

Chapter 20. Horizontal Property Act

Article 1. General Provisions

§ 55.1-2000. Definitions

As used in this chapter, unless the context requires a different meaning:

"Apartment" means a dwelling that is an enclosed space consisting of one or more rooms occupying all or part of one or more floors in a building of one or more floors regardless of whether it is designed or used for residence, for office, for the operation of any industry or business, or for any other type of independent use, or combination of uses, provided that the dwelling has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare. "Apartment" also includes such accessories as may be appurtenant to such dwelling.

"Condominium" means the ownership of a single unit in a multiple-unit structure with common elements in a condominium project.

"Condominium project" means a plan or project whereby four or more apartments, rooms, office spaces, or other units existing or proposed, whether the unit involves a single structure, attached to or detached from other units, or is in one or more multiple-unit structures, on contiguous parcels of real estate are offered or proposed to be offered for sale.

"Co-owner" means a person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, that owns an apartment within the building.

"Council of co-owners" means all of the co-owners acting as a group in accordance with the bylaws of the horizontal property regime.

"Developer" means a person that undertakes to develop a real estate condominium project.

"General common elements," unless otherwise provided in the master deed or lease, means and includes:

1. The land, whether leased or in fee simple, on which the building stands;
2. The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exits or communication ways;
3. The basements, flat roofs, yards, and gardens, except as otherwise provided or stipulated;
4. The premises for the lodging of janitors or persons in charge of the building, except as otherwise provided or stipulated;
5. The compartments or installations of central services, including power, light, gas, cold and hot water, refrigeration, reservoirs, water tanks, and pumps;
6. The elevators, garbage incinerators, and all other devices or installations existing for common use; and

7. All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety.

"Limited common elements" means those common elements that are agreed upon by all of the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments, including special corridors, stairways and elevators, and sanitary services common to the apartments of a particular floor.

"Majority of co-owners" means more than 50 percent of the votes of the co-owners computed in accordance with the bylaws of the horizontal property regime.

"Master deed" or "master lease" means the deed or lease recording the property of the horizontal property regime.

"Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof.

"Property" means the land, whether leased or in fee simple, the building, all improvements and structures on such land, and all easements, rights, and appurtenances belonging to such land.

"To record" means to record pursuant to the laws of the Commonwealth relating to the recordation of deeds.

1962, c. 627, § 2, § 55-79.2; 1966, c. 683; 1972, c. 450; 2009, c. 557; 2019, c. 712.

§ 55.1-2001. Property taxes assessed on individual apartments

Property taxes assessed by the Commonwealth or by any locality shall be assessed on and collected on the individual apartments and not on the property as a whole, or on the common elements.

1962, c. 627, § 14, § 55-79.14; 1966, c. 683; 2019, c. 712.

§ 55.1-2002. Chapter additional and supplemental

The provisions of this chapter shall be in addition and supplemental to all other provisions of law, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail.

1962, c. 627, § 32, § 55-79.32; 2019, c. 712.

Article 2. Creation and Alteration of Horizontal Property Regimes

§ 55.1-2003. Establishment of horizontal property regime

A. A horizontal property regime is established when a developer, the sole owner, or the co-owners of one or more buildings record a master deed or lease, which includes the particulars enumerated in § 55.1-2008.

B. Pursuant to § 55.1-1901, this chapter is superseded by the Virginia Condominium Act (§ 55.1-1900 et seq.) as of July 1, 1974. No new developments may be established under the provisions of this chapter after that date.

1962, c. 627, § 3, § 55-79.3; 1966, c. 683; 2019, c. 712.

§ 55.1-2004. Partition

A. The common elements, both general and limited, shall remain undivided. No apartment owner, or any other person, shall bring any action or other proceeding for partition or division of the co-ownership of the common elements as provided under § 55.1-2007.

B. Nothing contained in this section shall be construed as a limitation on partition by the owners of one or more apartments in a horizontal property regime as to the individual ownership of such apartment or apartments without terminating the regime or as to the ownership of property outside the regime, provided that upon partition of any such individual apartment it shall be sold as an entity and shall not be partitioned in kind.

1966, c. 683, § 55-79.34; 2019, c. 712.

Article 3. Management of Horizontal Property Regimes

§ 55.1-2005. Apartments subject to individual titles and interests; recording; transfer of garage unit

Once the property is established as a horizontal property regime, an apartment in the building is a separate parcel of real property and may be individually conveyed and encumbered, independent of the other apartments in the building, and the corresponding individual titles and interests shall be recordable. A garage unit sold to a co-owner as a limited common element may be sold or transferred by him to another co-owner in the same horizontal property regime independently of and separately from his apartment.

1962, c. 627, § 4, § 55-79.4; 1966, c. 683; 1973, c. 375; 2019, c. 712.

§ 55.1-2006. Joint or common ownership

Any apartment may be jointly or commonly owned by more than one person.

1962, c. 627, § 5, § 55-79.5; 2019, c. 712.

§ 55.1-2007. Exclusive and common rights of owners

An apartment owner has an exclusive right to his apartment and has a common right to a share, with other co-owners, in the common elements of the property.

1962, c. 627, § 6, § 55-79.6; 2019, c. 712.

§ 55.1-2008. Master deed or lease; recordation; particulars

A master deed or lease shall be recorded in the same manner and subject to the same provisions of law as are other deeds, provided that no state or local recordation tax upon the value of the property transferred shall apply to any such deed recorded solely for the purpose of complying with the provisions of § 55.1-2003.

The master deed or lease required pursuant to § 55.1-2003 shall include the following particulars:

1. The description of the land, whether leased or in fee simple, and the building, expressing their respective areas;
2. The general description and the number of each apartment, expressing its area, location, and any other data necessary for its identification;
3. The description of the general common elements of the building; and
4. The provisions requiring the council of co-owners to maintain insurance on the horizontal

property regime.

1962, c. 627, § 7, § 55-79.7; 1966, c. 683; 1973, c. 375; 2019, c. 712.

§ 55.1-2009. Deeds of individual apartments

The deed of each individual apartment shall express the particulars prescribed under subdivisions 1 and 2 of § 55.1-2008 relative to the apartments concerned and shall also express all encumbrances on such apartments.

1962, c. 627, § 8, § 55-79.8; 2019, c. 712.

§ 55.1-2010. Regrouping or merger of estates with principal property

All of the co-owners or such lesser percentage as may be authorized in the master deed, or the sole owner of a building constituted into a horizontal property regime, may by deed waive this regime and regroup, amend the master deed, or merge the records of the filial estates with the principal property, provided that the filial estates are unencumbered, or if they are encumbered, that the creditors on whose behalf the encumbrances are recorded accept as security the undivided portions of the property owned by the debtors.

1962, c. 627, § 9, § 55-79.9; 1966, c. 683; 1973, c. 374; 2019, c. 712.

§ 55.1-2011. Merger not to bar subsequent condominium

The merger provided for in § 55.1-2010 shall not bar the subsequent constitution of the property into a condominium whenever so desired, provided that the requirements of the Virginia Condominium Act (§ 55.1-1900 et seq.) are met.

1962, c. 627, § 10, § 55-79.10; 2019, c. 712.

§ 55.1-2012. Bylaws governing administration of buildings

The administration of every building established as a horizontal property regime shall be governed by bylaws approved and adopted by the council of co-owners. The bylaws may be amended from time to time by the council or the governing board provided for in the council's bylaws.

1962, c. 627, § 11, § 55-79.11; 1966, c. 683; 2019, c. 712.

§ 55.1-2013. Books and records; inspection; audit

The administrator, board of administration, or person appointed by the bylaws of the regime shall keep a book with a detailed account of the receipts and expenditures affecting the building and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the regime. Both the book and vouchers accrediting the entries made in the book shall be available for examination by all the co-owners during business hours that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization.

1962, c. 627, § 12, § 55-79.12; 2019, c. 712.

§ 55.1-2014. Contributions by co-owners

All co-owners are bound to contribute pro rata toward the expenses of administration and of maintenance and repairs of the general common elements, and, in the appropriate case, of the

limited common elements of the building, and toward any other expenses lawfully agreed upon by the council of co-owners.

If a co-owner fails to contribute his share as provided in this section, the manager or board of directors of the council of co-owners, or in a proper case, an aggrieved co-owner, may maintain an action at law on behalf of the council of co-owners to recover sums due for damages or in equity for injunctive relief.

No co-owner shall be exempt from contributing toward such expenses by waiver or nonuse of the use or enjoyment of the common elements, both general and limited, or by abandonment of the apartment belonging to him.

Such contributions may be determined and a lien, as the master deed may provide upon default in the payment of any such contribution, may be perfected by filing in the clerk's office in which the master deed is recorded a memorandum showing the name of the delinquent co-owner, the name of the council of co-owners as claimant of the lien, the amount of the claim, and a description of the property on which a lien is claimed verified by oath of the agent of the council of co-owners. The clerk shall record and index such lien as provided in § 43-4.1 and shall charge such fees as are provided by law. Such lien shall be released as provided in §§ 55.1-339 through 55.1-345 upon payment by the co-owner of his contributions.

1962, c. 627, § 13, § 55-79.13; 1966, c. 683; 1973, c. 375; 2019, c. 712.

§ 55.1-2015. Payment of assessments upon conveyance of apartment; priority

Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner for his pro rata share in the expenses provided for in § 55.1-2014 shall first be paid out of the sale price or by the purchaser in priority over any other assessments or charges of whatever nature except the following:

1. Assessments, liens, and charges in favor of the Commonwealth or any locality for taxes past due and unpaid on the apartment; and
2. Payments due under mortgages duly recorded.

1962, c. 627, § 15, § 55-79.15; 2019, c. 712.

§ 55.1-2016. Liens or encumbrances

A. Subsequent to establishment of a horizontal property regime as provided in this chapter, and while the property remains subject to this chapter, no lien shall arise or be effective against the property as a whole or against the common elements. During such period, liens or encumbrances shall arise or be created and enforced only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership, provided that no labor performed or materials furnished with the consent or at the request of an apartment owner or such owner's agent, contractor, or subcontractor shall be the basis for the filing of a mechanic's lien against the apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs to such apartment. Labor performed or materials furnished for the common elements and facilities, if duly authorized by the council of co-owners, the manager, or the board of directors in

accordance with this chapter, the master deed, or the bylaws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a mechanic's lien against each of the apartments and shall be subject to the provisions of subsection B. Notice of such lien may be served on the manager or the board of directors of the council of co-owners.

B. If a lien is filed against two or more apartments and their respective percentage interest in the common elements, the apartment owners of the separate apartments may remove their apartments and their percentage interests in the common elements appurtenant to such apartments from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected, or they may file a written undertaking with surety approved by the court. Such individual payment, or amount of bond, shall be computed by reference to the percentage established pursuant to the bylaws of the horizontal property regime. After such partial payment, filing of bond, partial discharge, or release, or other satisfaction, the apartment and its percentage interest in the common elements shall be free and clear of such lien. Such partial payment, indemnity, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce its rights against any apartment and its percentage interest in the common elements not so paid, indemnified, satisfied, or discharged.

1966, c. 683, § 55-79.35; 2019, c. 712.

§ 55.1-2017. Rule against perpetuities; rule restricting unreasonable restraints on alienation

The rules of property law known as the rule against perpetuities and the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this chapter or of any provisions of any master deed or lease, bylaws, or other document executed in accordance with this chapter as to the horizontal property regime. This exemption shall not apply to estates in the individual apartments.

1966, c. 683, § 55-79.36; 2019, c. 712.

§ 55.1-2018. Liability of owner

A. The liability of the owner of an apartment for pro rata expenses shall be limited to the amounts assessed from time to time in accordance with this chapter, the master deed or lease, or the bylaws.

B. The owner of an apartment shall not be personally liable with respect to the negligence of any other co-owner except insofar as the negligent co-owner is acting for the council of co-owners.

1966, c. 683, § 55-79.37; 2019, c. 712.

§ 55.1-2019. Compliance by co-owner with bylaws and administrative rules and regulations

Each co-owner shall comply with the bylaws of the horizontal property regime and with the administrative rules and regulations adopted pursuant to such bylaws, as may be amended from time to time, and with the covenants, conditions, or restrictions set forth in the deed to the individual apartment. Failure to comply with any such bylaws, rules and regulations, or covenants, conditions, or restrictions is grounds for an action by the manager or board of directors of the council of co-owners, or in a proper case, an aggrieved owner, on behalf of the council of co-owners to recover sums due for damages and for injunctive relief.

1966, c. 683, § 55-79.38; 2019, c. 712.

Article 4. Protection of Purchasers

§ 55.1-2020. Deposits to be held in escrow

Any deposit made with a reservation to purchase or a contract to purchase shall be held in escrow in a separate fund for such deposits designated as such until the deed for which a deposit was made is delivered to the depositor.

1973, c. 375, § 55-79.21:1; 2019, c. [712](#).