

OP. NO. 05-071

PROPERTY AND CONVEYANCES: PROPERTY OWNERS' ASSOCIATION ACT.

No statute directly addresses statutory authority allowing homebuilders to maintain majority control of property owners' association until construction of community property is completed and transferred to association. Any recourse that association may have regarding defective community property is private cause of action.

The Honorable Robert G. Marshall
Member, House of Delegates
January 4, 2006

Issues Presented

You ask whether statutory authority exists that allows homebuilders to maintain majority control of a property owners' association until construction of community property is completed and transferred to the association. If so, you further ask what recourse a homeowner has when community property turns out to be defective in material or workmanship.

Response

I find no statute that directly addresses your inquiry or that prohibits a developer-homebuilder from maintaining majority control of a property owners' association until construction of community property is completed and transferred to the association. Any recourse that a homeowner may have regarding defective community property, whether in material or workmanship, is a private cause of action.

Background

You relate that property owners' associations have contacted you regarding problems that they have experienced with builders transferring defective community property to the associations. You explain that the most recent instance has involved defects in the construction of a swimming pool.

Applicable Law and Discussion

The 1989 Session of the General Assembly established the Virginia Property Owners' Association Act in Chapter 26 of Title 55¹ to govern the operation of property owners' associations. The Act guarantees certain rights and protections to individual association members and grants associations the right to enforce rules and regulations and to impose and enforce liens for unpaid assessments.² You inquire regarding the statutory authority that allows a developer-homebuilder to maintain majority control of a property owners' association until construction of community property is completed and transferred to the association.

The association, as defined by the Virginia Property Owners' Association Act, "means the property owners' association."³ "[A]ny person, by virtue of ownership of a lot, is a member of an association" governed by the Act.⁴ Property owners' associations are to be governed by a board of directors and through the promulgation of resolutions or bylaws.⁵

You further inquire regarding the remedies available to homeowners where defective community property is ultimately transferred by the developers. The issues related to whether property is defective and the appropriate remedy for any defect are factual questions for the appropriate tribunal.⁶ Essentially, the remedy is a private cause of action.

Conclusion

Accordingly, I find no statute that directly addresses your inquiry or that prohibits a developer-homebuilder from maintaining majority control of a property owners' association until construction of community property is completed and transferred to the association. Any recourse that a homeowner may have regarding defective community property, whether in material or workmanship, is a private cause of action.

¹1989 Va. Acts ch. 679, at 1575, 1575-80 (consisting of §§ 55-508 to 55-516). Sections 55-508 to 55-516.2, as amended, currently comprise the Virginia Property Owners' Association Act.

²See Va. Code Ann. §§ 55-508 to 55-516.2 (2003 & Supp. 2005); Op. Va. Att'y Gen.: 2002 at 266, 266-67; 1997 at 164, 165.

³Section 55-509 (2003).

⁴*Id.* (defining "development").

⁵*Id.* (defining "board of directors").

⁶See 2002 Op. Va. Att'y Gen. 144, 147 (noting that Attorney General declines to render official opinions when request involves determination of questions of fact rather than questions of law).

[Back to January 2006 Opinion Index](#)