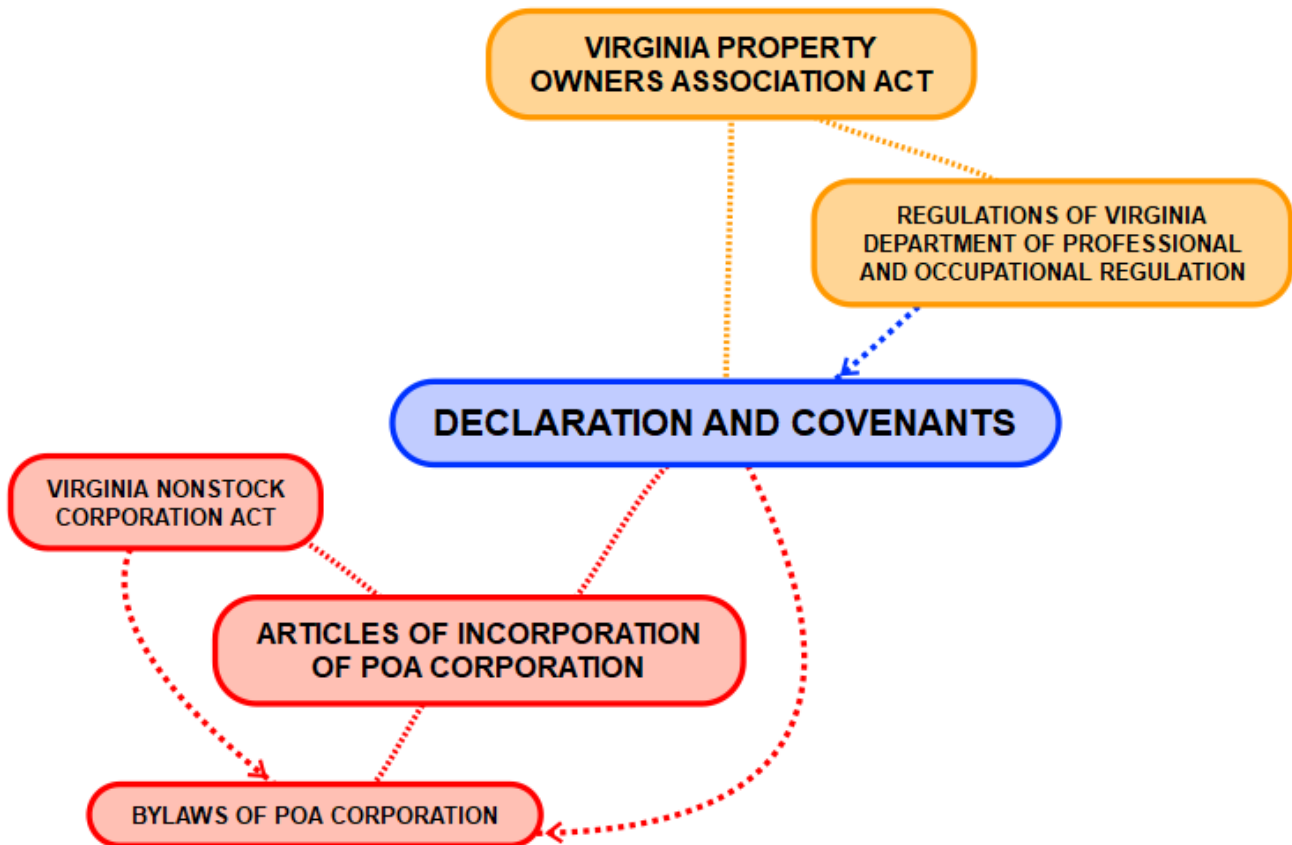


THE POA CONSTELLATION

Multiple laws and recorded documents determine what a Property Owners' Association¹ must do, cannot do or might be able to do. These laws and documents interact with each other and a POA board of Directors must understand the relationships.

Here is an illustration of the various laws and documents that govern POAs.



Title Documents (Shown in blue)

At the heart of this legal constellation is the declaration, which is the ultimate source of a POA's authority, and which defines whether the group is a POA at all. The declaration is an important title document that is recorded in the land records of the county where the community is located. It defines rights and responsibilities of owners and the

¹ Sometimes called a "Homeowners' Association."

community association and is just as important as individual deeds to property in the community.

The declaration will (or should) designate the property owners' association as the common interest association for the community.

Typically, a declaration is difficult to amend. It cannot be amended simply by voting at an annual meeting. Many POAs commit serious errors by improper attempts to amend the declaration.

Corporate Documents & Statutes (Shown in red)

Most POAs are nonstock corporations, so they are controlled by the Nonstock Corporation Act, which in some respects limits the powers of a corporate board of directors. Just as importantly, this set of laws provides important gap fillers if the articles of incorporation or bylaws are silent.

The property owners' association typically is established by articles of incorporation, which, together with the declaration, establish and limit the powers of the corporation. Articles of incorporation usually are brief.

The rules for how the corporation must act are established initially by the bylaws of the corporation, but they may be supplemented by or even overruled by Virginia statutes.

Because they are typically corporations, POAs must comply with legal requirements such as conducting annual meetings after time sensitive notices, a process that also can involve proxies, voting rules and so-called "record dates." These details can be confusing, particularly because certain corporation statutes are overridden by the Virginia Property Owners' Association Act.

Articles of incorporation can be difficult to amend. Bylaws typically are easier to amend. POAs frequently make errors in both the manner of bylaw amendment and the reasons for amendment.

The Nonstock Corporation Act requires that an annual report be filed with the Commonwealth of Virginia and that a POA make important designations regarding its registered agent, officers, directors, and business locations.

Virginia Property Owners' Association Act & DPOR Regulations (Shown in Gold)

Virginia POAs are also subject to the Virginia Property Owners' Association Act, another set of statutes, which establishes but also limits powers of property owners' associations. Once again, this statute serves as both a limitation on the powers of the owners' association and a gap filler if the declaration, articles, or bylaws are silent on a particular point.

Under the POAA, Virginia's Department of Professional and Occupational Regulation (DPOR) regulates property owners' associations, which are a type of so-called "common interest associations." POAs must register with DPOR, file an annual report, and obey DPOR regulations. That agency also oversees an Ombudsman complaint process, which can lead to regulatory penalties.

The POA Act and regulations of DPOR impose operational requirements on POA's, including transparency rules and the requirement for a reserve study of the community's capital improvements every five years, a bank account where reserve funds are segregated for use only on capital repairs, replacement or improvement and a yearly review of the reserve study. There are also important insurance requirements.

Important parts of both DPOR regulations and the Virginia Property Owners' Association Act regulate resale disclosure packages, an area of frequent confusion for POAs.

Altogether, there are more than 250 separate statutes and regulations that govern the typical POA, in addition to organizational documents that often comprise more than more than 50 pages of information. Understanding this complex set of documents and how they work together is not a do-it-yourself project. An attorney skilled in association law can help property owners' associations navigate this confusing set of laws easily and without risk.