



# **BEST PRACTICES FOR THE CONTENT OF PROPERTY OWNERS' ASSOCIATIONS' DECLARATIONS**

**ADOPTED BY THE  
COMMON INTEREST COMMUNITY BOARD  
DECEMBER 10, 2015**

## INTRODUCTION

Chapter 268 of the 2015 Virginia Acts of Assembly, which resulted from the passage of House Bill 1632, amended § 54.1-2349 of the Code of Virginia. This amendment required the Common Interest Community Board (Board) to “develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners’ Association Act (§ 55.1-1800 et seq.).” A development governed by a property owners’ association (association) must comply with the Property Owners’ Association Act (Chapter 18 of Title 55.1 of the Code of Virginia).

The association is created to carry out three functions: (1) the business of running a community; (2) maintenance and management of the common area; and (3) governance of the community and ensuring compliance with the governing documents. Community associations not only provide services to owners, but also encourage a sense of community.

The form of governance, nature and scope of services as well as limitations on property use are addressed in the association documents. While the purpose of this document is to offer guidance on best practices for the content of declarations for property owners’ associations, a summary of the typical association documents provides helpful context.

- **Declaration**, also commonly referred to as Covenants, Conditions, and Restrictions or CC&Rs
  - Establishes property rights binding on members and residents
  - Establishes assessment obligations and voting rights
  - Establishes easements
  - Reserves and establishes rights and obligations of the declarant, association, and members
  - Provide operational details, including authority to adopt and ensure compliance with rules and regulations
- **Articles of Incorporation** (if the association is incorporated)
  - Are usually brief, containing basic information – name, location, and purpose of the association
  - Establish the executive board membership
  - Comply with the applicable provisions of the Virginia Nonstock Corporation Act
  - Establish the association upon being filed with the State Corporation Commission
- **Bylaws**
  - Address administrative details and functions
  - Describe governance processes for association meetings, executive board and committees as well as executive board authority and duties



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- Establish procedures for voting
- May also address association governance, operation procedures, budgeting, insurance, reconstruction, amendments, and dispute resolution
  
- **Rules and Regulations**
  - May be contained in the declaration, or the executive board may adopt separate rules and regulations, based on declaration authority
  - Usually more specific than those contained in declaration
  - Cannot conflict with state or federal law or the declaration
  
- **Resolutions**
  - Adopted by executive board or where appropriate, association members
  - Must be based on authority from declaration, other association documents, or statute
  - Establish practices and procedures for implementation of association policy

## **BEST PRACTICES FOR THE CONTENT OF PROPERTY OWNERS' ASSOCIATIONS' DECLARATIONS**

### **I. OVERVIEW**

The format and content of association declarations are as varied and distinct as the associations or communities for which the declarations are drafted. Thus the format, style, articles, sections, and the like, may not be present in the declarations for all associations – or may be presented differently. The presence or absence of a particular topic, article, or section is not an indicator of the accuracy or completeness of a declaration.

These best practices offer an overview and are intended to provide a summary of matters that should be considered for inclusion in a declaration. This document **is not** a model declaration, nor is it intended to replace legal advice provided by an attorney or specific provisions contained in the Code of Virginia.

There may be guidance in this document that is not applicable to all communities, and, conversely, this document may not address all matters that should be addressed in a declaration due to the differences in the associations and communities. For this reason, guidance offered should be carefully considered. The Board is responsible for developing best practices but **neither the Board nor Department staff can give guidance or advice** on information that must be included in a declaration for a particular community.

If any guidance in this document contradicts or conflicts with any provision of the Property Owners' Association Act (POAA) or any other legal authority – statutory or case law - the law prevails.

### **II. CONTENT OF DECLARATIONS**

#### **A. Table of Contents**

For ease in navigating the declaration, a table of contents may be included. The table of contents enumerates the specific article number, section heading, and the appropriate page number, and may include specific section references after each article.

Following is an example of a table of contents for a declaration utilizing article references (but no sections for the purposes of this document). While the article headings below will be used throughout the **Best Practices for the Content of POA Declarations** document, some of the articles may not be applicable to all associations or communities, or may be referenced



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differently in some association declarations.

Article 1: DEFINITIONS.....[3](#)

Article 2: PROPERTY RIGHTS AND COMMON AREA.....[3](#)

Article 3: MEMBERSHIP AND VOTING RIGHTS .....[3](#)

Article 4: ASSESSMENTS AND COMMON EXPENSES .....[4](#)

Article 5: COVENANT AND RULE ENFORCEMENT (COMPLIANCE) .....[4](#)

Article 6: ARCHITECTURAL CONTROL.....[5](#)

Article 7: RESTRICTIONS ON USE .....[5](#)

Article 8: MAINTENANCE AND OPERATION OF THE PROPERTY .....[6](#)

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**B. Recitals**

The first page of most declarations includes recitals. The recitals 1) establish the purpose for creating the association and imposing covenants and restrictions on the property, 2) describe the real property which is subject to the declaration, and 3) may include a general statement of the declarant’s plan for developing the property.

**C. Exhibits**

Exhibits, if any, may be attached to the declaration. The exhibits may include

but are not limited to a description of the property subject to the declaration and land that may be subjected to the declaration later. A plat showing the property may also be attached as an exhibit.

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## Article 1: Definitions

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This section defines terms used in the declaration to give clarity to the content of the declaration. In addition, certain sections may contain definitions used only in those sections. Substantive provisions should not be included in the definitions. There may also be a general reference to definitions in § 55.1-1800 of the POAA. Well-defined terms are helpful in drafting and interpreting a declaration. Among other terms, declarations define qualifications for members, which may include owners and others who are authorized.

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## Article 2: Property Rights and Common Area

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This section describes association and member property rights in the common area and lots. Consideration should be given to the following:

- Description of the property – defining lots and common area as well as limited or reserved common area, if applicable
- Property rights and common area features
- Authority to adopt rules and regulations – limiting or restricting member use of common area as well as activity on lots
- Description of property rights in the common area
- Authority to impose limitations on use and availability of the common area
- Authority to enforce rules on common area and lots
- Extent to which rights may be delegated to others (e.g., family, tenants, guests, invitees)
- Eminent domain
- Responsibility for damage to common area
- Authority to sell, dedicate, and mortgage, and grant licenses and easements with respect to common area

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## Article 3: Membership and Voting Rights

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Details regarding membership and voting rights are often contained in the association bylaws. However, the bylaws must reflect and be consistent with membership rights and obligations established in the declaration and any articles of incorporation. Consideration should be given to the following:

- Membership qualifications
- Categories or types of membership
- Termination of membership
- Allocation of voting rights, including declarant voting rights

- Limitations on the exercise of voting rights
- Transition of control from declarant

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## **Article 4: Assessments and Common Expenses**

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The declaration authorizes the association to assess and collect mandatory fees (assessments) necessary to fund association operation, administration and governance. Assessments are typically used for maintenance of common area and lots (if applicable) and for services that may benefit some or all of the lots, members, occupants, or common area. Consideration should be given to the following:

- Authority to make assessments and establish payment terms
- Purpose and types of assessments that may be levied (annual or regular, special, individual, maintenance)
- Allocation of expenses related to maintenance, repair, and replacement
- Creation of lien and personal obligation to pay assessments
- Procedures for adoption of the association budget
- Authority to allow installment payments
- Establishment, maintenance, and use of reserve funds
- The manner in which assessments are allocated and calculated
- Method for applying payments
- Description or identification of property exempt from paying assessments
- Any other funds to be collected at closing (e.g., initial capital contribution, reserve funding, amenity fee)

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## **Article 5: Covenant and Rule Enforcement (Compliance)**

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This section addresses association authority to ensure compliance with the covenants and rules and regulations affecting use of lots and common area. Consideration should be given to the following:

- Authority to require compliance with covenants and rules and regulations
- Responsibility of members and occupants to comply with the association documents
- Authority and process for development and adoption of rules and regulations
- Assessments for damage to common area and lots
- Authority to impose monetary charges to encourage compliance, late charges, interest on unpaid amounts due, administrative fees, attorney's fees, and other costs incurred due to non-compliance
- Authority of association to take action to remedy violations
- Suspension of use and voting rights for non-payment or non-compliance
- Authority of individual members to enforce the association documents
- Reference to the association complaint procedure required by § 54.1-2354.4 of the Code of Virginia and 18VAC48-70 of the Virginia Administrative Code
- Due process procedures in accordance with § 55.1-1819 of the POAA



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## Article 6: Architectural Control

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This section addresses the framework authorizing the association to establish and enforce architectural standards, restrictions, and limitations. Consideration should be given to the following:

- Authority to adopt architectural guidelines imposing standards and limitations on improvements or alterations to a lot and improvements on the lot
- Creation, jurisdiction, and scope of architectural review committee, however designated and if applicable
- Method for adopting and amending architectural guidelines
- Process for review and approval of improvements or alterations, including time for approval, appeal process, and procedures
- Restrictions on changes to the appearance, or making improvements or alterations, to a lot or the improvements to a lot without prior approval

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## Article 7: Restrictions on Use

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This section contains restrictions on use of lots, typically restrictions that are not intended to be altered, and on conduct. Provisions should give authority to the executive board to adopt rules and regulations consistent with the restrictions. Given judicial decisions and legislative preference requiring specificity in the declaration to ensure enforceability, it may be necessary to include specific restrictions. Commonly used restrictions that should be considered include, but are not limited to, the following:

- Limitations or restrictions on use of property
- Limitations or restrictions on subdividing, combining, or rezoning lots
- Specific restrictions may include, but are not limited to:
  - Signs
  - Parking
  - Vehicles
  - Solar devices
  - Animals
  - Trash
  - Noise
  - Landscaping
  - Temporary structures and outbuildings
  - Flags and flagpoles
  - Leasing and resale of lots
  - Land development activities
  - Maintenance standards
  - Residential use restrictions
  - Home-based businesses



- Nuisances
- Hazardous substances

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## **Article 8: Maintenance and Operation of the Property**

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The declaration imposes on the association maintenance or operational responsibilities for the common area (and sometimes for lots). This section includes provisions related to maintaining and operating the property. Consideration should be given to the following:

- Association maintenance, repair and replacement responsibilities
- Authority of association to maintain off-site or non-owned improvements
- Member maintenance, repair, and replacement responsibilities
- Whether association has responsibilities to maintain an individual member's property or will provide optional services
- Statement of the association authority to establish and require compliance with specific maintenance standards
- Maintenance responsibilities specific to roads, sidewalks, private streets, alleys, common driveways, party walls, and shared fences
- Any standards of maintenance

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## **Article 9: Rights and Obligations of the Association and Powers and Duties of the Board**

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This section addresses any rights, obligations, and responsibilities of the association and powers and duties of the executive board, in concert with member rights and responsibilities. Consideration should be given to the following:

- Association responsibility for management and control of common area
- Association authority to acquire, hold and dispose of personal property and real property subject to authority established in the declaration
- Association authority to exercise any rights expressed in the declaration or bylaws
- Any off-site rights and obligations of the association
- If incorporated, statement indicating the association board has all authorities given pursuant to the Virginia Nonstock Corporation Act (Chapter 10 of Title 13.1 of the Code of Virginia), or a description of any limitations on the authorities given to the board under the Virginia Nonstock Corporation Act.
- Authority of the executive board to borrow money, assign assessment income, or pledge association assets

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## **Article 10: Reserved Rights and Easements**

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This section may contain descriptions of any easements or reserved rights benefitting the association or declarant. Consideration should be given to the following:

- A description of any applicable easements, including but not limited to the following:
  - Easements for development (e.g., construction, sales, bonds, drainage)
  - Easements for access to lots by managers, the executive board members, and others for inspections or upkeep and the limitations of any such rights of access
  - Easements for encroachments, including a statement of the circumstances that may entitle a member to an easement for encroachment
  - Easements for access by public and private agencies
  - Easements for golf course purposes
  - Use easements over lakes, ponds, streams, and riparian rights
  - Easements for conservation and environmental purposes
  - Easements for slope and drainage
- A description of limitations on the exercise of rights and easements

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## **Article 11: Insurance and Casualty Losses**

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This section may contain a description of any insurance coverage required to be obtained by or on behalf of the association and the lot owners or members. In addition, a description of any procedures and requirements related to claims should be considered. Consideration should be given to the following types of insurance coverage:

- Blanket or “all risk” property insurance
- Liability insurance
- Workers’ compensation insurance
- Blanket fidelity bond or employee dishonesty insurance pursuant to § 55.1-1827 of the Property Owners’ Association Act
- Directors’ and officers’ liability insurance

Consideration should also be given to how premiums and deductibles should be allocated, and any requirements to rebuild damaged lots and common area.

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## **Article 12: Development Rights**

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This section addresses any rights to add land or withdraw land from the development. Consideration should be given to the following:

- Description of any requirements related to the annexation or withdrawal of property by the declarant or association, including procedures for annexation or withdrawal with and without approval of the association membership
- Procedures related to the acquisition or disposition of common area, including the authority to grant or accept additional easements and establish covenants
- Statement on whether the declarant is under any obligation to add common area or facilities
- Description of the circumstances wherein the declarant’s right to consent to any

- change or modification to development rights is necessary
- Description of any other development rights

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### **Article 13: Mortgages**

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This section contains any guidelines or requirements related to mortgages and mortgagees, as defined in the declaration. Consideration should be given to the following:

- Description of any notices of action to be provided to a mortgagee. Such notices may include condemnation, assessment delinquency, other default, or any reduction of insurance coverage.
- Description of any specific events that require notification of the mortgagee and the mortgagees' right to respond and consequences of failure to respond (§ 55.1-1829 of the Code of Virginia)
- Statement regarding whether the mortgagees have any right to consent to certain actions of the association.
- Description of any actions requiring approval of mortgagees

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### **Article 14: General Provisions**

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This section may contain those provisions addressing interpretation or application of the declaration. Consideration should be given to the following:

- The term or duration of any covenants and restrictions established by the declaration. Typically such covenants should be perpetual.
- Provisions for the indemnification of officers, directors, or committee members
- Provisions related to merger or consolidation with other associations
- Interpretative provisions including standard clauses for severability, interpretation, waiver, and election of remedies
- A description of any alternative dispute resolution (arbitration or mediation) procedures
- Notice provisions
- Use of technology – in communication and voting

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### **Article 15: Amendment or Termination**

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This section contains provisions for amendment or termination<sup>1</sup> of the declaration. Consideration should be given to the following:

- How member approval is obtained
- The percentage vote or written consent required for amendment
- Conditions under which covenants and restrictions may be terminated and the

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<sup>1</sup> Termination of the declaration does not dissolve the association.

- percentage vote or written consent required for termination
- When the declarant may unilaterally amend or terminate the declaration
- A statement on whether an amendment can remove, revoke, or modify a right or privilege of the declarant without the declarant's written consent
- The declarant's right to veto amendments and object to a termination

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## **Article 16: External Requirements**

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This section generally contains a description of any rights, restrictions, or obligations of the association or its members arising outside the association documents. Consideration should be given to the following:

- Description of any conservation areas, stormwater management facilities, and off-site or non-owned facilities, and the association's rights and responsibilities with respect to such facilities
- Local jurisdiction requirements including but not limited to zoning, historic preservation, tax districts, and transportation management
- A description of the relationship with and responsibilities to any master association
- Preferred development conditions that impose limitations on architectural standards for lots and common area, limitations on use of common area, or limitations on amendments

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## **Article 17: Declarant's Rights and Limitations**

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This section generally contains a description of declarant rights and limitations. Consideration should be given to the following:

- Specific rights
- Transfer of special declarant rights
- Procedure for effectuating a transfer of declarant rights
- Description of the rights, obligations, and responsibilities of the transferor and transferee