

Common Interests

The Newsletter of the Virginia Common Interest Community Board



Summer Greetings...

After a five-year hiatus, we are excited to again publish Common Interests, the newsletter for the Common Interest

Community Board! Through this newsletter, we hope to be able to provide you with periodic updates on actions by the Board, Department of Professional and Occupational Regulation, and General Assembly that may impact common interest communities, associations, and those who work for and live in these communities. Board staff strives to be available to common interest community managers, developers, association members, and others affected by the laws and regula-

tions of the Board that impact associations. In addition to presentations, information booths, and other forms of outreach, we hope this newsletter will be a helpful source of information for you.

I often get questions about the Board. Some are short questions with long answers, such as, "What is the CIC Board?" and, "What do we get for registering our association?" and others have shorter answers, such as "Can anyone apply to be a Board member?" and "Does my association have to register?" along with many others. It is our goal to answer some of the many questions we receive through this newsletter. We would also love to hear from you about articles and topics

that would be of interest. Send us an email at cic@dpor.virginia.gov and let us know what you might like to read about in a future issue of the newsletter.

- Trisha Henshaw
Executive Director
Common Interest Community Board



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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.

CIC Board Updates the POA Disclosure Packet Notice

At its June 2017 meeting, the Board adopted significant revisions to the Property Owners' Association (POA) Act Disclosure Packet Notice. The notice was further amended by the Board at its meeting on August 11, 2017.

The POA Act (Chapter 26 of Title 55 of the Code of Virginia) requires that for sales of lots in communities subject to the 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.

In making the changes the Board sought to have the notice better communicate the information required by the Act, as well as new information result-

ing from changes to the POA Act by the General Assembly during its 2017 session.

The Board initiated the revision process starting with its December 2016 meeting; and developed a draft version of the revised notice earlier this spring. In late April, the draft was published for public comment.

The updated notice is available at the Board's website: <http://www.dpor.virginia.gov/Boards/CIC-Board/>.

Regulatory Actions Update

Regulatory Actions Completed:

Association Fee Reduction (Effective May 17, 2017)

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. In 2016, the Board extended this temporary fee reduction for another year, effective until June 30, 2017. However, at its meeting in March 2017, the Board voted to extend the renewal filing fee reduction for another year. In addition, the Board also voted to temporarily reduce the filing fee for initial association registration applications to \$10. These reduced fees will be in effect until June 30, 2018. The fee reduction only applies to filing fees. Assessment fees due with association registrations and renewals were not affected by the Board's action.

Association Complaint Procedures (Effective May 1, 2017)

At its December 2016 meeting, the Board finalized a change to the Common Interest Community Ombudsman regulations to update the regulation addressing the timeframe for associations to establish a complaint procedure. The most significant change is clarification that associations at initial registration must certify they have a complaint procedure process in place on the date of registration, or within 90 days of becoming registered. The change also requires associations that have been delinquent in registering with the Board to have a complaint procedure in place at the time of filing for registration.

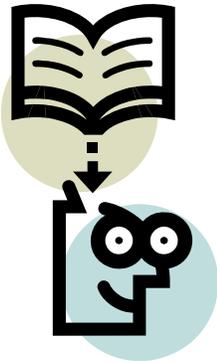
CIC Manager Training Programs (Effective July 1, 2017)

At its March 2017 meeting, the Board finalized a change to the training program requirements in the Common Interest Community Manager regulations. The training program regulations were amended to reflect the current practice that the two-hour Virginia Law and Regulation and Fair Housing training programs apply only to renewal applications, not to initial applications. In addition, the content requirements for these two training programs were revised. Virginia law and regulation course content will focus specifically on updates to Virginia laws and regulations related to common interest communities. Fair housing course content will focus on fair housing laws and updates pertaining to common interest communities.

Regulatory Actions In Progress:

Common Interest Community Management Information Fund Regulations - General Review

At its March 2017 meeting, the Board authorized a general review of the Common Interest Community Management Information Fund Regulations. The scope of these regulations include the registration and annual report requirements for community associations.



2017 Legislative Update

During the 2017 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.

HB 1554 - Amendments to the Property Owners Association (POA) Act. Requires that unless otherwise provided for in a declaration, a declaration may be amended by a two-thirds vote of the owners.

HB 2045/SB 1231 and HB 2274/SB 1255 - Amendments to the POA Act and

Condominium Act, respectively, that provide for the Common Interest Community Board may receive a complaint from directly from any person aggrieved by an association's failure to deliver an association packet or resale certificate within required timeframes, and may assess a monetary penalty against any association or common interest community manager for failure to deliver a packet or resale certificate as required. These bills also stipulated that unless expressly authorized by a declaration or condominium instruments, or by law, no association

shall require the use of any "For Sale" sign that is a unit owners' association sign or any real estate sign that does not comply with the regulations of the Virginia Real Estate Board, and that associations shall not require an owner to execute a formal power of attorney



2017 Legislative Update (continued)

if the owner designates a real estate licensee (firm, broker, or salesperson) as the owner's authorized representative.

HB 1475 - Amendment to the Common Interest Community Board statute revised the requirements for the POA Act disclosure packet notice (see story on Page #1).

SB 1578 - Also known as the "Airbnb bill," this measure gave Virginia localities the authority to create registries for properties offered as "short-term rental" (less than 30 consecutive days) and to require those offering short-term rentals to register annually. Localities are also authorized to charge a "reasonable fee" to cover costs to establish and maintain these registries. Those properties registered pursuant to the Virginia Time-Share Act cannot be required to register with a locality that establishes a short-term rental registry.



File Number 2015-03107, Hillpoint Farms Owners Association, Inc.

Consent Order adopted by the Board on March 10, 2016.

The association admitted to violating the Board's regulations by failing to utilize an association complaint procedure to properly respond to an association member's complaint. The association agreed to pay monetary penalties and board costs totaling \$1,650, with \$500 in monetary penalty to be waived if the association provided the Board with a copy of its complaint procedure within 60 days of the board's decision.

File Number 2015-02684, Klingbeil Powell & Alrutz, Inc (KPA Management).

Consent Order adopted by the Board on March 10, 2016.

The management company admitted to violating the Board's regulation for failing to act in providing management services in a manner that safeguards the interests of the public. The company failed to ensure that the unit owners' association complied with the common areas pesticide application notification re-

Remember

In Virginia, all laws enacted by the General Assembly become effective on July 1 following the adjournment of the regular session of the Assembly at which they were enacted, unless another date is specified.

Recent Board Disciplinary Case Decisions

File Number 2015-02873, RH1 Management, LLC

Decided: March 13, 2017.

Summary: The management company was charged with failing to act in providing management services in a manner that safeguards the interests of the public, a violation of the Board's prohibited acts regulation. The complaining homeowner association alleged the management company failed to follow the directives of association board members and the association's counsel regarding practices on imposition of late fees on assessments following a change in state law governing the imposition of late fees. The management company contended the association never formally adopted a resolution to change how late fees were imposed, that it was following the association's resolution that was in place at the time, and that it took administrative measures to ensure improper late fees were not imposed against owners. An Informal Fact-Finding Conference ("IFF") was held in January 2017, where a presiding officer on behalf of the Board heard testimony from the management company, and a representative of the association. The presiding officer of the IFF determined that although the management company did not follow best practices, it did not appear the public was harmed by the management company's actions, and the company's conduct did not rise to the level sufficient to find a regulatory violation. The presiding officer recommended the Board close the case with a finding of no violation. The Board voted 7-1 to adopt the presiding officer's recommendation, and that case was closed with a finding of no violation.



quirements in the Condominium Act. The company agreed to pay board costs totaling \$150.

File Number 2016-00994, Heatherlea of Arlington, A Condominium

Consent Order adopted by the Board on March 10, 2016.

This was the companion to File Number 2015-02684 against KPA Management. The unit owners' association admitted a violation of the Condominium Act by failing to comply with the common areas pesticide application notification requirements in the Act. The association agreed to pay board costs totaling \$150.

Recent Cease and Desist Actions

At its meeting on June 8, 2017, 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, declarants must cease and desist from sales of condominium units until they come into compliance.

Colonial Crossing, A Condominium (Registration No. 0517090129)

Newport News, VA

Declarant: Colonial Crossing, LLC

North Drive Condominiums (Registration No. 0517060201)

Christiansburg, VA

Declarant: Hawkeye West LLC

(Order lifted July 26, 2017, following declarant's compliance.)

Note: The Condominium Act requires a declarant for a condominium project to file an annual report within 30 days of the anniversary date of the project's registration each year, and must do so until the project registration is terminated; even if control over the unit owners' association has been transferred from the declarant.

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

Board Issues Its First Time-Share Reseller Registration

At its June 2017 meeting, the Board approved the issuing of its first time-share reseller registration. The registration was issued to TheMVPService, Inc. (Registration No. 0525000001).

In 2012, the General Assembly passed a measure (HB 233) requiring the time-share resellers - (any person who directly or indirectly engages in a **resale service**) to register with the Board in order to provide or offer to provide resale service. Section 55-362 of the Code of Virginia specifies:

"Resale service" means engaging, directly or indirectly, for compensation, in any of the following either in person or by any medium of communication: (i) selling or offering to sell or list for sale for the owner a resale time-share, (ii) buying or offering to buy a resale time-share for transfer to a subsequent purchaser, (iii) transferring a resale time-share acquired from an owner to a subsequent purchaser or offering to assist in such transfer, (iv) invalidating or offering to invalidate for an owner the title of a resale time-share, or (v) advertising or soliciting to advertise or promote the transfer or invalidation of a resale time-share. Resale service shall not include an individual selling or offering to sell his own time-share unit.

"Resale time-share" means a time-share, wherever located, that has previously been sold to an owner who is a natural person for personal, family, or household use and that is transferred, or is intended to be transferred, through a resale service.

There are some exceptions to the requirement for registration. For instance, attorneys, title agents, title companies or escrow companies providing closing services in connection with the transfer of a resale time-share do not need to register as resellers. This and other exemptions are outlined in Subsection C of Section 55-394.3 of the Code of Virginia.

In September 2015, the Board adopted regulations outlining the time-share reseller registration process and registration requirements. These regulations went into effect on March 1, 2016. For more information on time-share reseller registration, please visit the Board's website or contact the Board.

Updated Requirements for Time-Share Public Offering Statements

In addition to establishing regulations for time-share reseller registration, the Board's most recent amendments to the Time-Share Regulations, effective March 1, 2016, also updated the requirements for the form of public offering statements for time-share project registrations. Developers should review the public offering statements for projects registered in Virginia in order to ensure continued compliance with Virginia time-share registration regulations.

A Word from the Common Interest Community Ombudsman

Not all complaints are created equal....

It's been nearly five years since Virginia associations were required to adopt a complaint procedure under both state law (Va. Code §55-530) and the Common Interest Community Ombudsman Regulations. Officially the Regulations were adopted July 1, 2012, but associations had ninety (90) days to implement a complaint procedure which meant September 28, 2012 was the true starting point for associations already in existence at the time. While this has not necessarily been a smooth transition for all associations, and there has been some kicking and screaming along the way, I am comfortable saying that most associations who have adopted complaint procedures have settled in and utilized those procedures as needed.

While I certainly hear plenty of concerns and frustrations with the complaint process, there is one question that is raised over and over again in associations when we talk about the complaint process. The question? What type of complaint can be submitted to an association under the complaint procedure and then ultimately, to my office, as part of a Notice of Final Adverse Decision (NFAD)? Despite my best efforts, owners and board members still struggle to understand that the complaint process can never address complaints related to alleged violations of the governing documents of the association and can only address alleged violations of common interest community law or regulations.

The question raised, of course, is why can't the state-mandated association complaint process address possible violations of the governing documents? There are several

different reasons, but the simplest and in my mind easiest to understand is to look at the situation from the perspective of the State. Your governing documents (or condominium instruments) are enormously important and dictate and impact much of what happens in your association. But, the Commonwealth of Virginia was never a party to those documents, we had no role in what is contained in those documents and we cannot even assure that those documents are accurate or correct. As a result, we have no right or authority to enforce those documents. Just as you would never expect the Commonwealth to enforce a contract that you entered into to sell your car to your neighbor, you can also never expect the Commonwealth to enforce the governing documents in your association.

We do, however, have the authority to enforce common interest community laws (the Condominium Act and Property Owners' Association Act) and regulations, since those were created by the State and therefore can be enforced by a state agency. Keep in mind, however, that there are a couple of areas within those laws where we run into "grey" areas. For example, we cannot read your declaration to determine if the association has amended it properly. Thus, we cannot necessarily provide a determination related to §55-79.71 of the Condominium Act or §55-515.1 of the Property Owners Association Act. Nor can we help an association or owner interpret the governing documents to determine if they are being enforced properly, as laid out in §55-79.80:2 of the Condominium Act or §55-513 of the Property Owners Association Act. But, if a lack of due pro-

cess, as required under those statutes, is alleged, such a matter might be appropriate for submission through the complaint procedure and ultimately as a NFAD to my office.

For additional information, I encourage you to review the flowchart on our website at www.dpor.virginia.gov/cic-ombudsman and the CIC Ombudsman Regulations at <http://law.lis.virginia.gov/admincode/title18/agency48/chapter70>. And feel free to email me (cicombudsman@dpor.virginia.gov).

- Heather Gillespie

Common Interest Community Ombudsman



Title 55 Recodification

As part of its 2016-2017 workplan, the Virginia Code Commission is undertaking a recodification of Title 55 of the Code of Virginia, which covers property and conveyances. 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, fall within Title 55. Beginning in June 2016, commission staff have formed working groups with various stakeholders to receive input and develop revisions to Title 55. The CIC Board Executive

Director and the CIC Ombudsman, along with the Chair of the CIC Board, are participating in a workgroup with specific focus on those chapters in Title 55 that relate to common interest communities and time-shares. This workgroup met periodically throughout the

summer and fall of 2016, and twice during spring of 2017. It is anticipated that recodification of Title 55 will be introduced into legislation at the General Assembly's 2018 session.

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) Trigiani (Attorney) Second four year term ends June 30, 2019 Board Chair	Kimberly (Kim) B. Kacani (Developer) Second full term ends June 30, 2018 Board Vice-Chair	Mary Elizabeth (Beth) Johnson (CPA) Unexpired term ends June 30, 2017
Thomas (Tom) A. Mazzei (Community Manager) Unexpired Term ends June 30, 2016	Paul L. Orlando (Community Manager) First four year term ends June 30, 2019	Lori Overholt (Time-Share Industry) First four year term ends June 30, 2020
Kristie (Kristie) Helmick Proctor (Resident residing in a CIC) First four-year term ends June 30, 2017	John Rhodes (Community Manager) Unexpired term ends June 30, 2018	Scott E. Sterling (Developer) First four year term ends June 30, 2019
Katherine E. (Katie) Waddell (Citizen Residing in a CIC) Unexpired term ends June 30, 2017	David (Dave) Watts (Citizen Serving on an Association Board) First four year term ends June 30, 2018	Jay DeBoer Director, Department of Professional and Occupational Regulation Board Secretary

CIC Board Staff

- | | |
|--|---|
| <ul style="list-style-type: none"> ◆ Trisha L. Henshaw
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Joseph.Haughwout@dpor.virginia.gov | <ul style="list-style-type: none"> ◆ Tanya Pettus
Administrative Assistant ◆ Lee Bryant
Program Administration Specialist ◆ Ben Tyree
Licensing Specialist |
|--|---|

2017 Meeting Dates

March 13, 2017 @ 9:30 a.m.

June 8, 2017 @ 9:30 a.m.

August 11, 2017 @ 9:00 a.m.

September 7, 2017 @ 9:30 a.m.
(cancelled)

November 30, 2017 @ 9:30 a.m.

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.

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.

Contact Us

Common Interest Community
Board

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