

Common Interests

The Newsletter of the Virginia Common Interest Community Board



Greetings

Welcome to the Fall 2018/Winter 2019 edition of *Common Interests*, the newsletter of the Common Interest Community Board. In this edition of the newsletter, we devote special attention to the 10th anniversary of the creation of the Board, which became established on July 1, 2008. Also included is a summary of significant legislation passed during the 2018 General Assembly Session, an update on the Board's recent activities, and other information important to community associations. This edition also features *poetry!* As part of a presentation earlier this past spring, the CIC Ombudsman composed and presented a poem before a live audience of community association representatives and managers (see page 7). We hope you enjoy.

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CIC Board Commemorates its 10th Anniversary

At its meeting on June 7, 2018, the Common Interest Community Board took a moment to recognize the 10th anniversary of the creation of the Board by the General Assembly in 2008. Board Chair Pia Trigiani offered her reflections on the Board's anniversary. Following her comments, Board members adjourned the meeting and celebrated with light refreshments and cake marking the occasion.

As of July 1, 2018, the Board has conducted nearly 90 meetings (counting training program and regulatory review committee meetings as well as regularly scheduled sessions), with 25 members of the public having served as Board members. During this time, the Board and its staff have addressed more than 140 legislative proposals, and initiated nearly two dozen regulatory actions. Moreover, this period has seen a significant expansion in the number of community association registrations.

Beginnings of the Common Interest Community Board

In the early 1990s, the General Assembly directed the Board for Professional and Occupational Regulation (BPOR) to conduct a study on whether managers should be regulated (House Document No. 9 – The Need for Regulation of Property Managers). While a number of important concerns were raised, BPOR ultimately determined there was insufficient information and data to support recommending regulation of association managers. Though there was the potential for public harm given that managers control large sums of money and manage valuable real estate, the recommendation of the 1994 BPOR study echoed those of a study done in the 1980's by the Board of Commerce (predecessor to BPOR).

In 1993, the General Assembly created the Common Interest Community Management Information Fund, which required community associations to register with the Real Estate Board and pay fees to the Real Estate Board in support of the fund. The purpose of the fund was to promote the improvement and more efficient operation of common interest communities through research and education. Toward this end, the Real Estate Board would periodically



Disclaimer:

The information in this newsletter is intended to provide a summary of various updates and actions. It does not contain all information and should not be relied upon exclusively. Please contact the Board's office if you would like more information regarding the topics covered in this newsletter.

Story Continues on Page 9.

2018 Legislative Update

During the 2018 General Assembly session, lawmakers passed, and the Governor approved, several measures affecting associations. Here are summaries of a few bills that may be of interest to your association.

Note: Except where otherwise indicated, all legislation became effective on July 1, 2018. Bill information was obtained from the General Assembly's Legislative Information System. Further details on these bills are available at <http://lis.virginia.gov/>

Associations/Association Governance

HB 1205 - Nonstock corporations; members' meetings.

Summary: Authorizes the board of directors of a nonstock corporation to determine that any meeting of members not be held at any place and instead be held by means of remote communication, if the articles of incorporation or bylaws do not require the meeting to be held at a place.

SB 722 - Condominium Act and Property Owners' Association Act; access to association books and records; duty to redact.

Summary: Provides that books and records kept by or on behalf of a unit owners' association or a property owners' association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure enumerated in the Condominium Act or Property Owners' Association Act, as applicable, applies to the entire content of such books and records. The bill provides that, otherwise, only those portions of the books and records containing information subject to an exclusion may be withheld, and all portions of the books and records that are not so excluded shall be disclosed at the requesting member's expense.

Association Disclosure Packets/Condo Resale Certificates

HB 923 - Common Interest Community Board; information on covenants; association disclosure packets and resale certificates.

Summary: Requires the Common Interest Community Board (Board) to reconfigure its current one-page form that accompanies association disclosure packets that are required to be provided to all prospective purchasers of lots located within a development that is subject to the Virginia Property Owners' Association Act as a cover form to accompany both association disclosure packets and resale certificates that are required to be provided to all prospective purchasers of units located within a condominium that is subject to the Condominium Act. The bill also requires the Board to expand the breadth of information that is included on the form to provide potential purchasers with additional information regarding restrictive covenants that the potential purchaser may be subject to as a member of a property owners' association or a unit owners' association and which may affect the potential purchaser's decision to purchase a lot or unit located within a common interest community.

HB 1031 - Common interest communities; disclosure packets.

Summary: Requires that as a prerequisite to charging any fees for the preparation of disclosure packets, both professionally managed property owners' associations and property owners' associations that are not professionally managed must register with the Common Interest Community Board, file annual reports, and make annual assessment payments. Additionally, a professionally managed property owners' association must provide the disclosure packet electronically if so requested by the requester in order to charge fees. The bill allows a property owners' association that is not professionally managed to charge fees at the option of the seller or the seller's agent for (i) expediting the inspection, preparation, and delivery of the disclosure packet; (ii) providing an additional hard copy of the disclosure packet; and (iii) providing third-party commercial delivery service. A property owners' association that is not professionally managed may also charge and collect fees for inspection of the property, the preparation and issuance of an association disclosure packet, and such other services as provided by professionally managed property owners' associations as long as the association provides the disclosure packet electronically if so requested by the requester and complies with the other requirements of collecting fees for disclosure packets by professionally managed property owners' associations.

SB 328 - Common Interest Community Board; disclosure packets; registration of associations.

Summary: Requires the Common Interest Community Board to include information specifying the period or length of declarant control in its current one-page form that accompanies association disclosure packets that are required to be provided to all prospective purchasers of lots located within a development that is subject to the Virginia Property Owners' Association Act. With a delayed effective date of July 1, 2019, the bill also requires, unless control of the association of the development has been transferred to the members, that the developer register the association with the Common Interest Community Board within 30 days after recordation of the declaration and file required reports thereafter.



Regulatory Actions Update

Regulatory Actions Completed:

Association Fee Reduction (Effective June 1, 2018)

In March 2015, the Board temporarily reduced renewal filing fees for common interest community associations from a staggered fee (based on number of lots or units in the association) to a flat fee of \$10. The Board extended this temporary fee reduction in 2016 and 2017. In 2017, the Board expanded the temporary fee to include the application fee for initial association registrations. At its meeting in March 2018, the Board voted to continue the reduced initial application and renewal filing fees through June 30, 2019. The fee reduction only applies to application fees. Annual payments due with association initial registrations and renewals were not affected by the Board's action.

Time-Share Regulations - 2018 Time-Share Regulations Amendments—HB 674 (Effective December 14, 2018)

At its June 2018 meeting, the Board authorized an exempt action to amend the Time-Share Regulations to reflect changes to the Virginia Real Estate Time-Share Act resulting from the passage of HB 674 during the 2018 General Assembly session. The changes include removal of the requirement of time-share developers to post a surety bond or letter of credit with the Board for the purpose of insuring a escrowed deposits made in connection with purchase or reservation of a time-share. A developer of a time-share project consisting of 25 or more units has the option to post a surety bond or letter of credit with the Board in lieu of placing deposits in escrow. The exempt action was filed in September 2018. The amended regulations became effective December 14, 2018.

Regulatory Actions In Progress:

Common Interest Community Management Information Fund Regulations - General Review

In March 2017, the Board initiated a general review of the Common Interest Community Management Information Fund Regulations. The scope of these regulations includes the registration and annual report requirements for community associations. The Board filed a Notice of Intended Regulatory Action (NOIRA) in May 2017 and a 30-day public comment period was held from June 12, 2017, to July 12, 2017. The Board considered proposed amendments to the regulations at its November 2017 meeting. The Board voted to withdraw the action and reissue a new NOIRA in 2018 to allow for additional public participation through formation of a stakeholder committee.

In May 2018, the Board filed the new NOIRA. A regulatory review committee of the Board, consisting of selected Board members and other stakeholders, met on September 27, 2018, to discuss potential changes to the regulations. The committee reviewed and adopted proposed language for amendments to the regulations. At its November 29, 2018 meeting, the Board reviewed and considered the proposed amendments. The Board accepted the proposed amendments. The proposed amendments will be published in the Virginia Register and there will be a 60-day public comment period, to include a public hearing at a date to be determined.

Virginia Housing Commission Workgroup Considers CIC-Related Measures

On August 7, 2018, the Common Interest Communities workgroup of the Virginia Housing Commission held a meeting to receive presentations from legislators and members of the public on a variety of subjects related to associations, including proposed legislation introduced during the 2018 General Assembly session which was not adopted, but was referred to the Commission for further study.

Topics included legislation relating to home-based child care businesses in associations (SB 707), disclosures pertaining to association reserve funds (SB 705 and SB 706), lot owner rights in property owners' associations (HB 1041), and liability insurance minimums for associations.

Much of the discussion focused on the issue of child care businesses operated in homes located in associations. Proponents of SB 707 contend that home-based child care services which meet state and local licensure requirements, and comply with local zoning rules, are being prevented from operating by some association governing boards because such businesses are not permitted under the associations' covenants or rules. The workgroup did not make any final decisions on recommendations for legislation at the August meeting.

The workgroup also received a presentation from the CIC Board's Executive Director, who provided an update on the Board's activities, including a summary of some of the Board's accomplishments since its inception in 2008.

On October 18, 2018, the workgroup held a follow-up meeting. The workgroup reviewed a revised version of SB 707 that would deem home-based child care services as an accessory or ancillary residential use, unless such use is expressly prohibited or restricted by an association's governing documents. The workgroup adopted a recommendation to place the revised bill before the full commission for its consideration. The workgroup also reviewed revised versions of SB 706 and HB 1041, and adopted recommendations to present these measures to the full commission as well. At this meeting, the workgroup discussed issues related to the transfer of stormwater maintenance facilities from developers to association; and whether associations are knowledgeable of maintenance responsibilities and costs for these facilities.

In December 2018, the full Housing Commission considered the recommendations of the workgroup. The Commission adopted these recommendations. The measures accepted by the Commission were recommended to be introduced during the 2019 General Assembly session.

For more information on the Virginia Housing Commission, please visit the Commission's website at <http://dls.virginia.gov/commissions/vhc.htm>.

Board Changes POA Disclosure Packet Notice and Creates New Condominium Resale Certificate Notice



During the 2018 General Assembly session, the General Assembly passed, and the Governor approved, HB 923, which amended the Property Owners' Association ("POA") Act, the Condominium Act, and the Board's enabling statute. The measure amended the requirements for the POA Act Disclosure Packet Notice that accompanies disclosure packets prepared by a POA.

The POA Act (Chapter 26 of Title 55 of the Code of Virginia) requires that for sales of lots in communities subject to the POA Act that disclosure packets provided to potential purchasers include this notice. The Board is charged with developing the notice for use by the public. The purpose of the notice is to advise purchasers about the characteristics of POA's and circumstances that may affect those who own lots in a POA, such as requirements to pay assessments, or restrictive covenants.

HB 923 required the Board to reconfigure its notice to provide additional information regarding potential restrictive covenants that potential purchasers may be subject to as an owner in an association, including the potential for limitations on an owner's (i) right to rent their lot, (ii) ability to park or store certain types of motor vehicles in the community, (iii) ability to maintain an animal as a pet in common areas, and (iv) ability to operate a business within a dwelling unit. It would also inform purchasers about the possibility of architectural guidelines that might affect an owner's lot, and the establishment of the period of declarant (developer) control over the operations of the POA.

The measure also required the Board to develop a similar notice to accompany condominium resale certificates, and requires condominium unit owners' associations to now include this notice with condominium resale certificates.

At its meeting on March 15, 2018, the Board was presented with drafts of the revised POA Disclosure Packet Notice, and the new Condominium Unit Owners' Associ-

ation Resale Certificate Notice. There was considerable discussion regarding the requirements of HB 923 and whether the proposed drafts met these requirements. After several drafts and additional reviews by the Board, the draft documents were adopted by the Board and slated for public comment.

On April 26, 2018, the Board published the proposed revised POA Disclosure Packet Notice and new Condominium Resale Certificate Notice on the Board's website, and initiated a public comment forum on the Virginia Regulatory Town Hall website. The comment period concluded on May 28, 2018. The Board received several comments on the proposed drafts through Town Hall, as well as from members of the public directly.

On June 7, 2018, the Board reviewed and considered the public comments. In response to the comments received, the Board made some additional changes to the draft documents. The Board then voted on final approval of the documents. The documents became effective on July 1, 2018.

The revised POA Disclosure Act Packet Notice and new Condominium Resale Certificate Notice are available on the Board's website at http://www.dpor.virginia.gov/CIC-Board/Disclosure_Notices/.

Title 55 Recodification Update

Beginning in 2016, the Virginia Code Commission undertook a project to recodify Title 55 of the Code of Virginia, which includes The Property Owners Association Act, the Condominium Act, and the Virginia Real Estate Time-Share Act, as well as other common interest community related laws. Throughout 2016 and 2017, the CIC Board Executive Director, CIC Ombudsman, and the Chair of the CIC Board, participated in a workgroup with specific focus on those chapters in Title 55 that relate to common interest communities and time-shares. On October 15, 2018, the Commission considered and approved a final report on the recodification of Title 55. Legislation enacting a new title, Title 55.1, was introduced during the 2019 General Assembly Session. As of this writing, Senate Bill 1080 is working its way through the General Assembly and includes a delayed enactment date of October 1, 2019.

Additional information on the Commission's recodification of Title 55 can be found at the Commission's website at <http://codecommission.dls.virginia.gov/title-recodification-55.shtml>.

A Note About the Newsletter

Common Interests is produced by the staff of the Common Interest Community Board's office. The newsletter does not have an established publication schedule, though staff aims to publish the newsletter at least semi-annually. To receive notification regarding the publication of upcoming editions of the newsletter, please register as a public user at the Virginia Regulatory Town Hall website. Registered users of the site will also receive important updates from the Board, including notices of regulatory action and changes to board-issued documents. To register with Town Hall, visit its website at: <http://townhall.virginia.gov/L/Register.cfm>. Staff also welcomes input from the public regarding topics for upcoming editions of the newsletter. You may submit any ideas for future articles or other suggestions for the newsletter to the Board's email: CIC@dpor.virginia.gov.

Changes Regarding Maximum Allowable Fees for Preparation and Distribution of POA Disclosure Packets

During the 2018 General Assembly session, the General Assembly passed, and the Governor approved, HB 1031, which amended the Property Owners' Association ("POA") Act. The measure amended provisions in the POA Act relating to fees that may be charged by a property owners' association for preparation and distribution of a disclosure packet. Under the POA Act, an association is allowed to charge reasonable fees for compiling the required documents for a POA disclosure packet, and related services. However, these fees are capped by law. In addition, the POA Act distinguishes between property owners' associations that are *professionally managed* and those that are not professionally managed with respect to the fees that may be charged. The POA Act defines "*professionally managed*" as "a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community." Non-professionally managed associations are those that are managed by residents or volunteers. The POA Act establishes a maximum level of fees for professionally managed property owners' associations that is higher than those that are not professionally managed. HB 1031 amended the POA Act to allow non-professionally managed property owners' associations to charge the same fees as those that are professionally managed, provided the association provides the disclosure packet electronically, if requested, and otherwise complies with § 55-509.6 of the POA Act (the provision of the POA Act which outlines the requirements for professionally managed associations to charge fees). In addition, HB 1031 expanded the services for which a non-professionally managed association may charge fees to include (i) expediting the inspection, preparation, and delivery of the disclosure packet; (ii) providing an additional hard copy of the packet; and (iii) third-party commercial delivery service for hand delivery or overnight delivery of a packet. (Note: The POA Act provides for the maximum allowable fees for professionally managed associations to be adjusted every five years to account for inflation. These fees were recently adjusted in January 2018 in accordance with the POA Act.)

In addition, HB 1031 imposed a requirement on property owners' associations that an association may collect the disclosure packet fees authorized by the POA Act only if the association is (i) registered with the Common Interest Community Board ("the Board"); (ii) is current in filing the most recent annual report with the Board; and (iii) is current in paying the annual payment to the Board required by § 55-516.1 of the POA Act, and any assessment made by the Board pursuant to § 55-530.1 of the Code of Virginia (Common Interest Community Management Recovery Fund). This requirement is applicable to property owners' associations regardless of whether they are professionally managed or not. In addition, professionally managed associations may not collect disclosure packet fees unless the disclosure packet is provided electronically if so requested.

For more information on the POA Act refer to Chapter 26 of Title 55 of the Code of Virginia. (<https://law.lis.virginia.gov/vacode/title55/chapter26/>)

Bulletins regarding the maximum allowable fees that may be charged by property owners' associations for preparation and delivery of disclosure packets, including schedules of fees, may be obtained from the Board's website. (http://www.dpor.virginia.gov/CIC-Board/Disclosure_Notices/)



What to do if your POA is not registered/not current in filing with the CIC Board.

As of July 1, 2018, if your POA is not registered with the CIC Board, or is not current in filing an annual report to the CIC Board, then your POA is prohibited from collecting fees authorized by §§ 55-509.6 and 55-509.7 of the POA Act.

To verify if your POA is registered with the CIC Board, or to verify your POAs current registration status, you may use the "License Lookup" feature on the website for the Department of Professional and Occupational Regulation (<http://www.dpor.virginia.gov>). You may also contact the CIC Board office.

To register a POA, or to file an annual report, your POA must submit a completed registration or annual report application, along with the required application fees and association annual payment. The application may be obtained from the CIC Board website (<http://www.dpor.virginia.gov/Boards/CIC-Board/>). As part of the application, your POA will be required to submit documentation of the gross assessment income received by your POA for the year preceding application.

Gross assessment income includes any mandatory fees that are imposed by the association on its members. This would not include voluntary amenity fees ("user fees"), but would include any other mandatory fees including, but not limited to, neighborhood assessments, mandatory maintenance fees, special assessments, and fines.

Your POA will also be required to certify that it has adopted, or will adopt, an association complaint procedure as required by § 55-530 of the Code of Virginia, and the Common Interest Community Ombudsman Regulations.

Please be advised that receipt of an application and the deposit of fees/payments by the CIC Board does not indicate CIC Board approval of the application. Once the application is reviewed and approval by Board staff, the association will be issued a registration with the association's unique registration number and expiration date.

For additional information, you may contact the CIC Board office by email at cic@dpor.virginia.gov or by telephone at 804-367-8510.

Notable Recent Final Determinations from the Ombudsman

File Number 2018-02878, Fowler v. Hillcrest Farms Homeowners' Association

Determination issued on June 4, 2018.

The Complainant (Fowler) alleged that her association failed to comply with § 55-510(B) of the Property Owners' Association (POA) Act, which requires that "...so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association, shall be available for examination and copying by a member in good standing or his authorized agent..." Section 55-510(B) stipulates the right to access books and records may be exercised "(i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested."

Fowler had scheduled an appointment to review documents related to an association election that was held in October 2017, and had been given a cost schedule for copies. The association permitted Fowler to review the documents, and permitted her to copy some documents, but would not permit Fowler to make or receive copies of others. The association denied Fowler's request copies of these documents on the basis that Fowler's request was for an improper purpose. The association explained that it was protecting the privacy of homeowners, as it believed Fowler's intended purpose in requesting copies of these documents was to post them to social media. Fowler had previously made posts to social media pertaining to association matters. However, Fowler's request to the association did not specify a purpose for the request.

The Ombudsman noted that § 55-510(B) permits access to all records of the association. An association is allowed to deny access to certain documents that are specifically exempted under § 55-510. Section 55-510 does require that a member requesting copies of books and records, or the opportunity to inspect them, provide a proper purpose related to membership in the association. However, the term "proper purpose" is not defined in the POA Act. The Ombudsman determined the association's decision to deny copies to Fowler could not be upheld. The association denied Fowler's request based on its belief Fowler would misuse the copies and post them on social media, rather than because Fowler had provided an improper purpose or a purpose not related to her membership in the association. The Ombudsman noted, though, that the association could have denied Fowler access to the documents because the request did not identify a purpose for the request. If requested documents do not fall under one of the exclusions contained in § 55-510, it must allow Fowler to copy those documents, or it may require Fowler provide a proper purpose

related to her membership in the association before permitting copies to be made.

File Number 2018-02641, Jackson v. Lenox Place at Sunnyside Homeowners' Association

Determination issued on May 14, 2018.

Jackson alleged a violation of § 55-510.1 of the Property Owners' Association (POA) Act, which requires all board of directors meetings, including board subcommittees or other board committees, to open to all members of record. Boards may not use work sessions or other informal gatherings of the board to circumvent the requirement. Boards are also required to record minutes of all board meetings, which are to be made available to association members in accordance with § 55-510(B) of the POA Act. Jackson contended his association's board used private work sessions and other informal gatherings to circumvent open meeting requirements, and also failed to record minutes for several board committee meetings. However, the complaint did not contain specific details to when unnoticed meetings took place. There was evidence, though, of a board member apologizing for an executive session held without an open meeting. The association acknowledged there was one instance where the board went into executive session without first having an open meeting. But responded it otherwise fully complies with meeting requirements in the POA Act. Regarding Jackson's complaint about the recording of minutes for committee meetings, the association contended that the POA Act does not expressly require the minutes of board committee meetings be recorded.

Jackson further alleged that the association violated § 55-510.2 of the POA Act, which requires the board of directors to "establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association." Jackson claimed the association asked the Facebook Administrator of a Lenox Place Facebook Group to remove two items Jackson had posted on the group's page. The posts were removed by the page administrator. Jackson also claimed the association sent a "defamatory and factually incorrect email" to the administrator. The association responded that the Facebook page is not sponsored by the association, but is operated by an individual resident, who controls the page as "he/she deems appropriate."

Jackson also alleged the association violated § 55-510 of the POA Act by failing to appropriately process "formal requests for access to information" and by denying him a copy of a meeting agenda for a board meeting. However, copies of the allegedly improperly processed requests were not included in the complaint, and Jackson did not explain in what manner the requests had been improperly processed. The association responded that though Jackson had provided an excerpt from meeting minutes demonstrating a request for an agenda packet, there was no concurrent example the association had denied him access to the packet. The association also said it had no recollection of ever denying copies of association documents that were appropriate for review under the POA Act.

Notable Recent Final Determinations from the Ombudsman (continued)

The Ombudsman indicated her agreement with the association's response regarding unnoticed meetings, especially

A Poem by the Ombudsman

The Ombudsman presented this poem at the Central Virginia Community Associations Day Trade Show and Expo held in Richmond, Virginia on April 20, 2018.

Five Things...

With apologies to Dr. Seuss and all other poets in the universe

For HOAs, condos and co-ops to thrive,
It's best to remember the following five.

Number one is be nice, be kind and be good
You want to create peace in your own neighborhood.
Smile and greet and try to help out,
It's so much more pleasant if we don't have to shout.

Number two, please remember to field complaints,
You don't want to cause the ombudsman to faint.
Acknowledge, consider and provide a decision,
It's a process that requires at least some precision.

Number three I would ask you, be open and clear,
Don't hide all your records when owners come near.
Feel free to exclude those outlined in the Code,
but all other options lead down a bumpy road.

The fourth is the simplest and most important of all
Give notice of meetings, winter, spring, summer or fall.
Committee, work session, board or annual meeting,
The need for notice truly bears repeating.

The final remembrance, in this list numbered five
Is to call the ombudsman when troubles arrive.
I'm easy to get to, by email or phone
You don't have to handle it all on your own.

The moral of the story, if it's not yet clear,
Is the same for each community throughout the year.
Talk to each other, they're your neighbors you know,
With one single purpose to see their place grow.

If you follow the law, and do what is right,
The chances are good you'll remain in the light.
So be responsive, be open, tell people to meet,
Bring kindness to your association on each and every street.

Written by

Heather Gillespie

Common Interest Community Ombudsman



since there were no specific examples of meetings being held without notice, other than the one instance acknowledged by the association of an executive session held without first having an open meeting, for which it apologized. The Ombudsman noted she was comfortable the association was making effort to provide proper notice of meetings. Regarding the issue of recording minutes for board committee meetings, the Ombudsman pointed out the POA Act does not specifically require minutes for every single committee meeting. She also noted, though, that the definition of board of directors in § 55-509 of the POA Act, includes "...a committee which is exercising the power of the executive body by resolution or bylaw..." when coupled with the requirement that meeting minutes be recorded seems to suggest most committee meeting minutes would require minutes, depending on the nature of the meeting. The Ombudsman encouraged the association to review the minutes requirement under § 55-510.1 and the definition of "board of directors" in § 55-509, to ensure that it records minutes for board committee meetings where the committee is exercising the power of the executive body by resolution or bylaw.

The Ombudsman determined that since the Facebook Group is not operated or administered by the association, no violation of the POA Act could be found. The Ombudsman also concluded that there was no way to determine if the association failed to respond to Jackson's requests for documents, due to the lack of supporting documentation of such requests being made.

File Number 2018-01812, Kotova v. The Village Homes of Stoney Run Condominium Association

Determination issued on February 12, 2018.

The Complainant (Kotova) alleged her condominium association violated § 55-79.83 of the Condominium Act, which establishes the authority of an association to impose different types of assessments for common expenses in condominiums, such as general assessments, additional assessments, and limited common element assessments. Kotova indicated the association was "unbundling" certain utility expenses from the general assessment and billing owners. Kotova expressed her belief that the cost of meter reading and issuing of statements to be operational expenses and not services to owners. The association responded to the complaint by stating, verbatim "[t]he Board determined their actions for which you complained complied with [Section of the Code and Bylaws] of the [Virginia Property Owners Act or Virginia Condominium Act]."

The Ombudsman noted the complaint submitted to the association was difficult to understand, possibly because there was not enough information to flesh out the details of the alleged violation. With that said, the Ombudsman pointed out that it did not appear her office has the jurisdiction to determine whether the assessment of certain services are appropriate or not and whether they can be "unbundled" from a general assessment. Though Kotova alleged a violation of § 55-79.83, she did not specify precisely how the association violated the provision of the Condominium Act. Even if Kotova had done so, a determination would have required

Notable Recent Final Determinations from the Ombudsman (continued)

a review of the condominium instruments, which is outside the scope of the Ombudsman's jurisdiction.

Though the Ombudsman did not find the association violated common interest community law or regulations relative to Kotova's complaint, she pointed out the association failed to adhere to the Common Interest Community Ombudsman Regulations in providing a final determination to Kotova. Specifically, the final determination issued by the association to Kotova did not include specific citations to applicable laws or regulations that lead to the final determination, which provided little information to Kotova to understand the association's position. The Ombudsman informed the association that it was on notice that failure to comply with the Ombudsman regulations in the future might result in referral of the matter to the Common Interest Community Board.

Additional information on these final determinations, as well as other final determinations issued by the Ombudsman, can be obtained from the website for the Common Interest Community Ombudsman at <http://www.dpor.virginia.gov/CIC-Ombudsman/2017-18-Determinations/>.

Board Adopts Guidance Documents for Time-Share Registrations

On June 7, 2018, the CIC Board adopted two guidance documents related to time-share project registrations. The documents were posted on the Virginia Regulatory Town Hall for public comment between June 18, 2018, and July 19, 2018.

Determining Value of Blanket Surety Bonds Filed by Developers in Lieu of Escrowing Deposits

The guidance document provides interpretation of a section of the Virginia Real Estate Time-Share Act ("Time-Share Act") regarding blanket surety bonds that may be posted by a time-share project developer. As a result of a legislative change to the Time-Share Act in the 2018 General Assembly session, a developer of a time-share project consisting of more than 25 units has the option of positing a blanket corporate surety bond or blanket irrevocable letter of credit with the CIC Board in lieu of placing deposits received in connection with purchase or reservation of time-share product into an escrow account. The amount of the bond/letter of credit to be filed with the Board is based on the total amount of deposits held by the developer for the project. The legislation specified that for letters of credit, the amount of deposits held as of May 31 of a calendar year will determine the letter of credit amount. However, it was unclear whether this also applied to surety bonds filed with the Board. The Board determined that for surety bonds, the amount of deposits held as of May 31 of a calendar

year will determine the amount of the surety bond.

Time-Share Public Offering Statements Delivered by Way of Alternative Media; Purchaser Opportunity to Review Public Offering Statement Prior to Execution of a Contract

The guidance document provides interpretation of a provision of the Time-Share Act regarding public offering statements. Under § 55-374 of the Time-Share Act, a developer is required to distribute to a prospective time-share purchaser, prior to execution of a purchase contract, a copy of the public offering statement (POS) for the time-share being offered. The developer is required to "...fully and accurately disclose the material characteristics of the time-share project...and...make known to each prospective purchaser all material circumstances affecting such time-share project." A POS may be in any format, "...provided the prospective buyer has available for review, along with ample time for any questions and answers, a copy of the public offering statement prior to his execution of a contract." This section of the Time-Share Act references compact disc as an alternative format for a public offering statement, but is silent as to other possible formats. As technology has progressed, some developers have taken to distributing offering statements by flash drive or by Internet web link. However, it was not clear whether these formats were permissible under the Time-Share Act. The Board determined that dis-

Did You Know?

In addition to laws and regulations, guidance documents adopted by state agencies may impose requirements that have the binding force of a regulation. Regulatory boards, such as the CIC Board, create guidance documents in some cases to interpret statutes or regulations pertaining to the board, or to provide guidance to staff on how statutes and regulations are to be implemented. All guidance documents are published, and as of January 1, 2019, are subject to public comment.

Guidance documents for the CIC Board are posted on the Virginia Regulatory Town Hall website (<http://townhall.virginia.gov/L/GDocs.cfm?boardid=147>).

tribution of a POS by any tangible medium for data storage (e.g. CD, DVD, flash drive) and by Internet web link or network data storage (e.g. Dropbox) are permissible. In addition, to better ensure consumers are protected, the Board determined that full and accurate disclosure to a consumer in a POS includes providing notification of the developer's obligation to provide a public offering statement, along with ample time for questions and answers, prior to execution of the contract. The Board also determined that a developer seeking to distribute a POS by alternative media (i.e. other than paper copy) obtain a consumer's written consent to do so, and inform the consumer of its obligation to provide the POS and allow time for questions before a contract is signed.

CIC Board Celebrates 10th Anniversary (continued)

commission studies and award grants.

In 2001, the General Assembly created the position of Common Interest Community Association Liaison to serve as an information resource on matters relating to the governance, administration, and operation of associations, including applicable laws and regulations.

In 2003, the Real Estate Board contracted with Old Dominion University (ODU) to conduct a study on the operation and management of common interest communities. The ODU study concluded that better education and communication would benefit all individuals involved with common interest communities. Though the study provided a comprehensive overview of common interest communities, including legal and policy issues, it did not address the adequacy of training of managers, or the disclosure of financial information to consumers.

In 2005, the General Assembly directed the Real Estate Board to review the ODU study and conduct its own review of professionally compensated managers of community associations. In 2006, the Real Estate Board published the results of its study (House Document No. 3 – The Adequacy of Training and Disclosure of Financial Information to Consumers by Financially Compensated Professional Managers of Condominium Associations, Property Owners’ Associations and Other Similar Common Interest Communities). This study concluded that associations who employ reputable management companies were generally satisfied with the companies’ management personnel, who seemed to have adequate training. The study noted that problems facing associations focused on inadequate training of association board

Here is a look at the past 10 years for the Common Interest Community Board, by the numbers (as of July 1, 2018):



members, the ability of associations to employ a management company that meets acceptable standards, and acquiring adequate management contracts. The study also examined regulation of managers in other states. At the time, only two states (Connecticut and Nevada) regulated community managers by requiring registration or certification. The 2006 Real Estate Board study, however, did not make a recommendation regarding licensure of managers.

In 2007, the Virginia Housing Commission took up the issue of regulating managers. This was prompted, in part, by a case involving a Northern Virginia real estate firm that managed over 300 communities in Virginia. In January 2007, the Real Estate Board received information regarding financial irregularities in the association accounts controlled by Koger Management, Inc. It was later determined that the chief financial officer of the company had embezzled funds from numerous property owners’ associations and condominium

unit owners’ associations managed by the company. The individual admitted to stealing \$3 million dollars from the affected associations. The Real Estate Board and the Department of Professional and Occupational Regulation (DPOR) filed suit against the firm, and the firm was placed under court supervision.

The Commission also sought to address constituent complaints regarding associations, including the lack of a mechanism for resolution of disputes between owners’ and their associations, and a means to regulate association governing boards. Throughout the summer and fall of 2007, interested parties, including those representing associations, community managers, and real estate professionals, developed potential legislation. In December 2007, the Commission unanimously adopted a proposal to create a separate regulatory board for common interest communities, establish a licensure scheme for manage-

Members of the Inaugural CIC Board (July 2008)

Lucia Anna (Pia) Trigliani (Attorney) Board Chair	Kimberly B. Kacani (Developer) Board Vice-Chair	F. James Ahlberg (CPA)
Pamela Coerse (Time-Share Industry)	Ronda S. DeSplinter (Manager)	Douglas M. Kleine (Citizen)
Milton W. Matthews (Manager)	R. Lee Merritt (Manager)	Glenn H. Silver (Citizen)
Scott E. Sterling (Developer)	Katherine E. Waddell (Citizen)	Jay W. DeBoer Director, DPOR Board Secretary



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CIC Board Celebrates 10th Anniversary (continued)

ment companies and certification of individual managers, and a complaint system for association members.

Creation of the Board

During the 2008 General Assembly session, the Assembly adopted HB 516 and SB 301. The bills were introduced by Delegate Terrie L. Suit and Senator Mary Margaret Whipple, respectively.

The sweeping measures called for the creation of the Common Interest Community Board, a nine-member board (later increased to 11 members) with regulatory authority over associations and the power to license and regulate community management firms and individuals. The new board would be composed of a mix of industry representatives and citizens residing in associations.

The legislation also created a new office, the Office of the Common Interest Community Ombudsman, to replace the Common Interest Community Association Liaison. The Ombudsman would be required to be a licensed attorney, and responsible for offering assistance and information to association members regarding the rights and processes available to them through their associations. In addition, the legislation charged the new board to establish a requirement for associations to develop a complaint procedure for association members and other citizens to resolve complaints, and created a mechanism for association members to file notices of final adverse decision with DPOR in order to receive a final determination.

The scope of the Common Interest Community Management Information Fund was expanded to fund the operation of the new board and the Ombudsman's office. Further, the legislation created a new fund, the Common Interest Community Management Recovery Fund, to provide means for an association to recover monies in common interest community cases to pay a court-appointed receiver and restore association funds held by a common interest community manager in its fiduciary capacity that were lost. The measures also transferred from the Real Estate Board to the

new board the registration programs for community associations, condominiums, and time-shares. The bills also made other changes affecting property owners' associations and condominium unit owners' associations, to include increasing bonding requirements, and requiring such bonds cover theft or dishonesty of governing board members, association employees, and association managing agents.

By early March 2008, both bills had passed through the General Assembly, but not before the chambers made amendments that changed requirements for property owners' association disclosure packets, and condominium resale certificates. The Governor recommended additional amendments, which the Assembly accepted. On April 23, 2008, the Governor approved the bills. The legislation became effective on July 1, 2008.

The Governor's first appointments to the Board consisted of individuals known in the community associations industry. The initial appointments included Lucia Anna "Pia" Trigiani, a Northern Virginia attorney who represented community associations. Other appointees were Kimberly B. Kacani of HHHunt Communities and Scott E. Sterling of IDI Group Companies as developer representatives; R. Lee Merritt of RLM Associates, Ronda S. DeSplinter of Kingstowne Residential Owners Corporation, and Milton W. Matthews of Reston Association, as community manager representatives; James F. Ahlberg, a CPA who provided attesting services to associations; Pamela S. Coerse, a time-share industry representative; and citizen members Glenn H. Silver, Katherine E. Waddell, and Douglas M. Kleine.

Jay W. DeBoer, Director of DPOR, would serve as Secretary for the Board. In June 2008, Trisha L. Henshaw was selected to be the Board's Executive Director. Soon after, in September 2008, Heather S. Gillespie was selected as the Common Interest Community Ombudsman. Ms. Henshaw and Ms. Gillespie continue in their positions today.

Under the legislation, the Board was to begin issuing provisional manager licenses to those entities providing management services to associations on or before December 31, 2008. Provisional licenses would be

valid until June 30, 2011. By July 1, 2011, all employees of a manager that have principal responsibility for providing management services to associations, or who have supervisory responsibility for employees that directly provide management services to associations, would be required to be certified by the Board in order for the manager to receive or renew a license.

The Board's First Steps

On September 4, 2008, the Board convened its first meeting at DPOR. Shortly after convening, the Board elected Ms. Trigiani to serve as Board Chair, and Ms. Kacani to serve as Vice-Chair. Among the Board's first orders of business were the consideration of temporary regulations for common interest community manager licensure, and the formation of a regulatory review committee to begin the process of developing permanent regulations. The Board also took action to adopt association registration regulations, and adopt regulations for the condominium and time-share registration programs it assumed from the Real Estate Board.

Over the course of the fall of 2008, the new board held several meetings to develop the manager licensure program, provide interpretative guidance regarding the recent legislation, as well as other organizational matters. During this period, Board staff and the Ombudsman began outreach efforts to inform associations and managers of the changes brought on by the legislation, the new board, licensure requirements for managers, and new requirements for associations.

In November 2008, the temporary manager licensure regulations took effect, and the Board began the process of receiving applications to issue provisional licenses. In December 2008, the Board issued its first provisional licenses. After January 1, 2009, the Board began issuing regular manager licenses. In February 2009, the Board agreed upon proposed permanent regulations for manager licensure. The final regulations were adopted in October 2009, and became effective

CIC Board Celebrates 10th Anniversary (continued)

April 1, 2010.

During the fall and winter months of 2008 and 2009, the Board also began the process of developing regulations for association complaint procedure requirements. In January 2009, the Board formed a regulatory review committee to further consider what would become the Common Interest Community Ombudsman Regulations. In October 2009, the Board adopted proposed regulations. The final regulations were adopted in June 2011, and became effective July 1, 2012.

In July 2009, the Board undertook the process of developing regulations for the certification of management company employees with principal responsibility for providing management services to associations, or who have supervisory responsibility over employees that directly provide management services; as these individuals were required to be certified by July 1, 2011. However, during the 2011 General Assembly session, the legislature extended the timeframe for employees to become certified, establishing that employees be certified by July 1, 2012. The amendments to the CIC Manager Regulations became effective on March 1, 2012. In July 2012, the Board began issuing its first certificates.

Looking Back At 10 Years

As of its 10th anniversary on July 1, 2018, the CIC Board has held 48 board meetings, and 39 committee meetings (to include regulatory review and training program approval committees). There have been 25 individuals appointed to serve as board members. The CIC Board has undertaken 23 regulatory actions. In addition to creating regulations for licensure of common interest community managers and association complaint procedures, the CIC Board in recent years has rewritten regulations for condominium and time-share project registration. Currently, the Board is in the process of making changes to regulations for registration of community associations. The Board has been assigned 142 legislative proposals, and frequently has the most bills assigned to it during legislative sessions compared to other DPOR boards.

Some current and former Board members provided their insights regarding their time serving on the Board. Generally, members were motivated by a desire to contribute to the Board's mission of protecting the public welfare and ensuring the profession was adequately regulated. Board Member Paul Orlando, appointed in 2015 and currently the Board's Vice-Chairman, explained his motivation for serving:

"I became involved in common interest community legislative-related activities in the mid-1980's, after becoming increasingly frustrated with the lack of affirmative disclosure laws for homeowner associations as there were for condominiums. At that time I participated in writing what would eventually become the Property Owners Association Act, signed into law in 1989. I became a member of the Virginia Legislative Action Committee of the Community Associations Institute (CAI) in 2003 and participated in writing the law that would eventually create the CICB, the Office of the Ombudsman and require management company licensing. Thus, becoming a member of the CICB was a logical step to remain active in ensuring that communities receive the best and most honest services possible from companies created to deliver those services and to protect the interest of the owners and residents within those communities."

Scott Sterling, a member of the Board since its inception, explained that after having served on boards for non-profit organizations and for-profit firms, he was fascinated by the idea of being involved with the Board at its beginning, as it seemed like a "start-up." Doug Rogers, a former citizen Board Member, indicated he was motivated to join the Board after having become interested in association issues while serving as a member of his HOA board; and wanted to provide an HOA perspective to the Board.

Mr. Sterling indicated there were challenges for the Board during its early years as its members worked to establish the "framework and building blocks" of the Board while being mindful of the legislature's intent, the goal of serving the public, and respecting the good and valuable parts of the industry. Service on the Board also proved to be a learning experience for its members. Mr. Rogers expressed that his time on the Board allowed him to gain a great amount of knowledge as to why associations operate the way they do. Mr. Orlando, having previously served on two of the Board's regulatory review committees prior to joining Board, was fairly familiar with how the Board operated, but came to understand more about the processes at work in a governmental structure, and how they differed from those in an association.

The Board has benefitted from the steady leadership of its Chair, Pia Trigiani. Officers of the Board are elected by the Board on annual basis to serve for one year, and it is a testament to the high regard her fellow Board members have for her that Ms. Trigiani has been elected by acclamation of the membership every year since the beginning. Mr. Sterling expressed the Board was fortunate to have Ms. Trigiani serve as Board Chair from the outset, noting Ms. Trigiani's combination of legal expertise and practical experience, along with a "gentle but guiding hand," moved the Board through its early months. Mr. Rogers stated, "Pia is an outstanding chair and runs an excel-

Story Continues on Page 13.

Key Dates in CIC Board History

<u>Date</u>	<u>Event</u>
June 2007 - November 2007	Virginia Housing Commission considers creation of CIC Board and licensure of managers; potential legislation is developed.
December 6, 2007	Virginia Housing Commission recommends legislation to create CIC Board and license managers.
January 2008 - March 2008	General Assembly considers HB 516 and SB 301.
April 23, 2008	HB 516 and SB 301 are approved by the Governor.
July 1, 2008	HB 516 and SB 301 become effective.
September 4, 2008	The Board holds its inaugural meeting.
November 13, 2008	Temporary CIC Manager Licensure Regulations become effective.
December 2008	Board begins issuing provisional CIC Manager licenses.
January 2009	Board begins issuing regular CIC Manager licenses.
April 1, 2010	Permanent CIC Manager Licensure Regulations become effective.
March 2011	General Assembly extends provisional license expiration date to July 1, 2012. Deadline for certification of employees extended to July 1, 2012.
March 1, 2012	Regulations for certification of Principal and Supervisory Employees become effective.
July 1, 2012	CIC Ombudsman Regulations become effective.
July 2012	Board begins issuing first employee certificates.

Selected CIC Board Regulant Population, Past and Present

<u>License/Registration Type</u>	<u>1/1/2009</u>	<u>1/1/2014</u>	<u>1/1/2019</u>
Registered CIC Associations (POAs, Condos, Cooperatives)	3,952	5,379	6,392
CIC Managers	133	183	177
Certified Principal or Supervisory Employees (CPSE)	-	301	309
Condominium Project Registrations	634	377	222
Time-Share Project Registrations	97	72	88

CIC Board Celebrates 10th Anniversary (continued)

lent meeting.” Board members also credited the efforts of DPOR staff serving the Board. Regarding the staff’s assistance to the Board, Mr. Orlando noted, DPOR staff is “excellent and always provides thorough and detailed information for decision making, thus making the Board members’ lives pretty easy.”

These members regard their experiences in serving on the Board positively; and believe the Board has been beneficial to the public. Mr. Rogers, who served on the Board from 2010 to 2014, indicated he would be willing to serve on the Board again if asked. Mr. Orlando noted he sees significant accomplishments at each and every Board meeting in that the Board makes appropriate decisions to ensure that all entities under the Board’s purview are adhering to required laws and regulations, thereby accomplishing the main mission of safeguarding the public interest. Similarly, Mr. Sterling, in looking at the Board’s development, said:

The Board has, over the decade, built a reputation for deliberative decisions and an ability to pivot as new information become available. We have tried to marry the practical effects of our actions with legal necessities. The Board very much has tried to encourage compliance and good behavior rather than punish activities contrary to the rule & regulations.

Starting from near scratch requires persistence and an abundance of ideas, both good and not-so-much. It also takes years, sometimes, to see if what you’ve done will actually have the results you desired. “Just showing up”, as Woody Allen said, may be important, but once there you have to keep at it: reviewing what you’ve done, refining what needs adjustment, moving forward as circumstances change and always keeping in mind that we are serving the public. I think the Board has done this well.



Recent Cease and Desist Actions

At meetings held on March 15, 2018, and November 29, 2018, the Board imposed temporary cease and desist orders against the declarants for the following condominium project registrations due to non-compliance with the registration requirements in the Condominium Act. Under the terms of the orders, declarant must cease and desist from sales of condominium units until it comes into compliance.

North Drive Condominiums
 (Registration No. 0517060201)
 Christiansburg, VA
 Declarant: Hawkeye West, LLC
 Order adopted on March 15, 2018

(Order lifted April 6, 2018, following declarant’s compliance.)

Old Heller Brothers Lofts Condominium
 (Registration No. 0517080160)
 Bristol, VA
 Declarant: Old Heller Brothers Lofts, LLC
 Order adopted on November 29, 2018
 (Order lifted December 17, 2018, following declarant’s compliance.)

Oakwood Villas Condominium
 (Registration No. 0517040124)
 Harrisonburg, VA
 Declarant: Oakwood Villa, LLC
 Order adopted on November 29, 2018
 (Order lifted December 13, 2018, following declarant’s compliance.)

You may refer to the Board’s website for the most up-to-date information regarding active cease and desist orders.



Board Member and Meeting Information

CIC Board Membership

The CIC Board is composed of 11 members appointed by the Governor. Board members' terms are four years and a member can serve up to two terms. The *Code of Virginia* stipulates that the Board's membership is composed of:

- Three (3) representatives of common interest community managers
- One (1) attorney whose practice includes representing associations
- One (1) CPA who provides attest services to associations
- One (1) Time-Share Industry Representative
- Two (2) Representatives of Developers of CICs
- One (1) Citizen Serving/Served on Self-Managed Association Governing Board
- Two (2) Citizens Residing in Common Interest Communities

Lucia Anna (Pia) Trigianni (Attorney) Second four-year term ends June 30, 2019 Board Chair	Paul L. Orlando (Community Manager) First four-year term ends June 30, 2019 Board Vice-Chair	Maureen A. Baker (Community Manager) Unexpired term ends June 30, 2020
Tom Burrell (Citizen Serving on an Association Board) First four-year term ends June 30, 2022	Mary Elizabeth (Beth) Johnson (CPA) First four-year term ends June 30, 2021	Amanda Jonas (Developer) First four-year term ends June 30, 2022
Drew R. Mulhare (Community Manager) First four-year term ends June 30, 2022	Lori Overholt (Time-Share Industry) First four-year term ends June 30, 2020	Eugenia Lockett Reese (Citizen Residing in a CIC) First four-year term ends June 30, 2021
Scott E. Sterling (Developer) First four-year term ends June 30, 2019	Katherine E. (Katie) Waddell (Citizen Residing in a CIC) First four-year term ends June 30, 2021	Mary Broz-Vaughan Acting Director, Department of Professional and Occupational Regulation Board Secretary

CIC Board Staff

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- ◆ Lee Bryant
Program Administration Specialist
- ◆ Ben Tyree
Licensing Specialist

2018 Meeting Dates

March 15, 2018 @ 9:30 a.m.

June 7, 2018 @ 9:30 a.m.

September 6, 2018 @ 9:30 a.m.

November 29, 2018 @ 9:30 a.m.

2019 Meeting Dates

March 14, 2019 @ 9:30 a.m.

June 6, 2019 @ 9:30 a.m.

September 5, 2019 @ 9:30 a.m.

December 5, 2019 @ 9:30 a.m.

Note: As needed the Board will convene meetings of its Training Program Committee. These meetings typically take place on the afternoon preceding a scheduled board meeting date.

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