What You Need to Know about Property Owners Association Disclosure Packets

Presented by the LeClairRyan Community Associations Industry Team
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Welcome. With the high number of attendees, please note all lines have been muted for the event. Q&A can be posted at the right of your screen, but any questions (time permitting) will be addressed at the end of the event. If using Q&A – please send to both the host and the presenter. You can send direct questions (including requests for a copy of the slides) to seminars@leclairryan.com with “Community Associations Webinar” in the subject line after the event.
A Disclosure Packet is an assemblage of information and documents about the lot for sale and the development in which it is located, including rules, restrictions, and conditions governing the development, including any association fees that must be paid by an owner of a lot in the development.
Who Needs to Know?

- Property Owners Associations
- POA Managers
- Sellers
- Purchasers
- Real Estate Agents
- Closing Agents
- Attorneys drafting purchase/sale agreements
WHY provide Disclosure Packets?

The Law in Virginia

- Disclosure packets are required and governed by the Property Owners’ Association Act (Va. Code §§ 55-508 ff.)
- Rules governing condominiums, including disclosure requirements, are found within the Condominium Act (Va. Code §§ 55-79.39 ff.)
WHEN does the POA Act apply?

The POA Act applies only to

- “Developments”
- Subject to a “declaration” (initially recorded after January 1, 1959) and
- Subdivisions created under the former Subdivided Land Sales Act, which is superseded by the POA Act
“Development”

- Lots
- Some of which are residential or recreational
- Common Area
- Automatic membership in Association
- Obligation of members to pay assessments
“Declaration”

- Imposes responsibility on the Association to maintain or operate common area and/or
- Gives the association authority to impose on lots or their owners a mandatory obligation to pay money in connection with such responsibilities

Must do BOTH to be a development as defined by the POA Act.
Exceptions

Even if a lot is subject to the POA Act, a Disclosure Packet is not required in the case of:

- Gift
- Transfer pursuant to court order
- Foreclosure or deed in lieu of foreclosure
- Transfer to person/entity not acquiring the lot for his own residence (e.g. builder)
Sellers are required to disclose in their sales contracts that

- The property is located within a development subject to the POA Act
- The Act requires the seller to obtain from the POA a Disclosure Packet and provide it to the purchaser
- The purchaser may cancel the contract within 3 days after receiving the Disclosure Packet or being notified that it is “not available”
- If the purchaser has received the Disclosure Packet, he has the right to request an update
- The right to receive the Disclosure Packet and the right to cancel the contract are waived conclusively if not exercised before settlement.
“Not available” means

- A current annual report has not been filed by the Association with either the SCC or the CICB; or
- Seller has requested in writing that the packet be provided and it is not received within 14 days; or
- The Association has provided written notice that the Disclosure Packet is not available.

Note:
If the transfer is to a builder or other purchaser not acquiring the property for his own residence, the contract should so state, and the seller can rely on such statement unless the purchaser specifically requests a Disclosure Packet.
Effects of Not Providing Disclosure Packet

- If an Association has been requested in writing to furnish a Disclosure Packet and fails to do so
  - it effectively waives its claim as to any delinquent assessments or violations of POA documents up to that point; and
  - it will be liable to the seller for actual damages sustained up to $1,000 in the case of a POA managed by a CIC Manager and up to $500 if self-managed.
- Contract purchaser cancellation
Purchaser’s Right to Cancel

- Within 3 days of receiving the packet or notice that it’s not available if it’s hand-delivered or delivered by email;
- Within 6 days after the postmark date if sent by U.S. Mail; or
- Any time prior to closing if purchaser has neither received a Disclosure Packet nor been notified that it’s not available.
Written Request to Association

- Property address/lot number
- Disclosure being requested (e.g. Disclosure Packet, financial update, inspection update)
- Method of requested delivery
- Contact information for each recipient
- Contact information for seller’s agent and settlement agent (not required but important!)
Content of Disclosure Packet

- Name of POA, state of incorporation, registered agent name/address
- [Approved special assessments for current and following year, any post-closing fee charged by the manager]
- [Statement of all current assessments/fees regarding use/maintenance of lot and common areas and status of account]
- Any other entity/facility to which owner may owe fees/charges
- [Current reserve report or summary, status/amount of replacement fund, any portion allocated for specific project(s)]
Contents of Disclosure Packet (cont.)

- Budget or summary, income/expenses statement or balance sheet for last fiscal year, statement of balance due of outstanding loans
- Nature/status of pending lawsuits, unpaid judgments (with material impact on association or members or relating to lot being purchased)
- Insurance coverage provided for lot owners, including fidelity bond maintained by association; insurance typically secured by individual owners
- [Whether any improvements or uses of lot are in violation of POA documents]
- Restrictions on placing for-sale signs
- Restrictions on flag display
Contents of Disclosure Packet (cont.)

- Copies of Association Documents
  - Declaration
  - Articles of Incorporation
  - Bylaws
  - Rule and Regulations (if adopted)
  - Architectural guidelines (if adopted)
- Approved minutes of BOD and Association for previous 6 months
- Copy of any notices given to the lot owner for any current or pending rule or architectural violation
- One-page cover sheet designed by the CICB
- [Certification that the POA has filed its annual report, the filing number, and the expiration date of the filing]

**Note:**
The items in brackets need not be included in the case of the initial sale of a lot by the Declarant, (unless, as to the annual report, the association has filed an annual report prior to the disclosure packet date).
# Fees for Disclosure Packets –

**Associations Managed by Professional Common Interest Community Managers**

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Fee</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inspection of the lot and dwelling required to complete Disclosure Packet</td>
<td>$100.00</td>
<td>Seller</td>
</tr>
<tr>
<td>Preparation/delivery of Disclosure Packet – paper (up to 2 copies)</td>
<td>$150.00</td>
<td>Seller</td>
</tr>
<tr>
<td>Additional paper copies of Disclosure packet for recipient other than seller, purchaser, or settlement agent</td>
<td>$25.00</td>
<td>Seller</td>
</tr>
<tr>
<td>Preparation/delivery of Disclosure Packet – electronic (sent to up to up to 2 recipients)</td>
<td>$125.00</td>
<td>Seller</td>
</tr>
<tr>
<td>Additional expedite charge for inspection, preparation and delivery within 5 business days of request</td>
<td>$50.00</td>
<td>Seller</td>
</tr>
</tbody>
</table>
## Fees for Disclosure Packets –
Associations Managed by Professional Common Interest Community Managers (Continued)

<table>
<thead>
<tr>
<th>Description</th>
<th>Actual charges</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third party commercial delivery service</td>
<td>Actual charges</td>
<td>Seller</td>
</tr>
<tr>
<td>Post-closing fee to establish purchaser as owner of the property in the association’s records</td>
<td>$50.00</td>
<td>Purchaser</td>
</tr>
<tr>
<td>Update of a Disclosure Packet that has been issued within the previous 12 months (should be delivered within 10 days)</td>
<td>$50.00</td>
<td>Requestor</td>
</tr>
<tr>
<td>Financial update requested by settlement agent (should be delivered within 3 days)</td>
<td>$50.00</td>
<td>Requestor (Seller or Purchaser)</td>
</tr>
<tr>
<td>Additional inspection of unit at the option of the purchaser</td>
<td>$100.00</td>
<td>Requestor</td>
</tr>
</tbody>
</table>
### Fees for Disclosure Packets –
**Self-Managed Associations**

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Fee</th>
<th>Requestor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparation and delivery of Disclosure Packet</td>
<td>Actual cost not to exceed $.10 per copied page or $100 total</td>
<td>Seller</td>
</tr>
<tr>
<td>Update of a Disclosure Packet that has been issued w/in past 12 mos. – deliver within 10 days</td>
<td>$50.00</td>
<td>Requestor (Seller or Purchaser)</td>
</tr>
<tr>
<td>Financial update requested by settlement agent - deliver within 3 days</td>
<td>$50.00</td>
<td>Requestor (Seller or Purchaser)</td>
</tr>
<tr>
<td>Additional inspection of unit at option of purchaser</td>
<td>$50.00</td>
<td>Requestor</td>
</tr>
</tbody>
</table>
More about Fees

- If a property is subject to more than one declaration, the POA or manager may charge the applicable fees for each association, but an association may not charge inspection fees unless it has architectural control over the lot/unit.

- All fees are due at the earlier of settlement or 90 days of delivery of the Disclosure Packet (but see recent legislation for changes to take effect July 1st).
Fees: Paid at Settlement

- No charges are payable at the time of the request.
- All charges not paid, regardless of who is responsible for them, become personal obligations of the unit owner and a lien against the lot and are treated like unpaid assessments. This is true even if a Disclosure Packet is not required, as in the case of foreclosure, and the purchaser never receives it!
- **Sellers/Purchasers/Real Estate Agents**: make sure that the settlement agent is notified of all POA Disclosure Packet fees before closing.
- **Settlement Agents**: request fee and disbursement information and include Disclosure Packet fees on the settlement statement; after closing, provide packet preparer with name of seller, address of lot, name of purchaser, date of settlement, and application of funds.
Watch for final language of House Bill 702, passed by both houses, to take effect July 1, 2010, which provides that, for self-managed associations, all disclosure packet fees shall be collected at the time of delivery of the packet, shall be an assessment against the lot, and collectible like any other assessment.
Condominium Associations and the Public Offering Statement

- Unless within a POA, a condominium is not subject to the POA Act or the Disclosure Packet requirement
- Condominium Act is all about disclosure: Public Offering Statement (POS)
- Contract non-binding until condominium is registered. The registration date is the date of the “current” POS, until amended.
The POS must contain the statement that the prospective purchaser may cancel the purchase agreement within 10 days of delivery of the POS or the date of the purchase agreement, whichever is later.

Prior to closing, if POS is materially changed, the date of the “current” POS changes with the CICB, and all contract purchasers must receive the updated, “current” POS.

If POS is materially amended in a way that affects a purchaser’s bargain adversely, the possibility of which the purchaser was not forewarned in the POS, then the purchaser receives another 10-day right of rescission.
18 VAC 48-20-660 defines **material change** as “a change which renders inaccurate, incomplete or misleading, any information or document disclosed in or attached to a public offering statement ...” including (but not limited to) whenever information or a document required to be disclosed but not previously disclosed becomes available, or a new budget is adopted.
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