

Notes taken by Penny Hillman at  
POAVA Seminar ([www.poava.org](http://www.poava.org)) Dec. 8, 2007  
At Lake Monticello Owners Association, Palmyra, VA  
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The VPOAA....

- 1) Covers associations that were recorded in land records after 1/1/1959
- 2) Establishes boundaries of associations – who is subject? what are common areas and boundaries?
- 3) Obligation to maintain common area
- 4) Governing body is established in document to enforce that document.
- 5) POA disclosure act 1989

Associations are created at the local level and there is no blueprint for creating an association. They flourish mainly because state and local governments do not want to assume responsibility for construction and maintenance of roads.

All associations must register with the VA Community Liaison Office and the State Board of Realtors. They must have a point of contact for each association. An Association is a business and must be run as one.

### **Disclosure Packet –**

The Disclosure packet is the seller's obligation to provide to the buyer. The seller of a property must contact the POA and request the packet in writing and with a check for the amount required. POA has 14 calendar days to comply with request after receipt of both items. POA may collect an additional \$25 rush fee if they are asked to provide the packet within 3 business days.

If the POA is not registered noted above, the packet may be deemed to be unavailable thus triggering the 3 day cancellation option of the purchase contract.

The term "laches" refers to a POA that has been deemed to have sat on its rights too long and therefore cannot enforce covenants, lot violations, etc. However, clock can start again at sale of property if Disclosure Packet contains notice of violations. This would serve as notice to new owner that items must be corrected.

POA can charge up to 10 cents/page for disclosure packet not to exceed \$100. Before issuing Disclosure Packet, Board must do an inspection of the lot to note any possible violations which must be included in the Packet. **IMPORTANT:** Each Disclosure Packet is SITE SPECIFIC. Need to keep a folder for each lot so as to pull all information when needed for Disclosure Packet. Disclosure packets do not expire. Packet might become outdated if violations have occurred since it was issued.

The POA Treasurer should receive the requests for a Disclosure Packet as they will be receiving payment for the Packet. They can pass the task of assembling the packet on to someone else, but it is best to keep the Treasurer as the point of contact.

### **VA Nonstock Corporation Act –**

The Registered Agent for the corporation must be an officer or an attorney who has a physical address (not PO) that can receive service during regular business hours (not vacation or part-

time residence).

### **VA Property Owners Association Act –**

To be a legal POA in the Commonwealth of Virginia, an association must meet three requirements..

- 1) Mandatory Membership
- 2) Maintenance of Common Ground
- 3) Ability to collect assessments

Dogwood POA vs Winkleman; Dogwood foreclosed on Winkleman for failure to pay assessment. Winkleman took them to court based on the premises that they did not meet all 3 requirements of a POA, and thus did not have the authority to foreclose. Case went to VA Supreme Court who found in favor of Winkleman.

### **Hiring a Contractor –**

Only use license contractor to perform association work. Use DPOR license lookup to be sure your contractor is licensed in VA. (<http://www.dpor.virginia.gov/regulantlookup/>)

### **Reserve Fund Study –**

Must be included in Disclosure Packet. Board is required to review Reserve Study each year and make necessary adjustments to maintain the reserves.

- 1 Take inventory of what association is responsible for – EVERYTHING!
- 2) Keep and review maintenance records
- 3) How long will item last, what is remaining lifespan?
- 4) Determine replacement cost

Methods of funding include, Full Funding, Baseline Funding, Threshold funding. Full funding is recommended.

### **You are running a business -**

You have to continue to take care of your business at all times. It is not a club. BOD is responsible for homes and property value of others.

### **POA assessment court case -**

Pond vs Bryant. Pond owned lots 16 and 17 and wanted to build on both. County allowed Pond to combine both lots into one lot, no 16A. Pond went to POA and petitioned to have assessment reduced to one. Board approved it, however, the next BOD reversed the previous Board's decision. Pond took POA to court and lost – property reverted back to original two assessments.

### **POA easement court case -**

Involved 20' access to beach at Chincoteague. Hunt (owner) refinanced and found that a 20' strip of land they had been maintaining as their property and had also been maintained by prior owners what in fact an access easement to the beach for the use of the membership of the Oyster Bay Community POA. Hunts wanted to get easement from BOD to continue use of property they'd maintained as a garden (permissive use). BOD refused. Hunts filed adverse

possession claim and won. 20' strip of land now belongs to the Hunts.

**Records –**

Maintenance and continuity of records is of prime importance. Need duplicates; a file set and a working set. Should have more than one set of documents in one place.

**New VA POAA law as of July 1, 2007-**

- 1) review flag restrictions
- 2) blanket fidelity bond, employee dishonest policy
- 3) include association outstanding loans, line of credit, or no loans in disclosure packet to seller.

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CNPOA members in attendance at the seminar were Charles May, Penny Hillman, Tom and Karen Israel, Dick Wertz, Paul Zeissett

***Disclaimer:** These are my personal notes from the seminar. This should not be considered a complete or authoritative document.*