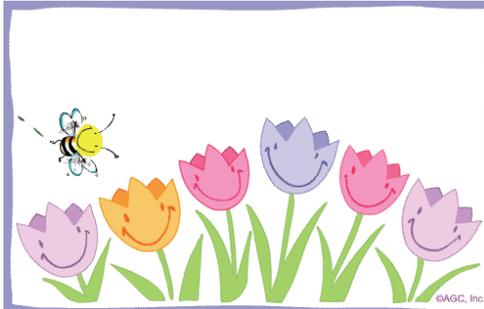


Common Interests



The Newsletter of the Virginia Common Interest Community Board

Happy Springtime!

Welcome to the Spring 2019 edition of *Common Interests*, the newsletter of the Common Interest Community Board. This edition of the newsletter continues to provide important information and updates regarding the Board’s recent activities, as well as significant legislation passed during the 2019 General Assembly Session. We also look at common interest community manager training programs. Also, be sure to check out the feature article “An Open Door on Closed Sessions.” We hope you enjoy.

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Board Update: CIC Board Welcomes New Members

The Board welcomes three new members recently appointed by Governor Northam: Tom Burrell, Amanda Jonas, and Drew R. Mulhare.

Mr. Burrell joins the Board as its newest citizen member, replacing David Watts. Mr. Burrell, who is retired and a veteran of the armed services, is a board member of his association, located in the City of Fairfax. He has been involved with common interest community issues for many years, and is a member of the Board of Directors of the Washington Metro Chapter of Community Associations Institute.

Ms. Jonas was appointed to fill a developer seat on the Board, replacing Kim Kacani whose second full term ended in June 2018. Ms. Jonas is the Director of Community Development for HHHunt Communities, a developer of master-planned communities in the Greater Richmond region. Ms. Jonas’s duties at HHHunt include directing and managing all aspects of community development. In addition, Ms. Jonas has extensive experience in community management, and, as a developer representative, has successfully assisted many associations in transitioning from developer control. She is accredited as a Certified Manager of Community Associations (CMCA), Association Management Specialist (AMS) & Professional Community Association Manager (PCAM).

Mr. Mulhare was appointed to fill a vacant community manager seat on the Board. Mr. Mulhare is the President of Realtec Community Services, Inc., a community management firm serving the Ford’s Colony community in Williamsburg. He is accredited as a Professional Community Association Manager (PCAM). In addition, Mr. Mulhare is the Chair of the Board of Commissioners for Community Association Managers

International Certification Board (CAMICB), a professional accreditation body for community managers. Mr. Mulhare has previously worked with the CIC Board, serving on a board regulatory review committee during 2018. In addition, Mr. Mulhare, a licensed real estate broker, has also previously worked with the Real Estate Board.

All three new members have been appointed to terms ending June 30, 2022.

Board Forms Committee to Develop Guidelines for Reserve Studies

During its March 2019 meeting, the Board authorized the formation of a committee to develop guidelines on the development of reserve studies. The Board’s action was in response to the enactment of HB 2030 and SB 1538, which direct the Board to develop guidelines on the development of reserve studies for capital components in common interest communities, including a list of capital components to be addressed in a reserve study.

The Board appointed Drew Mulhare to chair the committee, and appointed Tom Burrell to serve on the committee as an association representative. The committee will also be comprised of various subject matter experts in the field of reserve studies. It is scheduled to meet on June 20, 2019.

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.

2019 Legislative Update

On January 9, 2019, the Virginia General Assembly convened for its 2019 session. The session concluded on February 24, 2019. During this session, the Assembly considered and adopted numerous bills affecting common interest communities. The list below includes only those bills that were enacted and directly impact the CIC Board. There may be other legislation affecting common interest communities that are not on this list.

(Note: Except where otherwise indicated, all legislation will become effective on July 1, 2019. 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 1853/SB 1537 - Virginia Property Owners' Association Act; home-based businesses.

Summary: Provides that if a development is located in a locality classifying home-based child care services as an accessory or ancillary residential use under the locality's zoning ordinance, the provision of home-based child care services in a personal residence shall be deemed a residential use unless (i) expressly prohibited or restricted by the declaration or (ii) restricted by the association's bylaws or rules. This legislation was a recommendation of the Virginia Housing Commission.

HB 2030/SB 1538 - Common interest communities; dissemination of annual budget; reserve for capital components.

Summary: Requires common interest communities under the Condominium Act, the Property Owners' Association Act, and the Virginia Real Estate Cooperative Act (the Acts) to make available to members either the common interest community's annual budget or a summary of the annual budget prior to the beginning of each fiscal year. The bill requires that the five-year cash reserve study required under the Acts include a statement that outlines the amount of the reserves recommended in such study as well as the amount of current cash available for replacement of the reserves. The bill also requires the Common Interest Community Board to prepare guidelines for the development of reserve studies for capital components. This legislation was a recommendation of the Virginia Housing Commission.

HB 2647 - Condominium Act; meetings of unit owners' associations; proxy voting.

Summary: Provides that any proxy shall be void if not signed by or on behalf of the unit owner. The bill also provides that if the unit owner is more than one person, any such unit owner may object to the proxy at or prior to a meeting of the unit owners' association, whereupon the proxy shall be deemed revoked. Under current law, the proxy of any person is void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person.

HB 2694 - Property Owners' Association Act; association meetings; notice by e-mail.

Summary: Allows members of property owners' associations to elect to receive notice of meetings of the association by e-mail in lieu of the current requirement that such notice be sent by United States mail or hand delivered, provided that in the event that such electronic mail is returned as undeliverable, notice is subsequently sent by United States mail.

SB 1756 - Virginia Condominium Act; Virginia Property Owners' Association Act; stormwater facilities; transfer of control of management, maintenance, repair, or replacement.

Summary: Requires a declarant to deliver to the president of the unit owners' association or his designated agent, or in the case of a property-owners' association, the board of directors or their designee, an inventory and description of stormwater facilities located on their premises. The bill requires the delivery of final site plans and applicable recorded easements and agreements regarding the inventory and description of stormwater management facilities located on common elements of a condominium or property owners' association property so that such associations are aware of the requirements for the maintenance, repair, or replacement of the stormwater facilities.

Association Disclosure Packets/Condo Resale Certificates

HB 2019 - Residential real property; required disclosures; stormwater management facilities.

Summary: Provides that the owner of residential real property under the Virginia Residential Property Disclosure Act must include in the residential property disclosure statement provided to a potential purchaser of residential property a statement that the owner makes no representations with respect to the existence or recordation of any maintenance agreement for any stormwater detention facilities on the property, and that advises the potential purchaser to take whatever due diligence steps they deem necessary to determine the presence of any such facilities or agreements, such as contacting his settlement provider, consulting the locality in which the property is located, or reviewing any survey of the property that may have been conducted. The bill also requires the Common Interest Community Board to include notice that regular annual or special assessments paid by the owner to the association may be used for the construction or maintenance of stormwater management facilities in the 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 and resale certificates provided to purchasers of units located in a condominium that is subject to the Condominium Act.

HB 2385/SB 1580 - Condominium Act and Property Owners' Association Act; delivery of condominium resale certificates and association disclosure packets; right of purchaser to cancel contract.

Summary: Provides that a purchaser of a unit subject to the Condominium Act or a lot subject to the Property Owners' Association Act who receives a condominium resale certificate or association disclosure packet that is not in conformity with law may cancel the contract for such unit or lot (i) within three days after the date of the contract if the resale certificate or disclosure packet is received on or before the date that the purchaser signs the contract; (ii) within three days of receiving the resale certificate or disclosure packet if the resale certificate or disclosure packet is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate or disclosure packet is sent to the purchaser by United States mail.

Association Registration/CIC Manager Licensure

HB 2081 - Common Interest Community Board; association fees; Common Interest Community Management Information Fund.

Summary: Eliminates annual assessments levied by the Common Interest Community Board. The bill allows for the collection of application, renewal, and annual reporting fees set by the Board in accordance with a biennial assessment of the Common Interest Community Management Information Fund similar to the assessment required by the Callahan Act (§ 54.1-113), but at no time shall such fee exceed \$25 unless such fee is based on the number of units or lots in the association.

Common Interest Community Board

HB 1962 - Common Interest Community Board; enforcement; issuance of compliance orders.

Summary: Authorizes the Common Interest Community Board to issue orders requiring governing boards and developers under the (i) Condominium Act (§ 55-79.39 et seq.), (ii) Virginia Real Estate Time-Share Act (§ 55-360 et seq.), and (iii) Virginia Real Estate Cooperative Act (§ 55-424 et seq.) to take affirmative action to correct certain conditions to come into compliance with relevant statutory requirements. Currently the Board is limited to temporary and permanent cease and desist orders.

SB 1086 - Virginia Real Estate Time-Share Act; Common Interest Community Board; administrative proceedings.

Summary: Conforms language regarding temporary cease

and desist orders to similar proceedings in § 55-79.100 under the Condominium Act (§ 55-79.39 et seq.). The bill removes language that (i) requires hearings of the Board to be formal in nature and to be held in the County of Henrico and at least monthly and (ii) provides the Board with investigative powers already given to, and more appropriately, exercised by the Director of the Department of Professional and Occupational Regulation.

Miscellaneous

SB 1080 - Revision of Title 55.

Summary: Creates proposed Title 55.1 (Property and Conveyances) as a revision of existing Title 55 (Property and Conveyances). Proposed Title 55.1 consists of 29 chapters divided into five subtitles: Subtitle I (Property Conveyances), Subtitle II (Real Estate Settlements and Recordation), Subtitle III (Rental Conveyances), Subtitle IV (Common Interest Communities), and Subtitle V (Miscellaneous). The bill organizes the laws in a more logical manner, removes obsolete and duplicative provisions, and improves the structure and clarity of statutes pertaining to real and personal property conveyances, recordation of deeds, rental property, common interest communities, escheats, and unclaimed property. The bill has a delayed effective date of October 1, 2019, and is a recommendation of the Virginia Code Commission. (For more information see Page 7.)

Regulatory Actions Update

Regulatory Actions Completed:

Correction to Condominium Regulations (Effective May 15, 2019)

At its March 14, 2019 meeting, the Board voted to undertake an exempt action to correct a technical error in 18 VAC 48-30-560 of the Condominium Regulations. An exempt action was filed on March 21, 2019, and published in the Virginia Register on April 15, 2019.

Association Fee Reduction (Effective July 1, 2019)

In March 2015, the Board adopted a temporary reduction of filing fees for renewal of association registration. In 2017, the Board extended the temporary fee reduction to initial application for association registration. Currently, associations are required to pay a flat \$10 application fee for registering or renewing a registration. At its meeting on March 14, 2019, the Board voted to extend the temporarily reduced fees for another year, through June 30, 2020. An exempt action was filed on April 13, 2019, and published in the Virginia Register on May 13, 2019.

Elimination of Annual Assessments (Effective July 1, 2019)

At its March 14, 2019 meeting, the Board voted to undertake two exempt actions to amend the Common Interest Community Manager Regulations and Common Interest Community Management Information Fund Regulations to eliminate annual assessment payments as a requirement for manager licensure and association registration. The changes are the result of the passage of HB 2081 during the 2019 General Assembly Session. The exempt actions were filed on April 13, 2019, and published in the Virginia Register on May 13, 2019.

Regulatory Actions Update (cont.)

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 regulatory review 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. In February 2019, the proposed amendments were submitted for review by Executive Branch agencies, including the Governor's office. Once executive branch review is completed, the proposed amendments will be submitted to the Registrar of Regulations for publication in the Virginia Register. Publication in the Register will commence a 60-day public comment period, to include a public hearing at a date to be determined.

Further information on these regulatory actions may be found at the Virginia Regulatory Town Hall website (<http://townhall.virginia.gov/>).

Board Revises POA Disclosure Packet Notice and Condominium Resale Certificate Notice for 2019

At its meeting in March 2019, the Board adopted revisions to the disclosure notices that must accompany property owners' association ("POA") disclosure packets and condominium resale certificates. The revisions were made in order to comply with HB 2019, passed by the General Assembly during the 2019 General Assembly session, and approved by the Governor (see Page 2 for a summary of this legislation). HB 2019 amended the Board's enabling statute to require these notices to disclose that assessments charged to owners in an property owners' association or condominium unit owners' association may be used for the construction and maintenance of stormwater management facilities.

The change in the law becomes effective on July 1, 2019, at which time property owners' associations and condominium unit owners' associations will be required to include the revised dis-

closure notice in their packets.

The Board's office will be mailing notice of the upcoming change to all registered associations and licensed common interest community managers. In addition, the revised notices will be made available on the Board's website.

Recent Board Disciplinary Case Decisions

File Number 2018-01894; Tagare Corporation

Consent Order adopted by the Board on March 14, 2019.

The management company admitted to violating the Board's regulation for failing to safeguard the interests of the public. The company, as managing agent for a property owners' association, had failed to submit the annual report required by § 55-516.1 of the Code of Virginia to the Board, as stipulated in its agreement with the association. The association's registration with the Board subsequently expired. During the investigation of the complaint, the management company filed the required annual report.

In addition, the management company admitted to violating the Board's regulation pertaining to minimum terms required in a management services contract. The company's contract with the association did not contain the company's common interest community manager license number, the company's record retention and distribution policy, and a general description of the records to be kept and bookkeeping system to be used.

The management company agreed to monetary penalties and board costs totaling \$550, with \$150 in monetary penalty waived if the company submitted a contract to the Board which complied with the Board's regulation.

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.

Notable Recent Final Determinations from the Ombudsman

File Number 2019-01345, Green Run Homes Association

Determination issued on December 11, 2018.

The Complainant (Zeien) requested a copy of the association's disclosure packet pursuant to § 55-509.5 of the Property Owners' Association (POA) Act, and was told there would be a charge of \$264.08 for the packet. Zeien believed the amount charged to be a financial hardship, and that the association should provide a copy of the packet upon request through the company it employs to provide disclosure packets. Zeien also alleged the association failed to disclose possible pending litigation in its disclosure packets. The association responded by noting that a disclosure packet shall be provided to a seller after such packet has been requested. The association also stated a disclosure packet is not a business record of the association, and that disclosure packets are not kept as part of the association's books and records. If the association did maintain separate disclosure packets, they would be lot specific and, therefore, part of an individual owner's file, and subject to exclusion from examination or copying under § 55-510(C)(9) of the POA Act. Section 55-510(C)(9) exempts "[i]ndividual unit owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association" from being records that are required to be available to association members under § 55-510(B) of the POA Act. The association also responded by stating that the fee it charges to provide the disclosure packet is valid under applicable law. The association further responded that it has followed the law regarding disclosure packets as it pertains to litigation.

The Ombudsman noted that the association appeared to have a valid reason for not providing a copy of the disclosure packet to Zeien, as it does not maintain a general disclosure packet as part of its books and records, each packet is individual to the lot it references, and is provided to sellers upon request. The fee charged by the association for providing a disclosure packet is based on the fees established in the POA Act and as updated by the Common Interest Community Board in accordance with the POA Act. There are no provisions in the POA Act regarding fee waivers for financial hardship, so it would be up to an association to determine if it wished to provide any type of waiver. The Ombudsman further noted that there was no evidence provided to support Zeien's claim that the association failed to disclose pending litigation in disclosure packets. The Ombudsman determined no action was required of the association.

File Number 2019-01346, Green Run Homes Association

Determination issued on December 12, 2018.

The Complainant (Zeien) alleged the association failed to comply with § 55-510 of the POA Act by failing to provide requested records within five business days. Section 55-510(B) stipu-



lates the right of an association member to examine and copy books and records of an association may be exercised "...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." Zeien contended the association is managed by a common interest community manager. Zeien's request for records was dated August 28, 2018. The association's response was dated August 30, 2018, but a mailing receipt indicated the response was not mailed until September 5, 2018.

The association responded that it does not believe it is managed by a common interest community manager, but is professionally managed by an employee of the association who provides management services. The association contended that there is no definition of "self-managed association" in the statute, and determined that since they are not managed by a common interest community manager, they can only be self-managed since no other nomenclature is available. The association also referenced the terms "professionally managed" and "not professionally managed" as reflected in §§ 55-509.6 and 55-509.7 of the POA Act, as it pertains to fees that may be charged for preparation and distribution of disclosure packets. In its response, the association noted that it agreed to provide a copy of the requested record to Zeien on September 6, 2018 in its front office, at no cost.

The Ombudsman noted that the issue of what constitutes a common interest community manager has been confusing for many. The additional designations of "professionally managed" and "not professionally managed" add further confusion, as does the term "self-managed." The Ombudsman explained that based on the definitions for "common interest community manager" and "management services" provided in § 54.1-2345 of the Code of Virginia, which is part of the statute that establishes regulation of the profession of common interest community managers, an employee of an association who provides management services to an association would be considered a common interest community manager. The difference between an association employee and a

Notable Recent Final Determinations from the Ombudsman (continued)

licensed common interest community manager is that an association employee who provides management services to the association falls outside the jurisdiction of the Common Interest Community Board by way of an exemption for an association employee under § 54.1-2347(A)(2) of the Code of Virginia.

The Ombudsman determined that an individual employed by the association would be considered a common interest community manager, and, therefore, the five-day requirement in § 55-510(B) would be applicable. However, the Ombudsman also noted that Zeien requested a copy of documents, rather than requesting the right to examine or copy the records. The statutory language in § 55-510 references a right of examination and the five-or-ten day notice of such intent to examine or copy the books and records. It does not reference receipt of copies of records, and does not provide a time frame in which an association must provide copies. Zeien requested a copy of a particular document, but did not request the right to examine or copy the document. Since there is no language in § 55-510 that addresses how many days an association has to provide a copy of a requested document(s), it did not appear the association violated § 55-510. The Ombudsman determined no action was required of the association.

File Number 2019-01978, Peachtree Community Association Determination issued on February 22, 2019.

The Complainant (Whitley) alleged the association failed to provide copies of requested books and records in violation of § 55-510 of the POA Act. On October 25, 2018, Whitley submitted a request for 14 specific documents to the association. Whitley's request, sent by certified mail, was delivered to the association on November 2, 2018. The association's board did not consider Whitley's request at its meeting held on November 5, 2018, but instead notified Whitley the request would have to be considered at another board meeting. Whitley alleged the association also violated § 55-510 by failing to provide records within 10 days, and that the association could have scheduled a special meeting to consider the request.

The association's final decision on Whitley's complaint stated the board of directors approved Whitley's receipt of certain records, and stated "...you, not a duly authorized representative of your choosing, must come to the Peachtree Office to collect said documentation and remit payment..." A list of the documents that would be provided upon payment was included in the final decision. Whitley received one of the 14 documents she requested. The association did not provide an explanation as to why the other documents were not provided.

Section 55-510 of the POA Act provides that all books and records of the association, with exception to those that are specifically exempt under the statute, must be made available for examination and copying. The Ombudsman determined that unless the association has a valid reason for excluding any of the requested documents (meaning an exclusion availa-

ble under the statute), it must provide Whitley the remaining documents she requested.

Section 55-510 provides a timeframe for the exercise of an association member's right to examine and copy documents. If the association is managed by a common interest community manager, it must upon five business days' written notice make requested books and records available for examination and copying. If the association is self-managed, it must do so upon 10 business days' written notice. The Ombudsman noted that while the statute provides a timeframe for when books and records must be made available for examination and copying, it does not address requests for receipt of copies of association records, or provide a timeframe in which copies must be provided. Whitley had asked to be provided copies of books and records, not the opportunity to examine them.

The Ombudsman directed the association provide Whitley with all records she had requested within 14 days, provided Whitley met her payment obligation under the cost schedule existing at the time of her request. The association was advised that if had a valid reason under the law for denying specific records requests to Whitley, it was to immediately contact the Ombudsman's office.

File Number 2019-01768, West Neck Community Association Determination issued on February 4, 2019.

The Complainant (Luckman) alleged the association's board of directors failed to properly enter an executive session after a board meeting it held on May 16, 2018, in violation of § 55-510.1(C) of the POA Act. Section 55-510.1(C) of the POA Act permits a board of directors to convene in executive session for specific reasons to include (i) consideration of personnel matters; (ii) consultation with legal counsel; (iii) discussion and consideration of contracts, pending or probable litigation; (iv) consideration and discussion of matters involving violations of the declaration or rules and regulations adopted by the association for which an association member, his family members, tenants, guests or other invitees are responsible; and (v) to discuss and consider personal liability of members to the association. In order to enter an executive session, an affirmative vote must be taken in open session, the motion to go into executive session must state the specific purpose for holding the executive session. During executive session, the board is limited to discussion of those subjects which are permitted to be discussed in an executive session, which must also have been specifically stated in the motion to convene in executive session. Follow-



Notable Recent Final Determinations from the Ombudsman (continued)

ing the conclusion of executive session, the board must reconvene in open meeting. The meeting minutes must reflect the motion and stated reasons for entering executive session.

Luckman contended the board met for over two hours and conducted association business. He provided a copy of transcript from the meeting prepared by a court reporter from an audio recording of the meeting. According to the transcript, the open meeting ended with a motion to adjourn and agreement to adjourn, followed by the association president stating the board would take a five-minute break. There did not appear to be any motion to move into executive session. However, the minutes of the board meeting indicated a motion to convene in executive session was made after the five-minute break, and a purpose for convening in executive session was provided at that time.

The association denied Luckman's complaint and maintained it complied with the POA Act, but did not provide any additional information to substantiate its position.

The Ombudsman determined that the association's board of directors did not comply with § 55-510.1 (C) of the POA Act. The transcript of the meeting indicated the board meeting had adjourned without a motion made in open meeting to convene in executive session. Although the meeting minutes indicated a motion and vote were taken, it would not have been possible to have a motion and vote in open meeting, as required by law, if the open meeting had already adjourned. Based on the information provided, it appeared the meeting was adjourned without giving notice of a subsequent executive session and the subsequent executive session was held in violation of § 55-510.1 (C). The Ombudsman directed the association to ensure that it adheres to the requirements of §55-510.1(C) when convening into executive session.

File Number 2019-02080, Three Flags Homeowners Association Determination issued on March 11, 2019.

The Complainant (Wiley) alleged the association's board of directors improperly terminated its contract with the association's common interest community manager by meeting in an executive session to make the decision to terminate the company, and not returning to an open meeting as required by § 55-510.1(C) of the POA Act. Wiley also noted the management company was not present when the decision was made in executive session. Wiley provided a copy of the board's meeting minutes from the October 13, 2018 meeting where the action was taken. According to the minutes, the board did adjourn a meeting "...in order for the Board to discuss and act on private issues." The issues discussed included a decision to request a formal termination of the management contract and to write a termination letter that all the board members would sign. There was nothing in the meeting minutes to indicate the board returned to an open meeting to vote on those matters; rather, it appeared the board voted during the executive session.

The Ombudsman determined, based on the meeting minutes,

that (i) the association did not properly move into executive session because the board did not hold a vote during open meeting to convene in executive session; (ii) did not move out of an executive session properly, by returning to the open meeting; and (iii) appeared to have voted on matters during executive session, rather than in an open meeting. In order for the board's decision to terminate the management company to be effective, the board would have needed to take the vote after reconvening in open session.

The Ombudsman directed the association to ensure that any future executive sessions fully comply with requirements set forth in the POA Act.

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/>.

Title 55 Recodification Update

During the 2019 General Assembly Session, the legislature adopted, and the Governor approved, SB 1080 which recodifies Title 55 (Property and Conveyances) of the Code of Virginia. The bill was based on a recommendation from the Virginia Code Commission, which undertook recodification of Title 55 beginning in 2016.

Effective October 1, 2019, Title 55 of the Code of Virginia will be repealed, and replaced by the new Title 55.1. Subtitle IV of the new title will contain chapters pertaining to common interest communities as follows:

- Chapter 18 – Property Owners' Association Act
- Chapter 19 – Virginia Condominium Act
- Chapter 20 – Horizontal Property Act
- Chapter 21 – Virginia Real Estate Cooperative Act
- Chapter 22 – Virginia Real Estate Time-Share Act
- Chapter 23 – Subdivided Land Sales Act

In addition, provisions of the Code that are currently in Chapter 29 of Title 55 (Common Interest Community Management Information Fund) will be incorporated into Chapter 23.3 of Title 54.1.

In connection with these upcoming changes in the Code, the Board will be undertaking regulatory actions to revise several chapters of its regulations in order to conform them to the changes in the law.

Training Programs for CIC Managers and Certified Principal or Supervisory Employees

Licensing staff for the Board often receive inquiries regarding Board-approved training programs for a common interest community manager license or a principal or supervisory employee certificate. The Board's regulations establish two types of training programs: initial licensure/certification training; and continuing education for a certificate.

Initial Licensure/Certification Training

An individual may complete either an approved comprehensive training program or an approved introductory training program. Completion of either of these training programs may be used toward qualification for an initial manager license or certificate, along with meeting experience and other requirements. An introductory training program must be at least 16 contact hours (contact hour = 50 minutes of instruction) and encompass the following subject areas as they relate to common interest communities:

- Governance, legal matters, and communications;
- Financial matters, including budgets, reserves, investments, internal controls, and assessments;
- Contracting;
- Risk management and insurance;
- Management ethics for common interest community managers;
- Facilities maintenance; and
- Human resources.

A comprehensive training program must be at least 80 contact hours, of which at least 40 contact hours must cover the subject areas listed above. The other 40 contact hours of the program may cover other subjects approved by the Board. The time allocated to each of the core subject areas in a program must be sufficient, in the Board's determination, to provide adequate coverage of the subject. In addition, both the introductory and comprehensive programs require a final written examination.

Continuing Education for a Certified Principal or Supervisory Employee (CPSE)

A CPSE must complete both a fair housing training program and a common interest community law and regulation training program approved by the Board as a requirement to renew a certificate. Training is to be completed during the two-year certificate period prior to the expiration date of the certificate. The fair housing training program must include a minimum of two contact hours of fair housing laws and any updates, all as related to common interest communities. The common interest community law and regulation training program must include a minimum of two contact hours of updates to Virginia laws and regulations directly related to common interest communities.

More information regarding requirements for licensure or certification may be found in the Board's Common Interest Community Manager Regulations, which are available on the Board's website (<http://www.dpor.virginia.gov/Boards/CIC-Board/>). In addition, a list of approved training programs and providers may be obtained from the Board's website (<http://www.dpor.virginia.gov/uploadedFiles/MainSite/Content/Boards/CIC/CIC%20Approved%20Training%20Programs.pdf>).

Overview of Training Program Approval Process

Part VI of the Board's Common Interest Community Manager Regulations outlines the requirements for receiving approval from the Board for a training program. In order to qualify, a training program provider must submit a completed application (available from the Board's website) and requisite application fee. The application must include (i) the name of the training program provider (ii) the provider's contact person, address, and telephone number; (iii) number of training program contact hours; (iv) training program schedule, if established, including dates, times, and locations; (v) instructor information, including a professional resume with a summary of teaching experience and subject-matter knowledge and qualifications; (vi) a summary of the applicant's qualifications and experience in providing training; (vii) training program and material

fees; and (viii) a training program syllabus. Training programs may use distance learning or online education technology.

Upon receipt of a completed application, staff for the Board will perform a review of the application to ensure it meets minimum requirements for consideration by the Board. Applications meeting minimum requirements are then presented to the Board's Training Program Review Committee for its review and consideration. The training program committee will typically meet on the day before a regularly scheduled Board meeting. The committee will make a recommendation to either approve an application or reject it. The recommendation will be presented to the full Board the following day for a final decision on approval or rejection of the application. After a decision is made, the applicant will be informed of the Board's decision.

An Open Door on Closed Sessions

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By Aimee Winegar, CMCA, AMS, LSM, PCAM

Aimee has worked in the field of community management for 30 years. She is currently a large-scale manager for Community Association Services, Inc. in Frederick, MD. She sits on the Quorum Editorial Committee of WMCCAI and is the vice-chair of the Montgomery County, Maryland Commission on Common Ownership Communities.

Homeowner associations, condominiums, and cooperatives are established on the operating principle that they are associations of generally like-minded individuals who have jointly agreed to participate in the governance of their community and to uphold certain standards, make payments for the upkeep of shared amenities and otherwise be part of a team of equals in the operation of their neighborhood. It can be disconcerting to some residents, when the elected board of directors determines that it is necessary to convene a meeting in closed session. By definition, this excludes some members from the meeting and accompanying discussion and often leads to questions about what is being discussed: "Why can't I know what they're talking about?" "What is so secret?" "Are they talking about my neighbors? Or even worse, about me?"

The reality is usually far less about secrets and far more about service. After sitting through thousands of closed sessions, it has been my observation that boards of directors are not interested in using them to gossip about their neighbors or say mean things. Rather, closed sessions are most often an essential component to the protection of vital association interests.

The list of reasons for which a meeting can be closed is set forth in the governing laws of each jurisdiction, and usually includes discussion of contracts under negotiation, staff reviews, talk of delinquent accounts, covenant enforcement, and other legal matters. An honest and open discussion of these is-

ssues is frequently essential to the smooth function of the association, but could adversely affect the association in terms of negotiation, or could open staff, members, or contractors to embarrassment if publicly discussed. A closed session is the board's opportunity to hear and understand extenuating circumstances about a particular situation, and to ask questions of staff or legal counsel to ensure that they are making the best possible decisions for their association.

How does a board, then, protect its interests and those of its members in closed session while also providing the level of transparency and accountability demanded by members and the law? The first point of accountability is the decision to enter closed session. This should be noted on the agenda of any accompanying open session, along with the provisions of the applicable law empowering the board to enter closed session. The board should enter closed session only by motion, and that motion—including the appropriate excerpts of the empowering law—should be included in the minutes of the open session when that session is adjourned, and again in the minutes of the closed session, when the closed session is opened. Sample wording from an association in Maryland reads:

[A board member] moved to enter closed session, pursuant to Section 11B-111 of the Maryland Homeowners Association Act. Meetings of homeowners association or its governing body, which states that a meeting of the board of directors or other governing body of the homeowners association or a committee of the homeowners association may be held in closed session only for the following purposes: (iv) consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential legal matters. The motion was seconded and carried without objection.

Minutes must be kept of closed session, but they should be very brief. They should always record the attendance, date, and time. The discussion should be focused solely on the agenda items for which the meeting was closed. Any decisions must be reflected in board motions, and the record should be clear about how each board member voted on each motion. Usually, however, the substance of the discussion should not be in-

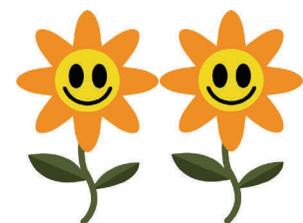
If the board is uncertain whether a discussion topic is appropriate for closed session, then it may err on the side of caution and hold the discussion in open session. The decision is often characterized by a nod to the old adage: if you can't say something nice, don't say anything at all.

cluded in the minutes.

Following the closed session, those same motions must be affirmed in the next open session. Some boards re-open the meeting directly after the closed session, while other boards will wait until the next regularly scheduled open session. At that time, the motions made and passed during the closed session should be read into the minutes and reaffirmed by the board.

A final admonition refers to the confidential nature of closed sessions. A board member who discusses with others the confidential information presented to the board injures the board and those about whom information was disseminated. The sessions are closed to protect the privacy and confidence of individuals, and to support the association in negotiating. Confidential pricing or circumstances must absolutely stay confidential within the board and should not be discussed outside of the closed session.

In conclusion, the closed session is a valuable tool for the board. It is not a gossip-fest. It is serious. It is business. Decisions must be disclosed to all members to ensure that even with the use of closed sessions, the business of the board is open to all.



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

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 Review Committee. These meetings typically take place on the afternoon preceding a scheduled board meeting date.

Those interested in receiving an appointment to the Common Interest Community Board may submit an application to the Secretary of the Commonwealth at the following website:

https://commonwealth.virginia.gov/va-government/gubernatorial-appointments_old/

Lucia Anna (Pia) Trigiani (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	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	Vacant (CPA)	Mary Broz-Vaughan Acting Director, Department of Professional and Occupational Regulation Board Secretary

Contact Us

Common Interest Community Board

9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, Virginia 23233

Phone: (804) 367-8510

Fax: (866) 490-2723

Email: cic@dpor.virginia.gov

CIC Board Staff

◆ Trisha L. Henshaw
Executive Director
Trisha.Henshaw@dpor.virginia.gov

◆ Lisa T. Robinson
Licensing Operations Administrator
Lisa.Robinson@dpor.virginia.gov

◆ Joseph C. Haughwout, Jr.
CIC Board and Regulatory Administrator
Joseph.Haughwout@dpor.virginia.gov

◆ Tanya Pettus
Administrative Assistant

◆ Lee Bryant
Program Administration Specialist

◆ Ben Tyree
Licensing Specialist

Office of the Common Interest Community Ombudsman

Heather S. Gillespie
CIC Ombudsman

Phone: (804) 367-2941

Fax: (866) 490-2723

Email:

cicombudsman@dpor.virginia.gov