

# Common Interests

*The Newsletter of the Virginia Common Interest Community Board*

## ***An Update from the Executive Director...***



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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.

Welcome to the Fall/Winter 2020/2021 edition of Common Interests, the newsletter for the Common Interest Community Board. As of this writing, the Commonwealth remains under the public emergency declared by the Governor this past March as a result of the COVID-19 pandemic. Since this past March, individuals, families, businesses, and communities have had to adapt to a variety of new rules and practices designed to limit the spread of the virus. Both the Department and the Board have likewise adapted to meet the challenges of the current situation. The Department closed to the public for in-person customer service beginning in March, and to date remains closed. However, the Department and the Board's office are available to assist members of the public by mail, telephone, and email. The Department has adapted its business operations and systems so that many of the routine functions performed by licensing staff, including responding to telephone calls, can be done so remotely. As a result, most of the Board's staff alternate days working in the office, and working remotely from home. In order to facilitate staff working remotely, the Board's call center continues to operate at a reduced schedule – from 8:30 a.m. to 1:00 p.m. – but staff remains available during regular business hours from 8:15 a.m. to 5:00 p.m. to respond to emails. If you cannot reach us by phone, please feel free to send an email and we will promptly respond. I am pleased to report that despite the changes and disruptions brought about by the public health emergency, the Board's office has been able to largely maintain the regular, timely review and processing of licensing and registration applications, and timely respond to inquiries from the public.

Adjusting to the current reality has affected the Board in other ways too. The Board has had to adapt in order to ensure it could conduct needed business, while best ensuring the safety of board members, staff, and the public. This past June, the Board was the first of the Department's boards to conduct a meeting virtually. The most significant item addressed by the Board in its

virtual meeting was to review and adopt a revision to the Property Owners' Association Disclosure Packet Notice to reflect the new requirement in the Property Owners' Association (POA) Act that POAs disclose any restrictions on the placement or display of political signs (see Page 5 for more on this). Despite some challenges in operating an unfamiliar virtual meeting platform, the meeting went smoothly.

Social distancing rules have also posed a challenge with respect to meeting space that is available for the Board to conduct in-person meetings. Normally, meetings of the Board are held at the Department's offices in Henrico, Virginia. The facilities used by the Department for holding meetings are shared by several other state agencies. However, most of the meeting spaces are insufficient to meet social distancing requirements, leaving only one space to share between multiple agencies and boards. As a result, in September, the Board held its first off-site meeting in a ballroom at the Deep Run Recreation Center, located in Deep Run Park, a short distance away from the Department's offices.

As the Governor's emergency declaration remains in effect, so do certain regulatory waivers previously issued by the Director of DPOR. These waivers include extending the validity of licenses, certifications, and registrations that expire, or are eligible for renewal or reinstatement, during the public emergency. The validity of a license, certificate, or registration extends until 30 days after the Governor lifts the state of emergency. Please note that this waiver does not extend the expiration date of a license, certificate, or registration. Please see Page #2 for a summary of current regulatory waivers. Additional information regarding the Department's response to COVID-19 may be found on the Department's website (<http://www.dpor.virginia.gov/COVID-19/>).

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In other Board news, the Board welcomed the reappointment of two of its members. In August, the Governor reappointed Maureen A. Baker and Lori Overholt. Ms. Baker, a community manager, was appointed to a first full four-year term on the Board, after having been previously appointed to complete an unexpired term. Ms. Overholt, a representative of the time-share industry, was reappointed to a second four-year term. Currently, there is one vacancy on the Board.

It would be an understatement to say this past year has been difficult. I am proud to say that the Board and staff have demonstrated poise and shown perseverance throughout these past several months as we have weathered the ongoing storm. I am confident they will continue to do so in the weeks and months ahead. As always, our office and the Office of the Common Interest Community Ombudsman remain here to serve regulants, association members, and members of the public.

Wishing everyone a happy and safe new year.

- Trisha Henshaw

Executive Director

Common Interest Community Board



### Regulatory Waivers Issued by DPOR

<b>Waiver Name:</b> <i>Temporary Waiver of Regulations to Extend Validity of Expired Licenses, Certifications, Registrations and Other Authorizations</i>	<b>Effective Date:</b> March 18, 2020 (amended May 27, 2020)
<b>Description:</b> Extends the validity of licenses, certifications, registrations, and other authorizations issued by regulatory boards under DPOR that would otherwise (i) expire during the state of emergency and (ii) be eligible for renewal or reinstatement during the state of emergency under applicable regulations, until the 30th day after the date by which the state of emergency is lifted. This waiver does not waive statutory requirements or limitations, nor does it amend or permanently extend the previous expiration date of affected licenses, certifications, registrations, and other authorizations.	
The waiver applies to common interest community manager licenses, principal or supervisory employee certificates, and common interest community association registrations. The waiver also applies to registrations for time-share alternative purchases and time-share resellers. The waiver does not apply to condominium registrations, time-share program registrations, or time-share exchange program registrations.	
<b>Waiver Name:</b> <i>Temporary Waiver of Regulations to Extend Examination Eligibility Deadlines</i>	<b>Effective Date:</b> March 19, 2020 (amended May 27, 2020)
<b>Description:</b> Extends examination eligibility deadlines established by regulations of boards under DPOR that would otherwise expire during the state of emergency, until the 30th day after the date by which the state of emergency is lifted. This waiver does not waive statutory requirements or limitations, nor does it amend any other examination eligibility provisions.	
The waiver does not apply to licenses, certifications, or registrations issued by the Common Interest Community Board.	
<b>Waiver Name:</b> <i>Temporary Waiver of Regulations that Prohibit or Limit Online, Electronic, or Distance Theoretical Instruction</i>	<b>Effective Date:</b> March 13, 2020 (amended May 27, 2020)
<b>Description:</b> Waives any regulations of regulatory boards under DPOR that prohibit or limit online, electronic, or distance theoretical instruction, in order to prevent and mitigate the spread of the coronavirus (COVID-19). This waiver does not waive statutory requirements or limitations, nor does it waive practical (hands-on) instruction required by a board's regulations.	
There are no regulations of the Common Interest Community Board which prohibit or limit online, electronic, or distance instruction. Common interest community manager training programs approved by the Board may provide online, electronic, or distance instruction. However, providers are highly encouraged to ensure training is delivered utilizing a platform that allows the instructor to ensure students are in attendance for the duration of the training, and allows a method for questions and answers during the training.	
<b>Waiver Name:</b> <i>Temporary Waiver of Certain Regulations Requiring Physical Presence at Places of Business</i>	<b>Effective Date:</b> November 6, 2020
<b>Description:</b> Waives any regulations of regulatory boards under DPOR that require physical presence at places of business. (With exception to licensees of the Board for Barbers and Cosmetology providing personal grooming services or body art.) This waiver does not waive statutory requirements or limitations, nor does it waive any supervision or management provisions required by a board's regulations.	
There are no regulations of the Common Interest Community Board that require physical presence at a place of business.	

## Regulatory Actions Update

### Recent Regulatory Actions Completed:

#### **Common Interest Community Manager Regulations - Amend Trade/Fictitious Name Requirements (Exempt Action) (Effective June 1, 2020)**

At its March 12, 2020 meeting, the Board voted to initiate an exempt action to amend the Common Interest Community Manager Regulations to revise trade/fictitious name requirements for management company licensure so that a firm seeking licensure registers any trade or fictitious name with the State Corporation Commission. The change was made so that the regulations would comport with a change in state law effective January 1, 2020. Prior to the change in the law, businesses were required to register any assumed or fictitious names with the circuit court of the locality where business was conducted.

#### **Condominium Regulations - Amend Declarant Trade/Fictitious Name Requirements (Exempt Action) (Effective June 1, 2020)**

At its March 12, 2020 meeting, the Board voted to initiate an exempt action to amend the Condominium Regulations to revise trade/fictitious name requirements for declarants seeking to register a condominium so that a declarant registers any trade or fictitious name with the State Corporation Commission. The change was made so that the regulations would comport with a change in state law effective January 1, 2020. Prior to the change in the law, businesses were required to register any assumed or fictitious names with the circuit court of the locality where business was conducted.

#### **Time-Share Regulations - Amend Developer and Reseller Trade/Fictitious Name Requirements (Exempt Action) (Effective June 1, 2020)**

At its March 12, 2020 meeting, the Board voted to initiate an exempt action to amend the Time-Share Regulations to revise trade/fictitious name requirements for developers seeking to register a time-share so that a developer registers any trade or fictitious name with the State Corporation Commission. A similar change was made regarding the registration requirements for time-share resellers. The change was made so that the regulations would comport with a change in state law effective January 1, 2020. Prior to the change in the law, businesses were required to register any assumed or fictitious names with the circuit court of the locality where business was conducted.

#### **Time-Share Regulations - SB 584 Conformance (Exempt Action) (Effective December 1, 2020)**

At its September 3, 2020 meeting, the Board voted to initiate an exempt action to amend the Time-Share Regulations to conform to changes in the Virginia Real Estate Time-Share Act (Chapter 22 of Title 55.1 of the Code of Virginia) resulting from the passage of SB 584 during the 2020 General Assembly session. The legislation provided clarification regarding the terms "time-share program" and "time-share project," particularly as these terms

relate to registration of time-share programs and public offering statements. The legislation also clarified that the Act is applicable to certain out-of-state time-shares where the time-share interests are direct or indirect beneficial interests in a trust. The legislation also made other technical changes.

### Regulatory Actions In Progress:

#### **Common Interest Community Management Information Fund Regulations - General Review (Final Stage)**

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 considered proposed amendments to the regulations at its November 2017 meeting. The Board voted to withdraw the action and re-start the review to allow for additional public participation through formation of a regulatory review committee.

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 accepted the proposed amendments. In February 2019, the proposed amendments were submitted for review by Executive Branch agencies. Executive Branch review was completed on September 19, 2019. The proposed stage was published in the Virginia Register on October 28, 2019 to commence a 60-day public comment period. A public hearing was held on November 12, 2019. The public comment period ended on December 27, 2019.

At its meeting on March 12, 2020, the Board reviewed the proposed amendments and public comments received. Based on some of the comments received, the Board elected to make revisions to the proposed amendments. The Board adopted the amendments as revised. On May 14, 2020, the amended regulation was filed for Executive Branch review. Upon completion of Executive Branch review, the final regulation will be published in the Virginia Register, and a final 30-day public comment period will be held prior to the amended regulation becoming effective.

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



## Board Updates Guidance Documents

At its September 3, 2020 meeting, the Board voted to revise several of its current guidance documents to reflect statutory changes resulting from the Recodification of Title 55 (SB 1080, 2019 General Assembly Session).

The following guidance documents were revised:

- ◆ Applicability of the Common Interest Community Ombudsman Regulations on Solely Commercial Condominiums
- ◆ Letters of Credit in Lieu of Bonds
- ◆ Maximum Fees for Disclosure Packets and Resale Certificates
- ◆ CIC Waiver of Filing Fee for Final Adverse Decision
- ◆ Summary of CIC Board Interpretations, Policies, and Guidance Documents
- ◆ Determining Value of Blanket Surety Bonds Filed by Developers in Lieu of Escrow Deposits
- ◆ CIC Manager Requirement to Obtain and Maintain a Separate Fidelity Bond or Insurance Policy to Comply with Chapter 23.3 of Title 54.1 of the Code of Virginia and 18VAC48-50-30.E of the Board's Regulations
- ◆ Procedure for Determination of Compliance with 55.1-2220 and 55.1-2234 of the Code of Virginia

In accordance with § 2.2-4002.1 of the Code of Virginia, the proposed revised guidance documents were posted to the Virginia Regulatory Town Hall for a 30-day public comment period. The comment period began on November 9, 2020, and concluded on December 9, 2020. No comments were received during the public comment period. The revised guidance documents became effective on December 10, 2020.

In addition, several other guidance documents are now available to the public through Virginia Regulatory Town Hall.

The newly posted guidance documents are as follows:

- ◆ Guidelines for the Development of Reserve Studies for Capital Components
- ◆ Bulletin: Maximum Allowable Preparation Fees - Disclosure Packets for Professionally Managed Property Owners' Associations
- ◆ Bulletin: Maximum Allowable Preparation Fees - Disclosure Packets for Non-Professionally Managed Property Owners' Associations
- ◆ Bulletin: Maximum Allowable Preparation Fees - Condominium Resale Certificates for Condominium Unit Owners' Associations

- ◆ Form: Property Owners' Association Disclosure Packet Notice
- ◆ Form: Condominium Unit Owners' Association Resale Certificate Notice
- ◆ Form: Disclosure Form for Special Meeting to Extend Declarant Control Period

These guidance documents had previously been available (and remain available) to the public from the Board's website. Members of the public now have an additional resource to obtain these important documents.

These and other Board guidance documents may be found on the Virginia Regulatory Town Hall website: <https://townhall.virginia.gov/L/GDocs.cfm?BoardID=147>.



### Public Comment on Regulatory Actions

**The Board welcomes the public's participation in the regulatory process. Individuals may offer comment on pending regulatory actions, to include proposed regulations or regulation amendments, and proposed guidance documents or guidance document amendments. To sign up to receive notices regarding the Board's regulatory actions, including notification of public comment periods and to submit comments during a regulatory comment period, visit the Virginia Regulatory Town Hall website (<http://townhall.virginia.gov>). In addition, public comments on regulatory actions may be submitted to the Board directly by mail or by email.**

## 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](mailto:CIC@dpor.virginia.gov).

### Board Revises POA Disclosure Packet Notice to Require Disclosure of Restrictions on Political Signs

In what has become something of an annual tradition, the Board took action at its June 3, 2020 meeting to revise the notice that is required to accompany disclosure packets required by the Property Owners' Association (POA) Act to comport with a change in the law.

During the 2020 General Assembly Session, the legislature approved, and the Governor signed, HB 720 which amended the POA Act. As a result of the amendment, POAs are required to include as part of disclosure packets a "... statement setting forth any restrictions as to the size, place, duration, or manner of placement or display of political signs by a lot owner on his lot."

The change in disclosure packet requirements became effective July 1, 2020. The change does not apply to condominium resale certificates prepared by condominium unit owners' associations.

This past June, the Board's office issued a notification to all registered property owners' associations, and to all licensed common interest managers, regarding the change in disclosure packet requirements.

The Board's action amended the POA Disclosure Packet Notice to reflect the new requirement. The revised notice is available on the Board's website. ([http://www.dpor.virginia.gov/CIC-Board/Disclosure\\_Notices/](http://www.dpor.virginia.gov/CIC-Board/Disclosure_Notices/)) The revised notice is also available on the Virginia Regulatory Town Hall. (<https://townhall.virginia.gov/L/GDocs.cfm?BoardID=147>)

### Board for Professional and Occupational Regulation Study Recommends Deregulation of Principal or Supervisory Employees for Common Interest Community Managers

As a result of recommendations in a 2018 Joint Legislative Audit and Review Commission (JLARC) report, the Board for Professional and Occupational Regulation (BPOR) evaluated several DPOR-administered licensure or certification programs to determine whether continued regulation is needed. Among the programs studied was the certification of principal or supervisory employees of common interest community managers. Prior to the Governor's declaration in March 2020 of a public health emergency for COVID-19, BPOR had scheduled a series of public hearings around the state to receive public comment as part of the evaluation process; however, due to the emergency declaration, the public hearings were cancelled. As it was uncertain when the public hearings could be safely rescheduled, BPOR elected to hold a public comment period from September 1-30, 2020, to give members of the public an opportunity to comment on the continued need for regulation of the professions. BPOR received a total of nearly 1,000 comments addressing the several licensure and certification programs, of which 20 comments related to certification of principal or supervisory employees. The great majority of commenters (95%) supported continued regulation. At a virtual board meeting held on December 17, 2020, BPOR reviewed a draft report of the study to be submitted to the General Assembly,

which assessed the certification program against the statutory criteria for occupational regulation. The report recommended that the legislature consider "...eliminating the certification program, because state occupational regulation of CIC manager employees is not warranted." The report suggested that instead of certification of employees, "...statutory requirements for associations to maintain continuous bonding or insurance against losses from employee theft or dishonesty" are sufficient to protect the public. The report determined that "[n]ational certifications [such as PCAM, AMS, and CMCA] could serve as a substitute for state regulation." The report further noted that elimination of the certification requirement would relieve current regulants from needing to renew their certification every two years and pay a \$75 renewal fee. After review, BPOR voted unanimously to adopt the report and submit its findings to the legislature for further consideration. (Any changes to existing regulatory programs require the enactment of legislation introduced by a member of the General Assembly.)

### CIC Association Fees Return to Tiered Fee Structure

Effective July 1, 2020, fees for initial registration of a common interest community, and registration renewal fees reverted to a tiered fee structure based on the number of lots or units in a community. For the last several years, registration and renewal fees had been set at a temporary flat fee of \$10 regardless of the number of lots or units in a community. In 2015, the Board set a flat fee for renewal of a registration. In 2017, this was extended to cover initial registration applications. In 2019, the General Assembly enacted measures which significantly affected the Board's financial position. The first, a measure supported by the Board, eliminated the statutorily-mandated gross assessment income fee on associations. The second measure required surplus monies in DPOR accounts, including the Common Interest Community Management Information Fund to be sequestered into a reserve account for certain designated expenses. As a result, this past March, the Board determined that continuation of the temporary fees was no longer feasible, and permitted them to expire at the end of June 2020.

The current initial registration and registration renewal fees are as follows:

Number of Lots/Units	Application Fee	Renewal Fee
1-50	\$45	\$30
51-100	\$65	\$50
101-200	\$100	\$80
201-500	\$135	\$115
501-1000	\$145	\$130
1001-5000	\$165	\$150
5001+	\$180	\$170

## An Update from the Ombudsman on Electronic Board Meetings for Associations

During the 2020 Regular and Special Session of the General Assembly, the legislature approved language amendments proposed by Governor Northam to the budget bills to address difficulties associations are facing when trying to hold board meetings during the current public health emergency.

Under the provisions of the new law, effective April 24, 2020, if the Governor has declared a state of emergency pursuant to Va. Code § 44-146.17, association governing boards may meet electronically without having a member physically present at one location. This is permitted only if the emergency makes it impracticable or unsafe for the board to assemble in one place; the purpose of the meeting is to discuss or transact business of the association required by statute or necessary to continue operations of the association; and the governing board distributes minutes of the meeting the same way it provided notice of the meeting. **These new provisions only apply to board meetings and not member/owner meetings.**

In order to convene a meeting under this new law, the governing board must give notice to members using the best method available given the nature of the emergency, and that notice must be given at the same time it is given to the governing board. The governing board must also make arrangements for association members to access the meeting through electronic means, including videoconferencing if practicable. If possible, the members should be provided an opportunity to comment.

Minutes of any such electronic meeting should include the nature of the emergency, the fact that the meeting was held electronically, and the type of electronic meeting method used.

Please contact the Ombudsman's office if you have questions or require additional information.

A copy of the budget amendment may be found at the General Assembly's Legislative Information System (see HB 5005, Item 4-0.01, paragraph 2g). (<https://budget.lis.virginia.gov/item/2020/2/hb5005/reenrolled/4/4-0.01/>)



## Notable Recent Final Determinations from the Ombudsman

**File Number 2020-01513; Yorke v. Unit Owners' Association of Hiddenbrooke Condominium**

**Determination issued on February 11, 2020.**

The Complainant (Yorke) alleged the association committed multiple violations of the Virginia Condominium Act ("the Act") related to notices of meetings and open meeting requirements. The complaint Yorke submitted to the Ombudsman's office included 17 specific complaints submitted through the association's complaint procedure.

The first five (5) of Yorke's complaints were related to a special meeting posted as an executive session that Yorke said was held without proper notice. Yorke alleged a violation of § 55-79.72:3(3) (now § 55.1-1939(3)) of the Act, which gives "[e]very unit owner who is a member in good standing..." the right to "...have notice of any meeting of the executive board, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § 55.1-1949..." and a violation of § 55-79.75(B) (now § 55.1-1949(B)(2)) of the Act, which requires "[n]otice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners." According to Yorke, the only one notice of the meeting was posted in a location unlikely to be seen by majority of owners. By doing this, the association failed to provide adequate notice.

Yorke also alleged the purpose of the meeting itself was contrary to the requirements in the Act pertaining to matters that may be discussed in an executive session. Section 55-79.75(B) (now § 55.1-1949(B)(1)) of the Act requires that "[a]ll meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section." Further, § 55-79.75(C) (now § 55.1-1949(C)) provides that "[t]he executive board or any subcommittee or other committee of the executive board may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation, and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant to such condominium instruments for which a unit owner, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association..." According to Yorke, the meeting held in executive session was to discuss the budget and other associated matters.

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## Notable Recent Final Determinations from the Ombudsman (continued)

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These subjects fell outside of the topics that may be discussed in an executive session.

Yorke also alleged that the association violated § 55-79.75(B) (now § 55.1-1949(B)(3)) of the Act, which requires that "...at least one copy of all agenda packets and materials furnished to members of the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board." Yorke stated the materials shared with the board were not made available to the membership. Yorke further alleged the association failed to properly convene in executive session, since no open meeting was held, and, as a result, the board did not properly motion to go into an executive session in an open meeting. Section 55.1-1949(C) provides that "[t]he executive board or any subcommittee or other committee of the executive board may convene in executive session...upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes."

The second grouping of Yorke's complaints was related to a special meeting the board held where it took action to fill a vacancy on the board. According to Yorke, there was no notice of the meeting, though it was later referenced in the association's newsletter after the fact. During the unnoticed meeting, the board appointed a new board member. The board also discussed proposals and bids, the removal of a tree, maintenance work, and changes to the common elements in private sessions without notice to owners. The board also entered an executive session to swear in the new board member, and to "conduct other undisclosed business the board deemed to be 'private'." Yorke alleged the special meeting was held without notice, in violation of §§ 55.1-1939(3) and 55.1-1949(B). She also alleged violations of §§ 55.1-1949(B) and 55.1-1949(C) because the materials the board used to make its decisions at the unannounced meeting were not made available to owners. In addition, there was a violation of § 55.1-1949(B) since the topics of the unannounced meeting were not appropriate for discussion during an executive session. Yorke further alleged there were violations of §§ 55.1-1939(3) and 55.1-1949(B) for not allowing owners to be aware of and participate in the meeting. Moreover, Yorke alleged the board's actions violated § 55-79.75(D) (now § 55.1-1949(D)), which provides that "[s]ubject to reasonable rules adopted by the executive board, the executive board shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association..." since owners were not allowed to be heard in the meeting.

Yorke alleges the board holds to conduct association business

without providing notice of these meetings to owners. Yorke cites an article in the association newsletter where the board stated that it "...continues to manage the affairs of our Condominium and communicates frequently by e-mail and phone as needed. We have held special meetings/Executive Sessions to discuss items that are sensitive not suitable for open discussion and will continue to do so if they are needed." Yorke noted that no records of these meetings can be obtained since they are conducted in private and the board does not take minutes for these meetings. Yorke alleged board's conducting of meetings by telephone and email violated §§ 55.1-1939(3) and 55.1-1949(B) of the Act. Likewise, the board violated these provisions of the statute by failing to provide notice of the meetings, and for not making agenda materials available to members at the same time they were distributed to the board. Yorke also alleged the board violated §§ 55.1-1939(3) and 55.1-1949(D) of the Act for not allowing owners to be heard at these meetings. Moreover, Yorke alleged that the board's actions violated § 55-79.74:1 (now § 55.1-1945) of the Act for not maintaining minutes and other required records of the business conducted in these meetings.

Yorke's 16th complaint alleged the association failed to provide access to the books and records of the association, despite Yorke's having made a written request. The 17th complaint alleged the association made repairs and renovations to the "Bistro" bathrooms in a manner that did not comport with the association's bylaws or § 55-79.55 (now § 55.1-1917) of the Act, which pertains to the allocation of interests in the common elements of the condominium. Yorke also alleged the replacement of the toilets in the bathrooms violated the Fair Housing Law because the community was for adults 55 years of age or better, and the replacement toilets were not of the proper height or seat length.

In its response, the association responded to the complaint by grouping the complaints into ten categories, and with only one exception, stated it acknowledged and understood that it must follow the applicable law in each category. The categories listed by the association were as follows:

1. Failure to conduct open meetings.
2. Failure to provide notice of meetings.
3. Circumventing the open meeting requirement by discussing topics in executive session that are not exempt from the open meeting requirement.
4. Circumventing the open meeting requirement by conducting business by phone and/or electronic means, without notice to the membership and opportunity to be heard.

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## Notable Recent Final Determinations from the Ombudsman (continued)

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5. Failure to adequately indicate in meeting notices what matters are scheduled to be discussed.
6. Failure to furnish to the association general membership materials shared with the board members not otherwise prohibited from release under the Virginia Condominium Act.
7. Failure to provide association general membership their right to be heard on matters under consideration prior to being voted on.
8. Failure to maintain proper books, records, and minutes.
9. Failure to make available for examination books, records, and minutes.

Regarding these categories, the association neither admitted, nor denied, any violation of common interest community law. The association said it “understands and acknowledges” its obligations under the Condominium Act as they apply to the allegations, and stated its intention to comply with applicable law going forward.

The 10th category outlined in the association’s response addressed Yorke’s complaint regarding the bathroom renovations. The association acknowledged it replaced the toilets without owner approval, but that the action did not violate the association’s bylaws or Fair Housing laws.

In the determination, the Ombudsman stated, “While I am pleased that the Association intends to walk the straight and narrow going forward, I do find that it did violate common interest community law on numerous occasions, and as a result, denied transparency to the owners. Much of common interest community law is intended to provide open and transparent leadership for associations and in this case that simply did not happen on numerous and repeated occasions.”

The Ombudsman noted the association violated § 55.1-1939 by failing to provide notice of meetings. The association also violated subsections B, C, and D of § 55.1-1949 by failing to provide proper notice, or any notice, of board meetings, by failing to make agenda packets and materials available to owners at the same time they were made available to board members, by misusing and improperly convening in executive session on numerous occasions, by discussing inappropriate topics in executive session, and by failing to provide a designated period of time at board meetings to allow owners the opportunity to speak.

The Ombudsman also noted the association violated § 55.1-1949(B)(1) for failing to record minutes of the unnoticed board meetings. In doing so, the association also violated § 55.1-1945 which requires the association to maintain such minutes and provide a copy if requested by any unit owner.

However, the Ombudsman found there was no violation of § 55.1-1917. Although unit owners are allocated interest in common elements, the statute does not address maintenance of those common elements. The Ombudsman noted that the allegation regarding a fair housing violation would need to be submitted to the Fair Housing Office to determine if there was a violation of fair housing law.

In addressing the actions required of the association, the Ombudsman stated, “[t]he required actions are quite simple – the Association must ensure, going forward, that if fully complies with the statutes it has been found to have violated. Any failure to do so in the future may result in a referral of this matter to the Common Interest Community Board for whatever action it may deem appropriate.”

The Ombudsman also advised the association that it did not comply with the requirements of the Common Interest Community Ombudsman Regulations regarding the association complaint process. Specifically, the Ombudsman noted the association failed to acknowledge receipt of Yorke’s complaint in a timely manner. Section 18 VAC 48-70.50.4 of the regulations requires acknowledgement of receipt of a complaint within seven (7) days. Yorke submitted her complaint to the association by email on September 23, 2019, and provided a hard copy on September 26. Yet, the association did not acknowledge receipt of the complaint until October 21, 2019. The association also failed to notify Yorke of the time, date, and location of consideration of her complaint. Yorke said a flyer was posted for the meeting, but that she did not receive notice herself. This was a violation of 18 VAC 48-70-50.7, which requires a complainant receive notice of the time, date, and location of the consideration of the complaint. The Ombudsman further advised the association that its final decision must include the association’s registration number, and the license number of its common interest community manager (if applicable) as required by 18 VAC 48-70-50.9.

### **File Number 2020-02642; Pimental v. Whisperhill Cluster Association**

#### **Determination issued on June 5, 2020.**

The Complainant (Pimental) alleged the association violated § 55.1-1800 of the Property Owners’ Association Act (“the Act”). The allegation was related to a broken water pipe that ran from a water meter to Pimental’s home. Pimental believes the water pipe is located on common area and that the association has failed to properly maintain that common area and repair the pipe. Pimental hired a contractor to fix the pipe and has asked the association to reimburse him for the expense.

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## Notable Recent Final Determinations from the Ombudsman (continued)

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Section 55.1-1800 of the Act provides the following definitions:

"Common area" means property within a development which is owned, leased, or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as a common area in the declaration.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement, or restoration and for which the board of directors determines funding is necessary.

In its response, the association stated the water pipe does not constitute a "common area" under § 55.1-1800 because the water pipe is not owned by the association, but the locality. Since the association does not own or lease the water pipe and is not required by the declaration to maintain it, the association does not believe that it has an obligation to repair or maintain the water pipe, nor does it believe it is obligated to reimburse Pimental for his costs to fix the water pipe.

In the determination, the Ombudsman noted that her office does not have the authority to determine whether the water pipe is part of the common area and whether the association is obligated to pay for the repairs. Determining whether the water pipe is part of the common area, or should be considered a capital component, are legal issues that would require legal review and interpretation of the association's governing documents. Such a review is not within the purview of the Ombudsman's office. Since the Ombudsman cannot determine whether the water pipe is part of the common area or considered a capital component, the Ombudsman cannot find that the association has violated common interest community law. Accordingly, no action was required of the association regarding the water pipe issue.

The Ombudsman did note the association failed to fully adhere to the Common Interest Community Ombudsman Regulations when drafting its response to the complaint. The association's final decision to Pimental did not include the complainant's right to file a Notice of Final Adverse Decision with the Ombudsman, as required by 18 VAC 48-70-50.10. In addition, the association's final decision did not include the association's registration number, and the name and license number of the common interest community manager, as required by 18 VAC 48-70-50.9.

**File Number 2020-02705; Hillson v. Cameron Station Community Association, Inc.**

**Determination issued on June 16, 2020.**

The Complainant (Hillson) alleged the association violated § 55-510 (now § 55.1-1815) of the Property Owners' Association Act ("the Act"). Section 55.1-1815 of the Act states, in part:

B. Subject to the provisions of subsection C and 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...

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and 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.

On February 8, 2020, Hillson made a request to examine certain books and records of the association. The request included Hillson's owner file, all receipts and reimbursements concerning an event held in 2018, and all invoices and billing records for legal services provided in 2019. Hillson said that on February 13, the association notified him it would need additional time to prepare for Hillson's review of the records. On February 14, the association contacted Hillson to advise that it could not meet the five-day deadline, but could make the owner's file available on February 19. Hillson reviewed his owner file on February 18, but was told by the association he would be notified as soon as the other requested files were located and charges for redacting determined. According to Hillson, 12 business days after the request, he still had not been given the opportunity to examine the party invoices or the legal invoices he had requested.

In its response to the complaint, the association acknowledged it took longer to coordinate the review of Hillson's owner file, and said the file was provided on February 18, 2020. The association said it had provided copies of invoices and reimbursements related to the party on March 2, 2020, and that those invoices comprised all invoices that management could locate. Regarding the request for legal invoices, the association said it provided Hillson with a schedule of costs associated with the review of the invoices, but as of May 4, 2020, had not received Hillson's authorization to charge the costs. The association stated it, "...has determined that information requested has been provided and will consider this matter closed."

In the determination, the Ombudsman concluded the association failed to meet its statutory obligations under § 55.1-1815 of the Act, and did not provide the right of examination in a timely manner with respect to the owner's file and party invoices. The Ombudsman stated, "It is clear that the five day notice was provided by the Complainant and the Association did not provide the Complainant the right to examine the requested records forthwith.

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This five day notice must be coupled with a mutually convenient time and location. However, since the Association did not raise the issue of the mutually convenient time and location we can only assume that was not an issue.” Since Hillson did not approve costs for redaction, the aspect of the complaint regarding providing of legal invoices was moot.

The Ombudsman noted that a future violation of § 55.1-1815(B)(2) by the association may result in a referral of the matter to the Common Interest Community Board for enforcement.

## Common Interest Community Ombudsman’s 2019-2020 Annual Report

In November, the Common Interest Community Ombudsman issued her 2019-2020 Annual Report to the Virginia General Assembly. The annual report outlines the Ombudsman’s activities for the past year, which include offering assistance and information to members of associations regarding the rights and processes available to them through their associations, receiving complaints involving common interest communities and time-shares, reviewing and making determinations regarding Notices of Final Adverse Decisions (NFADs) submitted to her office, and conducting public education and outreach to constituent groups.

In the report, the Ombudsman noted that during the past year, her office responded to 1,326 telephone calls and 2,791 emails. There was a significant increase of nearly 1,000 more emails received by the Ombudsman than in the previous year. As has been the case in previous years, the complexity of phone calls and emails continues to increase. This year inquiries to the Ombudsman related to the COVID-19 pandemic added to the complexity, as responses required considerable research and querying of common interest community professionals to provide answers or suggestions.

In the last year, the Ombudsman’s office received a total of 190 complaints. Nearly half of complaints received (47%) related to property owners’ associations, 25% related to condominium unit owners’ associations, and 27% related to time-shares.

The Ombudsman reported that the greatest number of complaints related to associations failing to respond to complaints submitted through the association complaint procedure, followed by complaints that associations failed to adopt a complaint procedure. Other complaints related to notice of meetings, access to books

and records, and executive sessions not held in compliance with common interest community law.

Most of the time-share related complaints received by the Ombudsman related to allegations of misrepresentation during a sales presentation. The Ombudsman noted that her office is unable to take action on such complaints due to an absence of evidence showing a violation of the Virginia Real Estate Time-Share Act, generally due to the verbal nature of sales presentations.

During this past year, the Ombudsman received 35 NFADs from individuals requesting a final determination from the Ombudsman regarding an adverse decision made by an association. The Ombudsman often received NFADs consisting of multiple complaints submitted to the association at the same time. In one instance, a NFAD was made up of 23 separate complaints submitted to an association through the complaint process. The most frequent issues in NFADs were related to notice of meetings (32% of complaints), access to books and records (18%), method of communication (13%), and executive sessions (11%). Other issues raised included complaints regarding agenda packets, improper use of work sessions or informal meetings, reserve studies, disclosure packets/resale certificates, association charges, and pesticide application.

Because of the pandemic, there was little opportunity for the Ombudsman to provide in-person outreach, and did not provide any presentations this past year. The Ombudsman plans to work on virtual options for outreach while the pandemic continues. The Ombudsman created another video tutorial to help association boards of directors better understand the association complaint process, and their obligations under the Ombudsman Regulations regarding that process. The video is available online and at the Ombudsman’s website.

For additional details, the Ombudsman’s 2019-2020 Annual Report (as well as reports for previous years) may be obtained through the website for the Ombudsman’s office:

<http://www.dpor.virginia.gov/CIC-Ombudsman/>.



## Board 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

The Director of the Department of Professional and Occupational Regulation is designated by statute as the Secretary of the CIC Board, but is not a voting member of the Board.

Drew R. Mulhare (Community Manager) First four-year term ends June 30, 2022 <b>Board Chair</b>	David S. Mercer (Attorney) First four-year term ends June 30, 2023 <b>Board Vice-Chair</b>	Maureen A. Baker (Community Manager) First four-year term ends June 30, 2024
Tom Burrell (Citizen Serving on an Association Board) First four-year term ends June 30, 2022	Jim Foley (Community Manager) First four-year term ends June 30, 2023	Amanda Jonas (Developer) First four-year term ends June 30, 2022
Lori Overholt (Time-Share Industry) Second four-year term ends June 30, 2024	Anne M. Sheehan (CPA) Unexpired term ends June 30, 2021	Scott E. Sterling (Developer) Second four-year term ends June 30, 2023
Katherine E. (Katie) Waddell (Citizen Residing in a CIC) First four-year term ends June 30, 2021	Vacant (Citizen Residing in a CIC)	Mary Broz-Vaughan Director, DPOR <b>Board Secretary</b> (Ex officio/Non-voting)

### CIC Board Staff

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>◆ Trisha L. Henshaw<br/>Executive Director<br/>Trisha.Henshaw@dpor.virginia.gov</li> <li>◆ Lisa T. Robinson<br/>Licensing Operations Administrator<br/>Lisa.Robinson@dpor.virginia.gov</li> <li>◆ Joseph C. Haughwout, Jr.<br/>CIC Board and Regulatory Administrator<br/>Joseph.Haughwout@dpor.virginia.gov</li> </ul> | <ul style="list-style-type: none"> <li>◆ Tanya Pettus<br/>Administrative Assistant</li> <li>◆ Lee Bryant<br/>Program Administration Specialist</li> <li>◆ Ben Tyree<br/>Licensing Specialist</li> </ul> |
|--|---|

### 2021 Meeting Dates \*\*

March 4, 2021 @ 9:30 a.m.

June 3, 2021 @ 9:30 a.m.

September 23, 2021 @ 9:30 a.m.

December 2, 2021 @ 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.*

**\*\* Due to the current public health emergency, the schedule listed above is subject to change, to include the rescheduling or cancellation of scheduled meetings. Notification regarding changes to scheduled meetings will be posted to the Virginia Regulatory Townhall (<https://townhall.virginia.gov/>).**

**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://www.commonwealth.virginia.gov/va-government/boards-and-commissions/>

### Contact Us

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#### Office of the Common Interest Community Ombudsman

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CIC Ombudsman

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