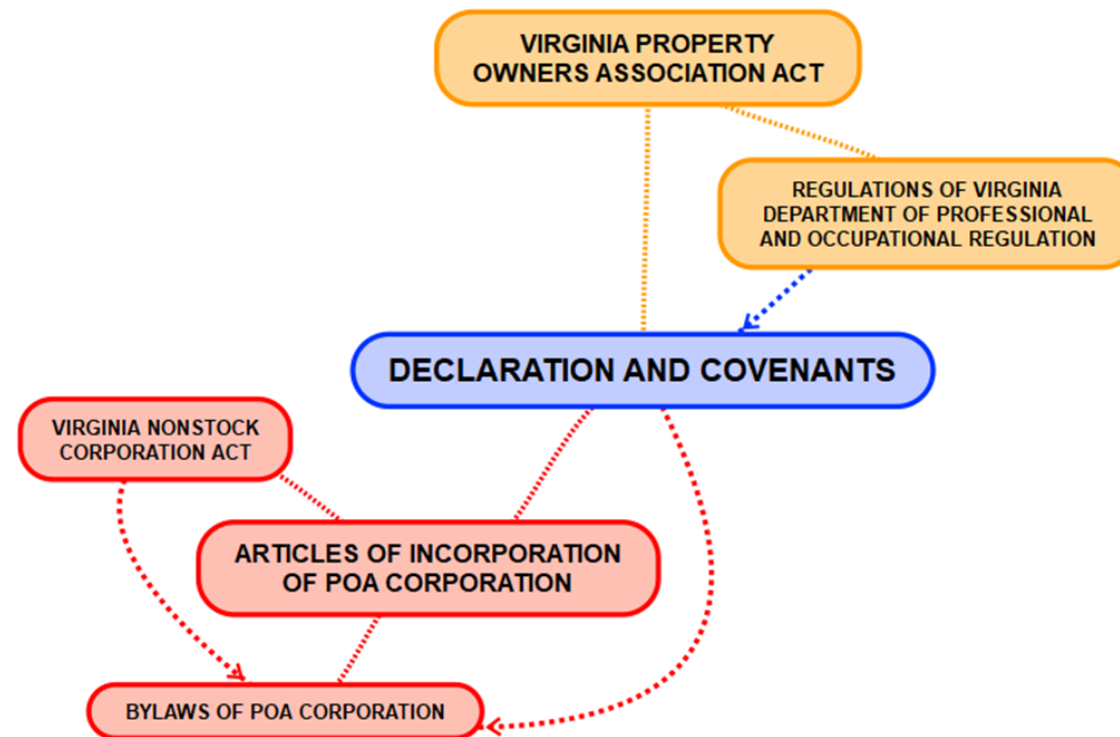
Private zoning and land use authority

Private taxing authority

A group of neighbors

- ☐ TITLE 55. PROPERTY AND CONVEYANCES [Repealed]
- ☒ TITLE 55.1. PROPERTY AND CONVEYANCES
 - ☐ SUBTITLE I. PROPERTY CONVEYANCES
 - ☐ SUBTITLE II. REAL ESTATE SETTLEMENTS AND RECORDATION.
 - ☐ SUBTITLE III. RENTAL CONVEYANCES.
 - ☒ SUBTITLE IV. COMMON INTEREST COMMUNITIES
 - ☒ CHAPTER 18. PROPERTY OWNERS' ASSOCIATION ACT
 - ☒ ARTICLE 1. GENERAL PROVISIONS.
 - ☐ ARTICLE 2. DISCLOSURE REQUIREMENTS; AUTHORIZED FEES.
 - ☐ ARTICLE 3. OPERATION AND MANAGEMENT OF ASSOCIATION.
 - ☐ CHAPTER 19. VIRGINIA CONDOMINIUM ACT
 - ☐ CHAPTER 20. HORIZONTAL PROPERTY ACT
 - ☐ CHAPTER 21. VIRGINIA REAL ESTATE COOPERATIVE ACT
 - ☐ CHAPTER 22. VIRGINIA REAL ESTATE TIME-SHARE ACT
 - ☐ CHAPTER 23. SUBDIVIDED LAND SALES ACT

It all starts with the Declaration & Covenants



It all starts with the Declaration & Covenants

DECLARATION AND COVENANTS

What is a Declaration?

Legal document. Usually prepared by a developer.

Recorded in your local courthouse.

Just as important as the deed to your house. Think of them the same way.

An enforceable contract.

Usually contains restrictions on how you can use your property.

Intentionally hard to change.

EGGX 309 PAGE 398

DECLARATION OF COVENANTS AND RESTRICTIONS
APPLICABLE TO ALL PROPERTY IN
[REDACTED]

THIS DECLARATION ("Declaration") is made this 16th day of April, 1990, by [REDACTED] PROPERTIES, INC., a Virginia Corporation ("Declarant"):

RECITALS

Declarant is the owner and developer of certain real property in the County of Northumberland, Virginia, shown and designated as [REDACTED] Lots 1 through 9, Section 1st on plat of survey made by Sutton & James, P. C., dated June 20, 1989, revised 7/6/89, revised 8/15/89 and recorded in the Clerk's Office, Circuit Court of Northumberland County, Virginia, in Plat Book 6, page 103, [REDACTED] Lots 1 through 24, Section 2nd on plat of survey made by Sutton & James, P. C., dated July 5, 1989; revised July 18, 1989, recorded in the aforesaid Clerk's Office, in Plat Book 6, page 104, and "Harbour Pointe, Lots 1 through 22, Section 3rd as shown on plat of survey made by Sutton & James, P. C. dated November 14, 1989; revised January 5, 1990, recorded in the aforesaid Clerk's Office, in Plat Book 6, page 115, all of which together are known as [REDACTED]. The declarant desires to provide for (i) a common scheme of development, (ii) a high and uniform quality of construction and aesthetic appearance, (iii) a high and consistent quality of maintenance of all common areas, recreational areas and private property within and throughout [REDACTED] and (iv) an organization to facilitate all of the foregoing.

What does a Declaration do?

Creates the Property Owners' Association.

Sets the ground rules for what property is covered . . .

How it can be used . . .

How operation, maintenance and replacement of common elements will be paid for.

BOOK 309 PAGE 398
DECLARATION OF COVENANTS AND RESTRICTIONS
APPLICABLE TO ALL PROPERTY IN
[REDACTED]
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common scheme of development, (ii) a high and uniform quality
of construction and aesthetic appearance, (iii) a high and
consistent quality of maintenance of all common areas, recreational
areas and private property within and throughout [REDACTED]
and (iv) an organization to facilitate all of the foregoing.

Assigns a leading role to the Association.

Designates the HOA as a common interest association.

Makes each owner a member of the association.

Makes HOA responsible for common elements, covenant enforcement, and collection of assessments.

Does not create the HOA, which is usually a nonstock corporation (more complications).



Norma Desmond, *Sunset Boulevard*. 1950. Don't be Norma.

Understanding the Declaration.

Legal phrases have specific legal meanings.

Supplemented/regulated by the Virginia Property Owners' Association Act.

You cannot do anything that is not described in the Declaration or authorized by POAA.

It is strictly construed. Say what?



Meryl Streep & Alec Baldwin. 1990. Try to keep it simple, even if it's not.

Beware of the dead hand (usually a dead developer).

We do not like a Zombie controlling the living.

Limits on “the dead hand controlling from the grave.”

Courts favor the free and unrestricted use of real property. Restrictions are carefully enforced.

Covenants will be enforced if expressly stated in the Declaration.

And interpretive leeway is limited.



What does this mean for HOA boards?

Read and understand your Declaration and Covenants.

Always identify a basis in the Declaration for doing what you are trying to do. If it's not there, you cannot do it even if it feels good.

Always perform the responsibilities assigned to the HOA in the Declaration. It is impossible to delegate. Even if you hire a management company.

You are probably stuck with the Declaration. It's intentionally hard to amend.

Beware of previous boards.

Be careful about pushing a point.

Be careful of the Silver Bullet.

Virginia POAA Section 55.1-1828:

- “Any lack of [Declaration] compliance shall be grounds for an action . . .
- . . . the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment.”

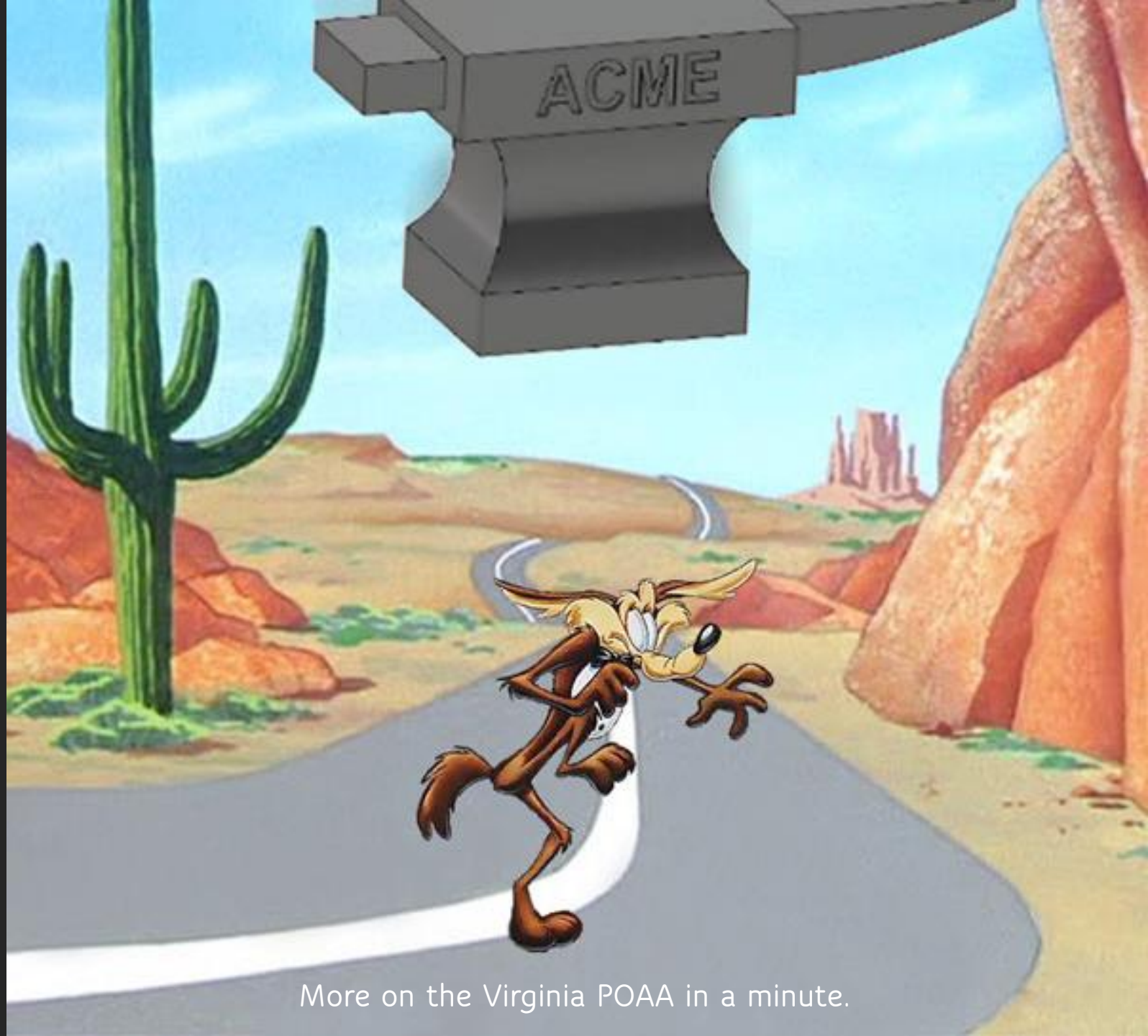
Powerful enforcement tool for HOAs.

But remember



The “prevailing party” is awarded attorney fees.

Don't be Wile E.



More on the Virginia POAA in a minute.

Uh oh, I am starting to keep too many notes.

All you need to know for now is in the handouts, but this is a good time to talk about working with your attorney.

Only hire experienced HOA counsel.

Use the resources we provide.

Annual review of operations and law update.

Include checklists and timelines.

Standardize routine operations with our help.
Doing so avoids problems.



DUNTON, SIMMONS & DUNTON, LLP

*Summary of Legal Services Packages
for Homeowners' Associations.*

Volunteer boards for homeowners/property owners' associations have a tough job that requires the right amount of legal advice from an attorney with experience representing owner's association boards of directors.

Multiple laws and record must do, cannot do or might be a other and a board of directors mu

Recognizing that associati has developed plans for fixed fee that associations need. After revi fixed fee proposal for your orgar following services:

- Service as register report.
- A legal review of g upon the attached
- Board training on l minute Power Poi covering essential Presentation will organization.



DUNTON, SIMMONS & DUNTON, LLP

HOMEOWNERS ASS
LEGAL REVIEW QUE:

The purpose of this questionnaire to help review of your association's activities. Complete, c help you.

Please return your completed questionn documents:

1. The Declaration that governs you
2. Your association's articles of i bylaws.
3. A copy of your pro forma statement, with any attachm documents listed here.
4. Your current complaint form procedure for owners and third p
5. Your current reserve study.
6. Minutes from the meeting at w budget was adopted.
8. The declarations page(s) for all issued to your association.
9. Any voting proxy used for your , any other association voting.

Also help us by answering the following que

1. Please list any of the above documents attached and indicate whether or not th



DUNTON, SIMMONS & DUNTON, LLP

HOMEOWNERS ASSOCIATION
ANNUAL CHECKLIST

The following checklist helps HOAs keep track of deadlines and satisfy all annual requirements of a common interest association and a Virginia Nonstock corporation. It is geared to your annual year, commencing with you annual meeting.

- ☐ Complete annual attorney audit of documents and operating procedures:

Deadline: _____

- ☐ Have all board members reviewed the Declaration and the Bylaws?

Deadline: _____

- ☐ On what date do your bylaws require you to hold your annual meeting?

- ☐ Review and approve procedure for recording and maintain resale certificates (these names and addresses become the basis for notice to members)

Deadline: _____

You were
saying . . .



Your Association is also a corporation.

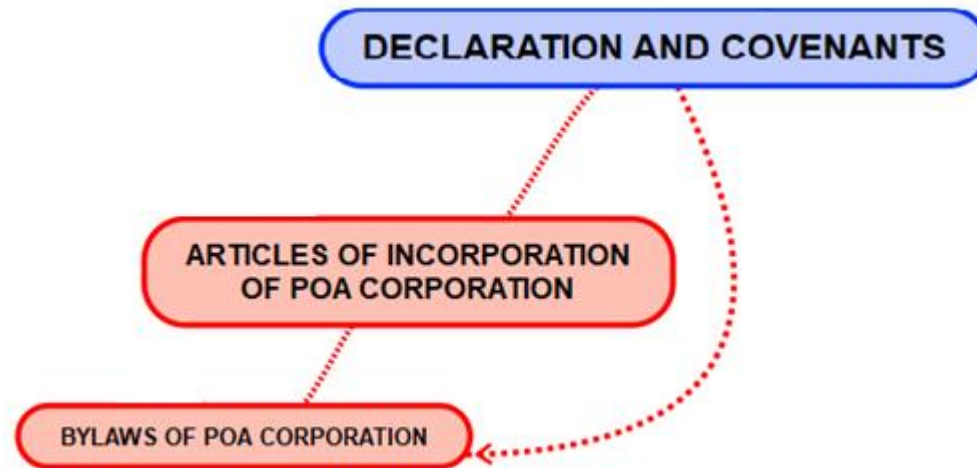
DECLARATION AND COVENANTS

Your Association is also a corporation.

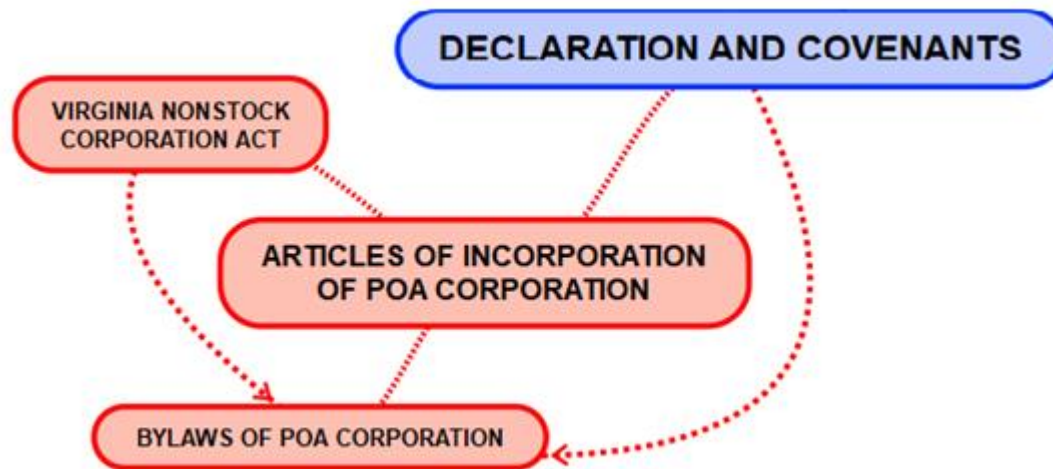
DECLARATION AND COVENANTS

**ARTICLES OF INCORPORATION
OF POA CORPORATION**

Corporations have bylaws.



Nonstock corporation gap fillers and speed limits.



Focus on the Bylaws.

Closely related to the Declaration.

Establishes the Board of Directors as the sole governing authority for the Association.

Provides for election of directors and officers.

Typically limits member voting and participation in board activities to comment periods at board meetings.

BYLAWS

OF

██████████ COMMUNITY ASSOCIATION, INC.

Article I

Name, Principal Office, and Definitions

Section 1. Name. The name of the Association shall be ██████████ Community Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association in the Commonwealth of Virginia shall be located in ██████████ County. The Association may have such other offices, either within or outside the Commonwealth of Virginia, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these Bylaws shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for ██████████ (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context requires otherwise.

Balancing the Declaration and Bylaws

The Declaration determines the authority of the HOA to act with respect to the Property.

- Recall that it is like a deed.
- Covenant enforcement.
- Assessments.
- Maintenance and repair of common elements.

Bylaws govern how the HOA acts as a Business Entity. It controls governance of the HOA.

- Elections.
- Meetings.
- Official acts.



Boca is not an option.

Some big ideas about corporations generally.

Following corporate formalities is essential.

File required annual reports.

Adopt and follow a budget.

Establish and observe record and notice dates.

Hold directors and committee meetings only after notice.

Follow your agenda

Only the board can act after directors have been elected.

More on HOA specific requirements in a moment.

Guidelines for directors.

Universal rules apply to conduct of directors.

Fiduciary relationship means faithfulness to members and to governing documents.

Duty of undivided loyalty. Avoid conflicts of interest.

Act as a board.

Support board decisions except through normal governance channels.

Business decisions are subject to the “business judgment rule.”

Preserve confidences.



Leipzig-Dresden Railway Company Directors' Meeting, 1852

But remember the light touch.

This is not General Motors.

Although directors' duties are the same.

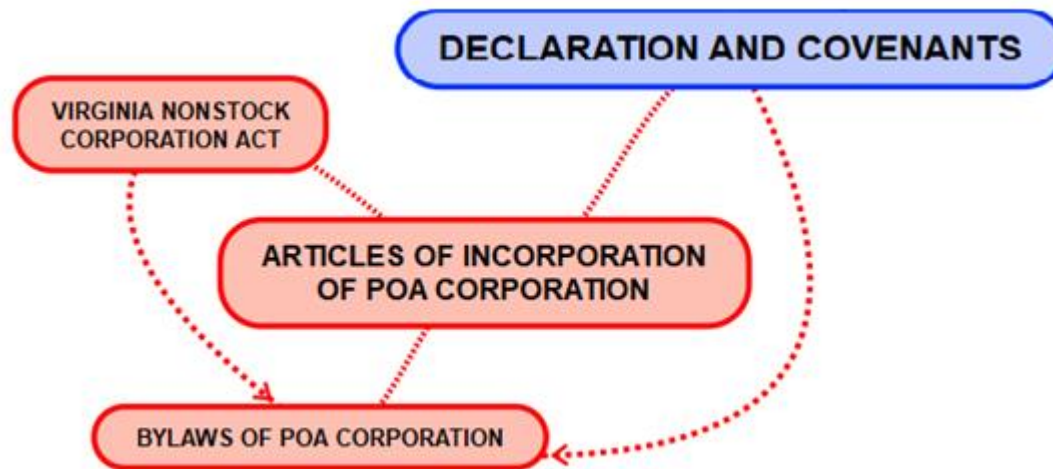
Don't be Gunny Hartman, but follow a couple of Marine Corps rules.

- *Semper Fidelis*
- "It's not what you say, it is what the other person hears."
- Use a servant's spirit in order to be faithful to your neighbors.



Lee Ermey, *Full Metal Jacket*, 1987. Don't be Lee.

Nonstock Corporation Act, briefly.



Nonstock Corporation Act, briefly.

**VIRGINIA NONSTOCK
CORPORATION ACT**

Nonstock Corporation Act Summary

183 Code Sections

Mostly gap filling and supplementation for corporate bylaws

But provides substantive law

Reading the bylaws is not enough

No time to review in detail

Highlights & Some Goodies

13.1: Corporations 10: Virginia Nonstock Corporation Act

Virginia Nonstock Corporation Act

This is Chapter 10 of the Code of Virginia, titled "Virginia Nonstock Corporation Act." It is part of Title 13.1, titled "Corporations."

1	General Provisions
2	Fees
3	Formation Of Corporations
4	Purposes And Powers
5	Name
6	Office And Agent
7	Members And Meetings
7.1	Member Or Director Agreements
8	Directors And Officers
9	Indemnification
10	Amendment Of Articles Of Incorporation And Bylaws

Highlights

Describes formalities and registration with state.

Describes how corporations act

And should not act.

Provides rules for meetings

And elections

Describes duties and responsibilities of officers and directors



Every director should know

No action without action by the board

Beware of ultra vires actions

Always act in good faith. Avoid conflicts of interest.

You are protected by the business judgment

A court can intervene

Even remove a director



A few goodies

Safe harbors for good faith reliance on other directors, committees and professionals, such as lawyers and accountants

Indemnity rights/privileges

- Make sure your bylaws make indemnification mandatory
- And requires advancement of expenses

Limitations on liability



Important Cautions

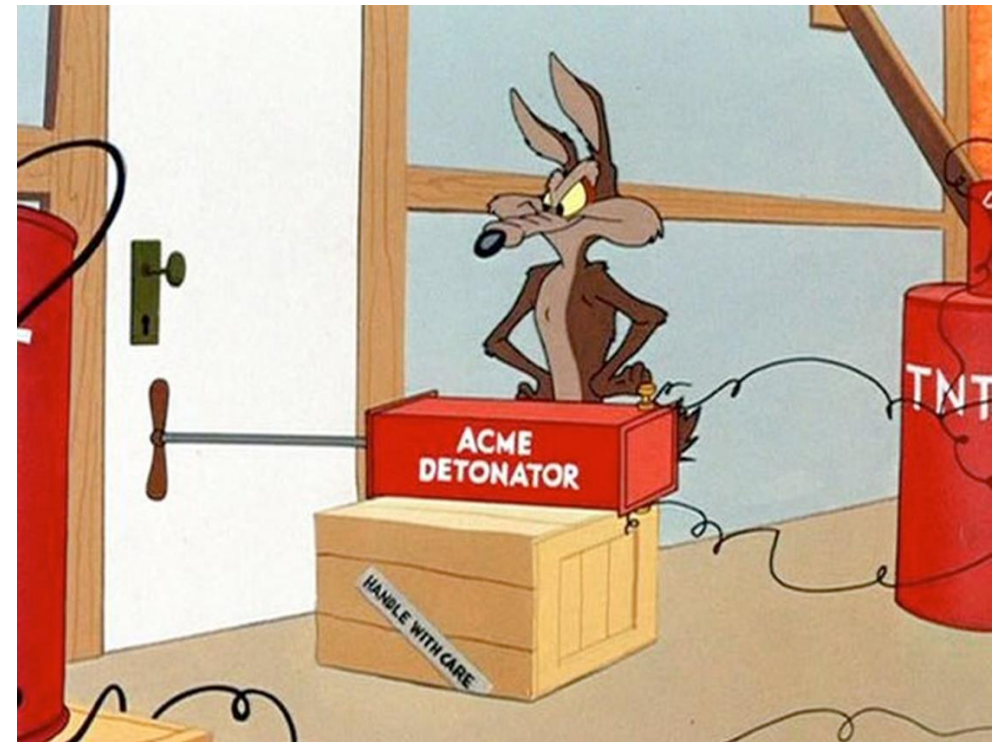
In general, no “membership votes”

Invite participation but do not let members take over directors’ meetings

Control your committees

Forget about delegation of director responsibilities

It’s not enough to read your bylaws



Don't be Wile E. Really.

“But I know my documents!”

It's not enough to read the declaration.

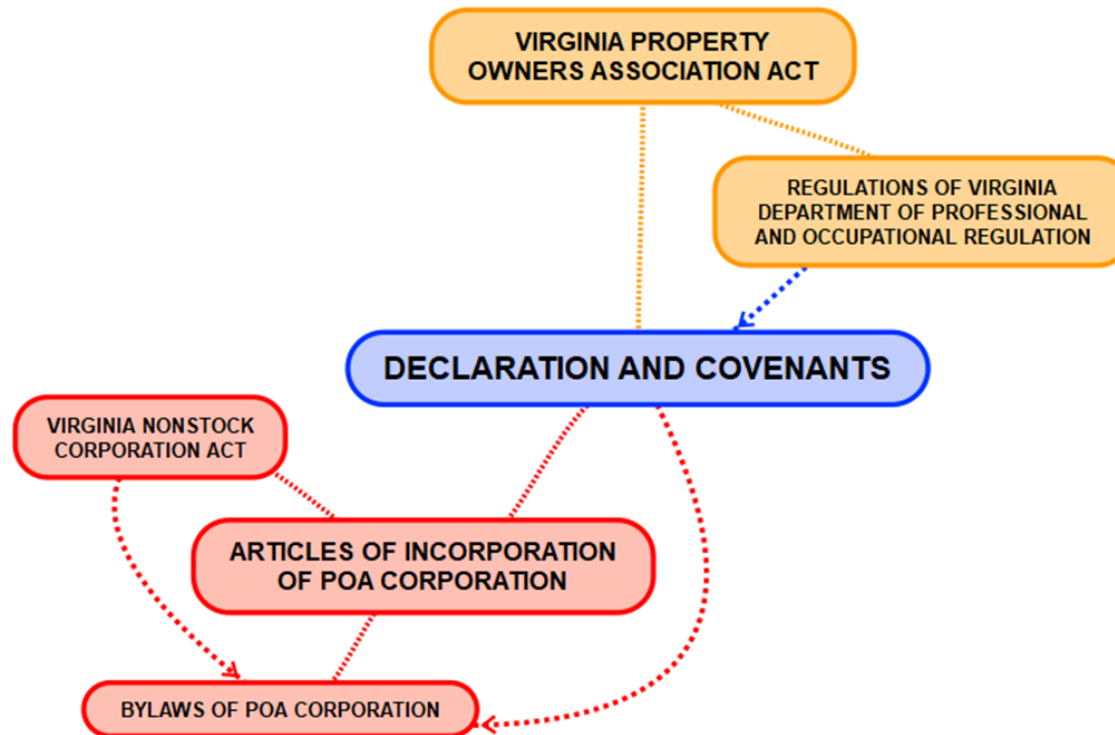
It's not enough to read the bylaws.

It's not enough to master corporate statutes.

Don't forget the Virginia POAA.



HOAs are a special type of corporation



With an additional layer of oversight



Remember our Three Big Ideas.

Associations are private taxing authorities.

Associations are private zoning authorities.

Associations can feel coercive.

A black and white photograph of James Stewart as Jefferson Smith in the movie *Mr. Smith Goes to Washington*. He is standing in a congressional hearing room, looking down at a stack of papers he is holding. In the background, many men in suits are seated at desks, and large wicker baskets filled with papers are on a table to the right. The room has high ceilings and large windows.

Legislative Protections

Passed originally in 1989

Recodified in 2019

36 Sections

Authorizes POAs as a form of ownership among other "common interest associations"

But regulates how POAs do business

James Stewart as Jefferson Smith, *Mr. Smith Goes to Washington*, 1939. Try to be Jeff or at least a Boy Ranger.

Think POAA as a speed limit

Protecting against
overbearing behavior

Financial protections for
owners and common

Accountability

Disclosure for prospective
purchasers

Transparency for owners



Think POAA as a speed limit

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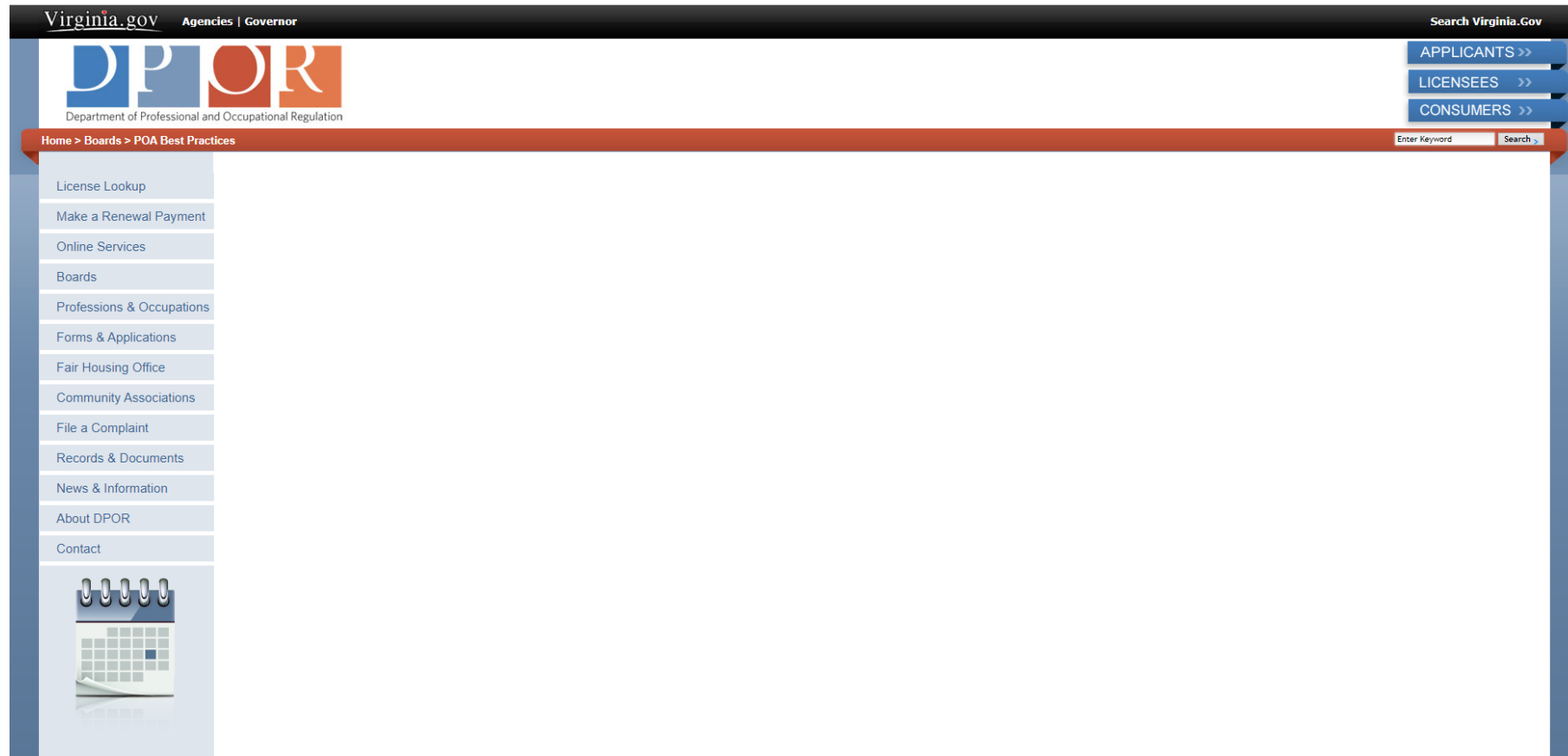


"I will let it go this time, sir, but armed robbery usually is a felony."

And, of course, the state is here to help.



And, of course, the state is here to help.



Focus on the big POAA Concepts

- Transparency
- Compliance with declaration
- Annual Budget & Reserve studies
- Limitations on HOA powers
- Disclosures
- Regulation of fees



Transparency is the most crucial

HOMEOWNERS ASSOCIATIONS

- All board meetings are open to members
- Secret meetings prohibited
- Executive sessions limited
- Members are entitled to notice of meetings
- Members entitled to copies of agendas
- Members entitled to address directors at each board meeting

OTHER CORPORATIONS

- Board meetings closed
- No similar restriction
- No similar restriction although minutes treated similarly
- No notice requirements
- No public agenda
- No comments except at annual meetings

Virginia Code Section 55.1-1816

- *“All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record.”*
- *“The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section.”*
- *“Minutes of the meetings of the board of directors shall be recorded and shall be available [to members upon request].”*

An Owner Bill of Rights

§ 55.1-1807. **Statement of lot owner rights.** Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The **right of access to all books and records** kept by or on behalf of the association according to and subject to the provisions of § [55.1-1815](#), including records of all financial transactions;
2. The right to **cast a vote on any matter requiring a vote by the association's membership** in proportion to the lot owner's ownership interest, unless the declaration provides otherwise;
3. The right to **have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting** in accordance with the provisions of subsection G of § [55.1-1815](#) and § [55.1-1816](#);
4. The right to have (i) **notice of any proceeding** conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the **opportunity to be heard and represented by counsel** at such proceeding, as provided in § [55.1-1819](#), and the right of due process in the conduct of that hearing; and
5. The right to **serve on the board of directors if duly elected** and a member in good standing of the association, unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § [55.1-1828](#).

Virginia Code Section 55.1-1816

- *“Notice of the time, date, and place of each [regular, special or emergency] meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners. [Owners may also request personal notification.]”*
- *“At least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.”*

Virginia Code Section 55.1-1816

- Meetings may be recorded by members subject to reasonable rules.
- A portion of the agenda must be reserved for comments by members.
- Meeting may be conducted remotely (former requirement of two directors being presented suspended for COVID emergency and may be eliminated).
- No secret ballots, except for election of officers.
- Remember that these rules also apply to committees and subcommittees of the board.
Misunderstood by most HOAs.

Virginia Code Section 55.1-1816

“Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period of time during a meeting to allow members an opportunity to comment on any matter relating to the association.”

- May be limited to topics at a special meeting or on a limited agenda.
- Comment not debate
- Many members believe they have a right to be heard during board discussions. They do not.
- Or to filibuster.
- Restricted to designated period

Executive sessions under Virginia Code Section 55.1-1816

- Permissible but very restricted
- Limited to:
 - Discussing personnel matters
 - Consulting with legal counsel
 - Discussing contracts, pending or probable litigation
 - Matters involving violations of the declaration or rules and regulations for which a member or his family members, tenants, guests, or other invitees are responsible
 - Discussing personal liability of members to the association

Executive sessions under Virginia Code Section 55.1-1816

- Requires affirmative vote in an open meeting. to assemble in executive session.
- The motion shall state specifically the purpose for the executive session.
- Reference to the motion and the stated purpose for the executive session shall be included in the minutes.
- Restricted to consideration of matters covered by statute and stated in the motion.
- *“No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee of the board of directors, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting.”*

What this means for your board.

Develop habits of transparency.

Communicate with members

Invite participation

Give all required notices and make agendas available

Severely limit executive sessions, following all rules for them

Allow owners to speak without taking over board meetings (it's an art)



Avoid these illegal habits

Holding “preliminary meetings” to discuss
(and often decide) agenda items

Especially with no minutes

Shoveling everything into an executive
session whether items qualify or not

Being obtuse about decisions made in
executive session

Refusing to keep and/or distribute minutes

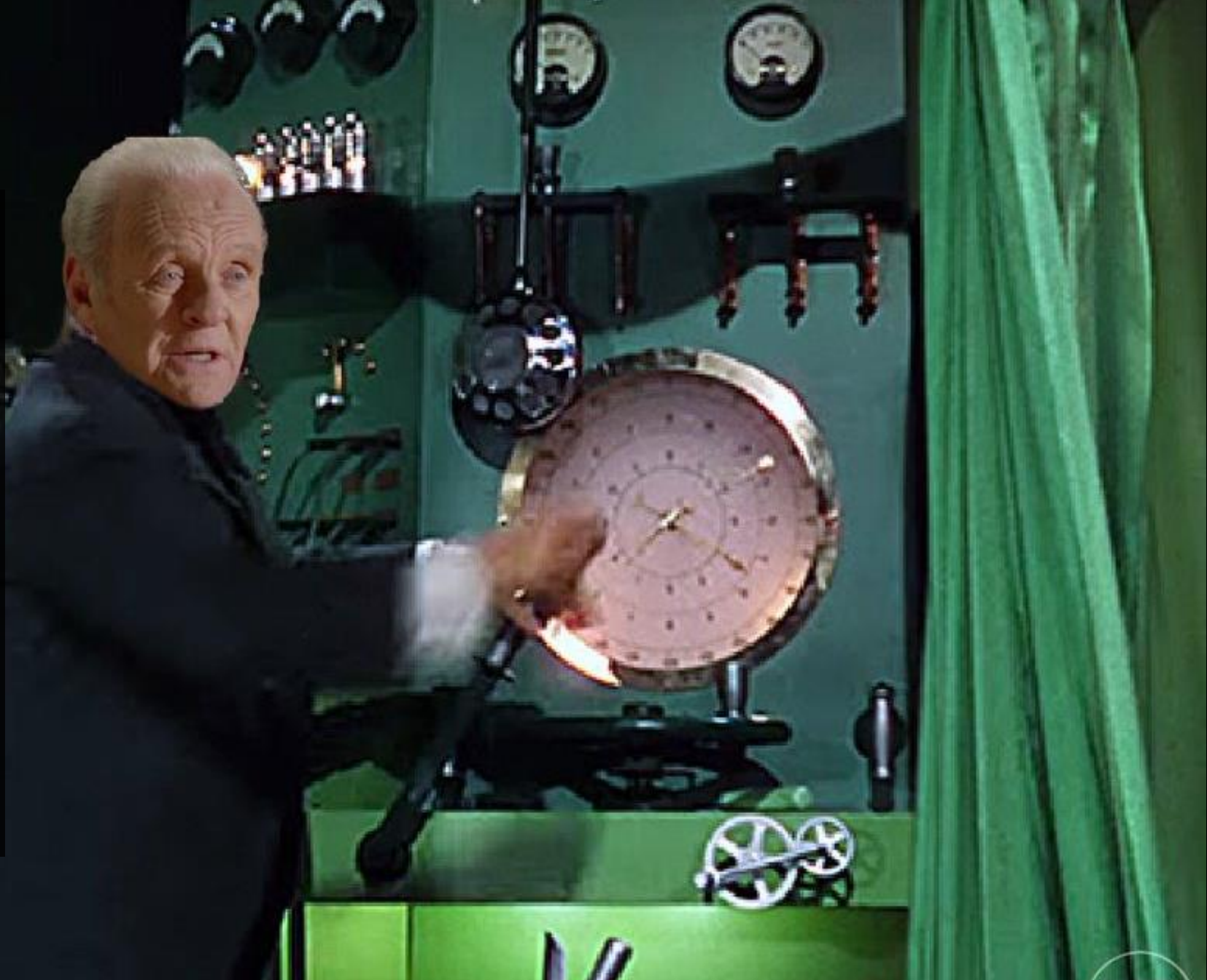


The Wizard of Oz, 1939. Frank Morgan as the Wizard behind the curtain. Don't be a Wizard.

Actual minutes from a non-client board

“The board then went into executive session to discuss several matters. Thereafter, it returned to the public session and approved the action taken in executive session.”

The Wizard would have been proud.



“Pay no attention to that man behind the curtain. I am the great and powerful Oz.”

Don't be Oz

"Upon motion of Mr. Smith, seconded by Ms. Jones, the board adjourned to executive session to consider possible sanctions against an owner for violation association rules. Following a return to the public session, the board approved imposition of a fine against the Billy Bob Thornton in the amount of \$25."



Try to be Glinda.

Billie Burke



Wife of Florenz Ziegfeld



Declaration Compliance

- Board has the authority to enforce the Declaration and Covenants.
- Affirmative responsibility to enforce Declaration
- Some discretion with respect to covenants but beware of waiver and selective enforcement.
- Lien for unpaid assessments and other charges but three-year deadline for enforcement of liens
- Foreclosure of liens is expensive.
- A simple lawsuit may be better.
- Association can be the target of a suit by owners for non-compliance. There are limitations on the type of suit.

The “prevailing party” is
awarded attorney fees.





Budgets and Reserves

Thomas Miller as Uncle Billy, *It's a Wonderful Life*. Forggodness sakes, don't be Uncle Billy.



Budgets and Reserves

And as Gerald O'Hara, *Gone With The Wind*, 1938. It's not a good idea to be Katie Scarlett O'Hara, either.

Budget Requirement

- Prior to beginning of fiscal year must provide a copy of the budget or budget summary to members.
- Annual assessment is based upon budget.
- Most difficult part of budgeting is the reserve component.



Reserve Studies

Must study and budget for replacement of capital items in the common elements.

Written study required every five years.

Board must review reserve study each year in connection with adoption of an annual budget.

Maintain reserves.

Special budgeting requirements if reserves need to be replenished.

Virginia Code Section 55.1-1826

“To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

- 1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1800;*
- 2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;*
- 3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and*
- 4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.”*

An aerial photograph of a golf course and residential area. The image shows a large green field with several holes, surrounded by trees and a few buildings. A road runs along the edge of the property, and a body of water is visible in the foreground. The overall scene is a mix of natural and developed land.

Reserve studies can be a difficult subject

The more complex and extensive your assets, the more you need professional help

DPOR model is a starting point for everyone

Budgeting reserve expenses and replenishing reserve accounts is the least understood aspect of association management

Start with DPOR guidelines

Available at:

<http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/CIC/Guidelines%20for%20the%20Development%20of%20Reserve%20Studies%20for%20Capital%20Components.pdf>

77 pages of guidance.

Checklists for what should be evaluated

Explanation of three basic approaches to estimating replacement funding

Use Full Funding Method

If you do nothing else following this program, read this document.

Steps to Provide for Adequate Reserves



Specific limitations on HOA powers

- Flag poles
- Home businesses
- Short term rentals in some cases
- Political signs unless prohibited by the declaration
- Some aspects of For Sale signs

Fees imposed by the association

§ 55.1-1805. Association charges.

Except as **expressly authorized in this chapter, in the declaration**, or otherwise provided by law, no association shall

- (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or**
- (ii) charge a fee related to [issuance of resale disclosure package]** that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § [55.1-1810](#) or [55.1-1811](#). The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § [54.1-2351](#) or (b) common interest community manager pursuant to § [54.1-2349](#), and may issue a cease and desist order pursuant to § [54.1-2352](#).

Fees imposed by the association

- The association is authorized to charge fees for certain items.
 - Requested records
 - Certificate of assessment payment.
 - Disclosure packages
 - Late fees
 - Others
- Establish fees and adopt a public schedule. It's required by law
- Note limitation on late charges for payment of assessments (5%)

Resale disclosure packets

NOT
WHAT
YOU
THINK



Resale disclosures

Extremely important and frequently misunderstood by boards.

Complicated and technical. Refer to handout.

Must be requested in writing and provided electronically or on paper within 14 days.

Must provide specific information required by statute.

Must be accompanied by a DPOR approved form.

Adverse consequences if disclosure is late or incorrect.

- Potential damages and fines.
- Surrender of association rights.

Resale disclosures

Virginia Code Section 55.1-1810

“Failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot.”

“The preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000.”

Resale disclosures

Best Practices

- Refer to handout and take this responsibility seriously.
- Designate one board member as a lead person.
- Review package yearly.
- Work with an attorney.
- Beware of outsourcing by management companies.
- Never provide more information than requested.
- NEVER TALK TO A PROSPECTIVE PURCHASER OR EXPRESS OPINIONS ABOUT DISCLOSURE CONTENTS.

Resale disclosures

Best Practices

- Boards frequently do not understand their responsibility to maintain a current and accurate register of owners.
- Adopt and use a transmittal letter to make sure that charges are collected at settlement.
- Include a request for the name, address, telephone number and email for each new owner.
- Include a form for the new owners to complete consenting to receive official notices from the association via email and designating the appropriate email.
- Statutory mandate for modernization of association communication practices.
- Designate a board member (probably the secretary) to maintain this information. You will need it for annual meetings.

Record Inspection

- Begin with creating and maintaining records.
- Continuity of records is a frequent problem with older associations.
- Maintain a minute book.
- And a central repository of all corporate records.
- Keep notices and minutes
- For annual meetings, board meetings and all committees & subcommittees.
- Keep separate minutes for executive sessions.

Record Inspection

- A right of members under both POAA and Nonstock Corporation Act.
- Broader right under POAA.
- No time limits on membership.
- Must be for proper purpose related to membership.
- Private records of owners protected from disclosure.
- Proper confidential matters protected from disclosure.

Complaint procedure

Everyone needs one

Procedure must be in writing

Written form

With required elements

Specified by statute

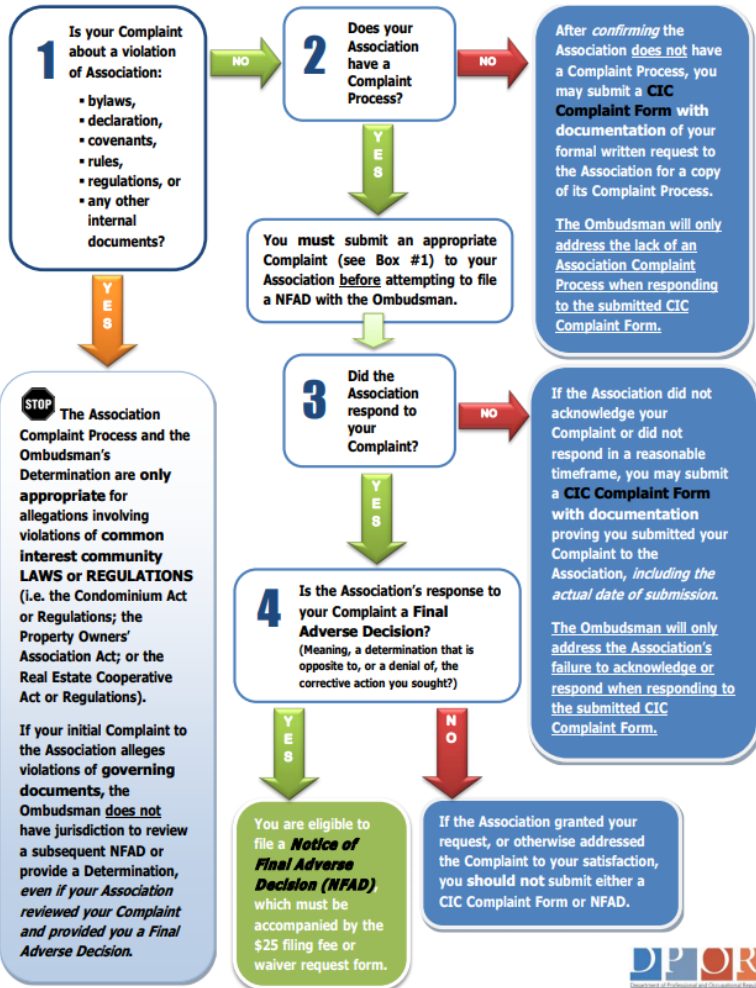
Best restricted to alleged violation of POAA and regulations.

Appeal to CIC Ombudsman

Chapter 70. Common Interest Community Ombudsman Regulations

[Read Chapter >](#)

Section 10	Definitions
Section 20	Submission of documentation
Section 30	Requirement for association to develop an association complaint procedure
Section 40	Establishment and adoption of written association complaint procedure
Section 50	Association complaint procedure requirements
Section 60	Distribution of association complaint procedure
Section 70	Maintenance of association record of complaint
Section 80	Failure of association to establish and utilize association complaint procedure
Section 90	Filing of notice of final adverse decision
Section 100	Waiver of filing fee
Section 110	Review of final adverse decision
Section 120	Decision from the notice of final adverse decision
Section 125	Referral for further action
Section 130	Purpose, responsibilities, and limitations
FORMS	FORMS (18VAC48-70)



Insurance

Part of your fiduciary responsibilities

Investigate and understand coverages

Develop a good relationship with an insurance professional

Review annually

Remember to update disclosure packet

Some coverages required



Insurance

REQUIRED

Fidelity bond or employee dishonesty policy

FDIC insured accounts (technically applies only to “managing agents”), but reasonable person standard almost certainly requires for all funds collected by the association

Remember FDIC limits (currently \$250,000 *per bank*)

RECOMMENDED

Property coverage on common elements

Premises liability

Comprehensive general liability

D&O versus E&O. There is a difference.

You want D&O coverage

FDIC insured accounts (remember limits)

FREE AND EFFECTIVE MEMBER COMMUNICATION

A requirement almost everyone forgets.

§ 55.1-1817. DISTRIBUTION OF INFORMATION BY MEMBERS.

The board of directors shall establish a **reasonable, effective, and free method**, appropriate to the size and nature of the association, **for lot owners to communicate among themselves and with the board of** directors regarding any matter concerning the association.

2001, c. [715](#), § 55-510.2; 2019, c. [712](#).

It's as easy as a Facebook page.

- Many boards are reluctant to provide a method for abusers to complain.
- Most of them will use email anyway.
- Better approach is to control the problem.
- Is it okay to moderate?
- Establish rules of conduct and announce consequences.



Alternatives

- Probably cannot do this.
- Bulletin boards.
- Email groups.
- Website with chat feature.
- Facebook seems easiest but make sure that the board controls hosting. Probably worth a rule.
- This can help. Don't fight it even if you could.



Working with your lawyer

Take advantage of forms and
checklists.

Standardize procedures

Train your board

Understand essential concepts so
that you can spot issues.

Don't reinvent the wheel

Working with your lawyer

Look before you leap

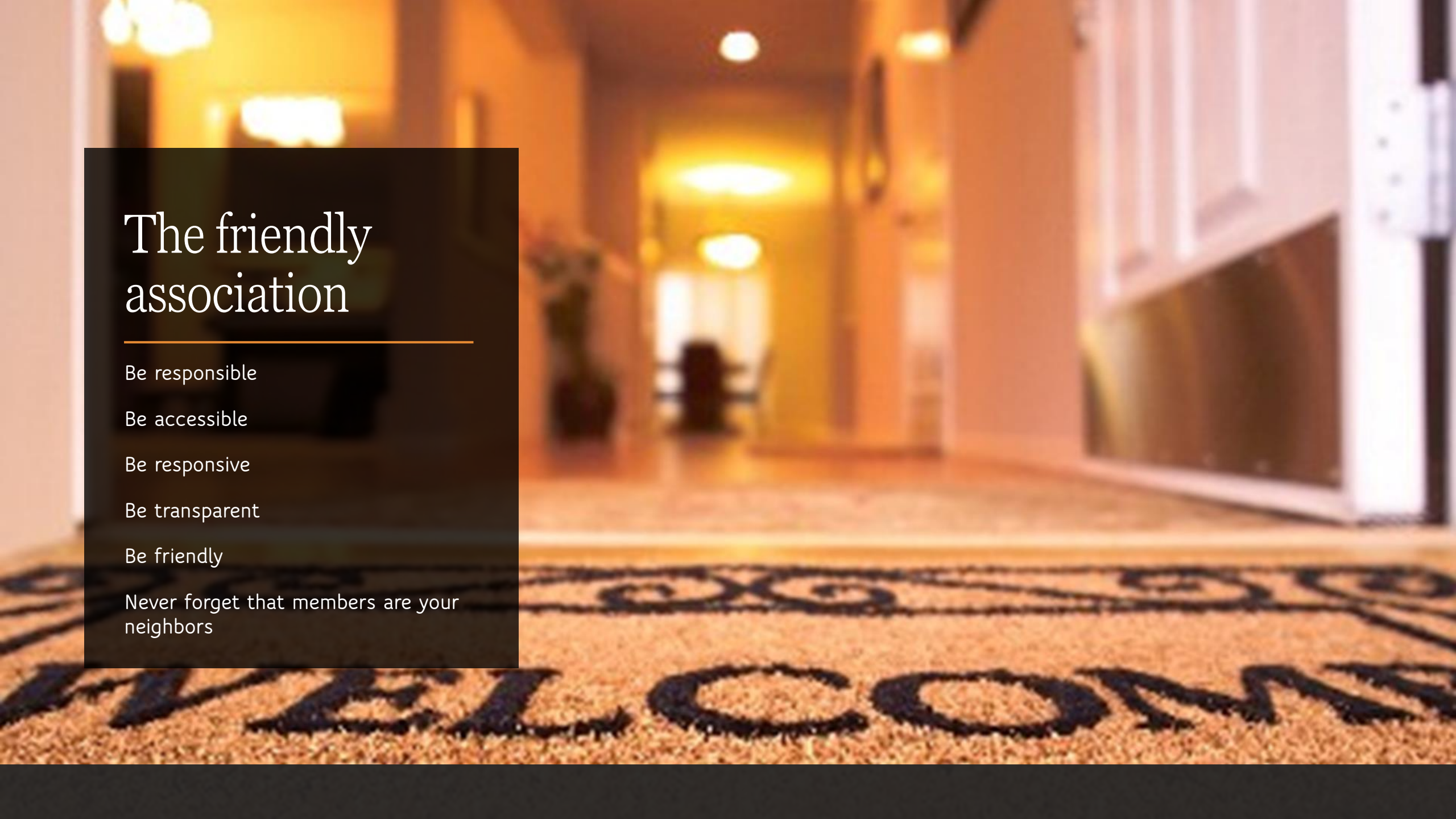
Ask before you leap

Don't be afraid to lead

Hire a doctor, don't build a hospital



Gregory Peck, To Kill a Mockingbird, 1962. Help me be Atticus



The friendly association

Be responsible

Be accessible

Be responsive

Be transparent

Be friendly

Never forget that members are your neighbors

Remember your mother

Always treat members the way
you would expect to be treated



Questions?

