

# Common Interests



*The Newsletter of the Virginia Common Interest Community Board*

## Happy New Year!

Welcome to the Winter 2018 edition of *Common Interests*, the newsletter of the Common Interest Community Board. This edition of the newsletter includes important information and updates regarding the Board’s recent activities, as well as significant legislation introduced during the 2018 General Assembly Session. In this issue, we also look at common interest community manager licensure, and we visit the subject of condominium registration. Also, be sure to check out the feature article “Myths About Reserve Studies.” We hope you enjoy.

### Inside this issue:

Update to Association Disclosure Packet/Condo Resale Certificate Maximum Allowable Fees	2
Regulatory Actions Update	2
2018 Legislative Update	3
Ombudsman’s Annual Report Update	4
Notable Recent Ombudsman Determinations	4
Recent Cease and Desist Actions	7
A Word About Condominium Registration	7
Who Needs a CIC Manager License Anyway?	9
Title 55 Recodification Update	10
Myths About Reserve Studies	11
Board Member List and Meeting Schedule	12

## CIC Board Update

The Board held its final meeting of 2017 this past November 30. The Board welcomed one of its newest members, Maureen A. Baker. Ms. Baker is the owner and principal of Association Management Solutions, LLC, a community management company based in Moneta, Virginia. She has extensive experience in the fields of community management and property management, and is accredited by the Community Associations Institute as an Association Management Specialist (AMS) and Professional Community Manager (PCAM); and is a Certified Manager of Community Associations (CMCA). Ms. Baker was appointed to one of the Board’s community manager seats to fill an unexpired term ending on June 30, 2020.

Also joining the Board is Eugenia Lockett Reese, a real estate investor, re-developer, and REALTOR® with the Richmond, Virginia, firm One South Realty Group. Ms. Reese is a native of Mexico City, where she began her real estate career, and moved to Richmond in 1996. She was the first recipient of VHDA’s Service to Virginia Award for promoting homeownership among foreign-born Americans. Ms. Reese is also a founder and former Chairman of the Virginia Hispanic Chamber of Commerce. Ms. Reese was appointed to one of the Board’s citizen member seats, for a full four-year term ending June 30, 2021.

Returning to the Board as reappointed members are Mary Elizabeth (Beth) Johnson and Katherine E. (Katie) Waddell. Ms. Johnson is the President of Johnson, Bremer & Ignacio CPAs P.C , a Northern Virginia accounting firm. Ms. Johnson is the Board’s CPA member. Ms. Waddell is from Henrico County and is an insurance professional who specializes in underwriting and client relations. She is one of the Board’s

three citizen members. Both Ms. Johnson and Ms. Waddell were first appointed to the Board in 2014 to fill unexpired terms. They have each been appointed to their first full term ending in June 2021.

The Board also bid adieu to three of its members. Thomas A. Mazzei and Kristie Helmick Proctor leave the Board after four years of service. John A. Rhodes leaves the Board after two years of service. During the meeting, the Board adopted resolutions for each member, recognizing their service and contributions to the Board.

In other news, the Board held its annual election for officers. Lucia Anna (Pia) Trigiani was unanimously reelected by her fellow members for another term as Board Chair. Paul L. Orlando was elected, also unanimously, to his first term as Vice-Chair.



Pictured: CIC Board Chair Pia Trigiani and outgoing Board Member John Rhodes

### 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.

## Update to Maximum Allowable Fees for POA Disclosure Packets and Condominium Resale Certificates

The Property Owners' Association (POA) Act requires that when selling a home in a POA, the owner must provide a potential purchaser with certain legally required information regarding the home, common areas, and the association. The document, called a disclosure packet, is prepared by the association and delivered to the potential purchaser. The Condominium Act contains a similar requirement in that an owner reselling a condominium unit is to provide a potential purchaser with a condominium resale certificate.

Because pulling together the materials for a disclosure packet or resale certificate involves time, effort, and resources, the law allows the preparer to assess reasonable charges to recover costs, but sets a maximum amount for such fees.

To account for inflation, the law authorizes the Board to adjust the maximum fees applicable to POAs that are professionally managed<sup>1</sup> and condominiums every five years based on the Consumer Price Index (CPI). These maximum fees were initially set in 2008, and were previously adjusted in 2013. Effective **January 16, 2018**, these maximum fees have been adjusted to account for inflation.

POAs that are not professionally managed are not subject to CPI adjusted fees. However, the Condominium Act does not differentiate fees based on how a unit owners' association is managed.

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

### Regulatory Actions In Progress:

#### Common Interest Community Management Information Fund Regulations - General Review

At its March 2017 meeting, the Board initiated a general review of the Common Interest Community Management Information Fund Regulations. The scope of these regulations include the registration

### Maximum Allowable Fees for Preparers of Condominium Resale Certificates or Disclosure Packets for Professionally-Managed POAs

Fee Type	Previous Fees (2013)	Current Fees (2018)
Inspection of lot/unit	\$109.31	<b>\$117.37</b>
Preparation/delivery of packet/certificate (paper)	\$163.97	<b>\$176.05</b>
Preparation/delivery of packet/certificate (electronic)	\$136.64	<b>\$146.71</b>
Expedited inspection additional fee	\$54.66	<b>\$58.69</b>
Additional copy fee	\$27.33	<b>\$29.34</b>
Third-party commercial delivery (overnight or hand-delivery)	N/A	N/A
Post-closing fee	\$54.66	<b>\$58.69</b>
Pre-settlement updates	\$54.66	<b>\$58.69</b>
Additional inspection fee	\$109.31	<b>\$117.37</b>

### Maximum Allowable Fees for Preparers of Disclosure Packets in Non-professionally Managed POAs

Fee Type	Maximum Fee
Preparation of disclosure packet/certificate	Actual costs not to exceed \$.10 per page of copying costs, or a total of \$100 for all costs.
Financial update	\$50
Additional inspection	\$50

## Regulatory Actions Update

and annual report requirements for community associations. The Board filed a Notice of Intended Regulatory Action (NOIRA) in May 2017, which included a 30-day public comment period held from June 12, 2017, to July 12, 2017. The Board considered proposed amend-

ments to the regulations at its November 30, 2017. After discussion, the Board voted to withdraw this action and reissue a new NOIRA at a later date in 2018 to allow for additional public participation through formation of a stakeholder committee.

<sup>1</sup> "Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community. (see § 55-509 in the POA Act)

## 2018 Legislative Update

On January 10, 2018, the Virginia General Assembly convened for its 2018 session. During even-numbered years, the Assembly meets for 60 days. As of this writing, the Assembly has passed the mid-point of its session. Thus far several bills potentially affecting common interest communities have been considered.

*(Note: This is not a comprehensive list of all introduced legislation that might affect common interest communities. 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 1041 - Virginia Property Owners' Association Act; lot owner rights.**

**Summary:** Provides lot owners the right to be informed of the count and outcome of a vote on any matter requiring a vote by a property owners' association's membership in proportion to the lot owner's ownership interest.

#### **HB 1205 - Nonstock corporations; members' meetings.**

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

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

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

### Association Disclosure Packets/Condo Resale Certificates

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

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

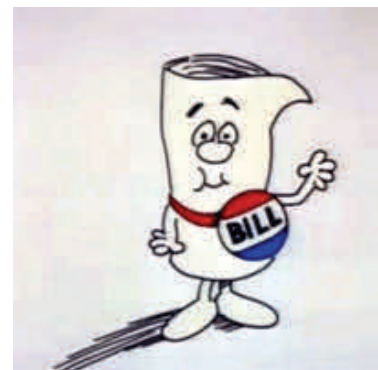
#### **HB 1031 - Common interest communities; disclosure packets.**

**Summary:** Requires that as a prerequisite to charging any fees for the preparation of disclosure packets, both professionally managed property owners' associ-

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

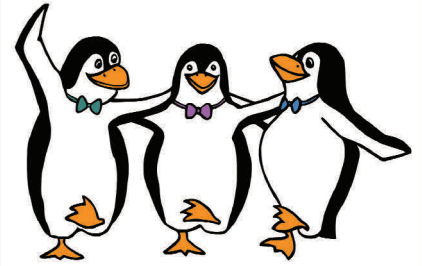
#### **SB 328 - Common Interest Community Board; disclosure packets; registration of associations.**

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



## Common Interest Community Ombudsman's 2016-2017 Annual Report

This past fall, the Common Interest Community Ombudsman issued her 2016-2017 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 notes that during the past year, her office responded to nearly 1,600 telephone calls and 2,300 emails. Often these inquiries are complex and require substantial time and research in order to be appropriately addressed. In the last year, the Ombudsman's office received a total of 207 complaints. The majority of these complaints involved property owners' associations or condominium unit owners associations. The most common complaints were related to an association's failure to adopt a complaint procedure or failure to timely respond to a submitted complaint. In addition, a significant number of complaints received by the Ombudsman involved time-share companies. Overwhelmingly, the complaints received related to allegations of misrepresentations during sales presentations.

Among the complaints received were 30 NFADs from individuals requesting a final determination from the Ombudsman regarding an adverse decision made by an association. There were a variety of subjects presented in these cases, ranging from access to association records, notices of meetings, enforcement of association rules, and financial matters such as assessments and reserves.

The Ombudsman also conducted several outreach presentations before constituency groups, including local Realtors™ associations, and the Community Associations Institute (CAI).

For additional details, the Ombudsman's 2016-2017 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/>.

## Notable Recent Final Determinations from the Ombudsman

### File Number 2018-01442, Marroletti v. Eagle Pointe at Cahoon Planation

Determination issued on December 7, 2017.

The Complainant (Marroletti) alleged that the manager of her condominium association failed to comply with § 55-79.75:1 of the Condominium Act, which requires the executive organ of an association to "...establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive organ..." about any matter concerning the association.

The association provides residents with a bulletin board and mailbox holders for communication among residents. It also provides an online discussion group for owners and residents. In addition, owners and residents also communicate through a Facebook page. There are also open forums during association meetings for owners to communicate with the board and others.

Marroletti requested the manager of the association forward an email to all members of the association. The manager requested

Marroletti submit her distribution request to the association's board of directors. The manager did not forward the Marroletti's email as requested; however, the email was posted by the association on the community's bulletin board. Marroletti contended that there is no way to exchange information on a bulletin board, and the mailbox slots are not appropriate to the size and nature of the condominium.

The Ombudsman held that it was outside the scope of her authority to determine what is a reasonable, effective, and appropriate method of communication; as the terms have never been defined within the confines of common interest community law, and a definition based on common usage would not be appropriate because the terms are specific to a particular subject. The Ombudsman determined that no action was required by the association. While the bulletin board and mail slots provided by the association may not be perfect tools for communication, particularly in light of today's technology, they can be useful. In addition, there

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

do appear to be avenues for online communication among members. The association provides several communication options for owners, and there is no requirement under the Condominium Act that every owner must be willing to use whatever communication form is provided.

### File Number 2018-01443, Knox v. Wynd Crest Condominium

Determination issued on December 27, 2017

The Complainant (Knox) alleged that her condominium association violated § 55-79.76 of the Condominium Act, which allows a unit owners' association, or any association member entitled to vote, to petition a circuit court to order an annual meeting for electing officers when an association has been unable to hold an annual meeting due to lack of quorum.

Knox contended that the association failed to hold elections for Board of Directors, and failed to petition the court in order to elect officers, and instead has "rolled over" board members each year. According to the association, it has not been able to obtain a quorum at its annual meeting for a number of years, and so it has opted to instead request volunteers willing to help run the association. The Ombudsman noted that obtaining quorum for annual meetings can be a difficult problem in many associations, and often leads to the practice of "rolling over" board members since an election cannot be carried out. However, the Condominium Act does not require that an association petition the court. The Ombudsman suggested that the association may wish to consider whether petitioning the court is in its best interest in order to ensure that it has a quorum to elect officers at its next meeting of unit owners.

Knox also alleged the association failed to provide access to association books and records in accordance with § 55-79.73:3 of the Condominium Act, which gives unit owners the "...right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § 55-79.74:1, including records of all financial transactions..."

Section 55-79.74:1 of the Act specifies, in part, that "...all books and records kept by or on behalf of the unit owners' association...shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation."

Knox made several requests to the association, prior to and after purchasing her unit, to review the books and records of the association at the association office. The association denied Knox's requests, and instead offered to send documents electronically since the files were largely in an electronic format. The association said that Knox refused to provide an email address. The association indicated it was willing to print

out documents for Knox, and provided her with a fee schedule for the cost of generating hard copies, but Knox refused to pay these costs. Knox preferred to review the documents in their electronic format at the association's office. The association also claimed Knox had not given the association a proper purpose for requesting access to the association's books and records.



The Ombudsman noted that owners have an absolute right to examine the books and records of the association if they are members in good standing and have provided a request that comports with the law. Though some of Knox's requests to access books and records did not have a purpose, at least one of Knox's requests, made after she became an owner, did have a proper purpose. Accordingly, once Knox officially owned a unit and provided a proper purpose, the association was obligated to provide Knox with her right to access the association's books and records; regardless of how these documents are kept and maintained. The Ombudsman suggested the association consider its method of maintaining its books and records so that it can be certain to provide an owner the opportunity to examine or copy them if so requested.

### File Number 2018-01571, Hook v. Burnett's Mill Subdivision Homeowners' Association, Inc.

Determination issued on January 8, 2018.

The Complainant (Hook) alleged that his homeowners' association violated several provisions of the Property Owners' Association Act (POA Act).

Hook alleged that the association failed to conduct an annual meeting as required by § 55-510(F) of the POA Act, which mandates that association meetings be held in accordance with association bylaws at least once a year after the formation of the association. Hook complained that the association had scheduled an annual meeting, but that the association "skipped" the meeting, and instead conducted a meeting of the board. The association acknowledged the annual meeting was scheduled and called to order, but that quorum could not be established, so the annual meeting was closed and a board meeting was called to order.

Hook further alleged that by convening the board meeting, the

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

association failed to provide proper notice of the board meeting, in violation of § 55-510(F) of the POA Act, which requires a 14-day advance notice of any annual or regularly scheduled meeting, and seven-day notice for any other meeting, as well as the time, place, and purposes of such meeting. Hook further contended that notices for other association meetings, held quarterly, did not specify a purpose, and there had been variations in the date the annual meeting was held; which Hook believed meant there had been meetings, with no notice given, in order to decide the annual meeting dates. The association argued that Hook may have confused the notification requirements in § 55-510(F), which pertain to association meetings, with the notice requirements in § 55-510.1 of the POA Act, which pertain to board meetings. Section 55-510.1 requires that notice of the time, date, and place of each meeting of an association's board of directors, or any committee or subcommittee, "...be published where it is reasonably calculated to be available to a majority of the lot owners."

The Ombudsman determined that the association did provide notice of the annual meeting, and did attempt to hold it, but was unable to obtain a quorum. Had the association not made an effort to provide notice of the annual meeting, it would have been in violation of § 55-510. It was a failure of owners to show up to the meeting which caused the lack of quorum. The Ombudsman suggested the association needed to address its inability to obtain quorum, since common interest community law requires a meeting of the association at least once a year. The Ombudsman also determined there did not appear to be notice for the board of directors meeting that was held after closed annual meeting. Though it may be logical to assume that one notice should suffice for the other, in fact, an association meeting and a board of directors meeting are two separate meetings, and there should have been notice for each; either by having a separate notice for each, or a single notice that clearly stated a board meeting would take place following the annual meeting. The Ombudsman also noted that while § 55-510(F) requires that an association meeting notice provide a purpose, this is not the case with notices for a board of directors meeting. Further, she noted that it is not necessary for a board to have a meeting to make a date change if the governing documents and corporate law permit it. While decision making outside of a meeting should not be encouraged, there are times when it is the logical and simplest way to resolve an issue.

Hook also alleged the association failed to provide access to association books and records, in violation of § 55-509.3:2 of the Act, which grants association members the "...right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § 55-510, including records of all financial transactions..." Hook requested a copy of the proposed 2018 budget, which had not been approved by the board of directors or presented to members. The association denied the request, telling Hook that it would

be inappropriate to send him a preliminary budget before the association board had seen it, and that Hook would receive the approved budget at the time it was presented to the entire membership. Hook also claimed the association failed to include the proposed budget in the agenda packet for the unscheduled board meeting, which was supposed to include discussion of the budget, in violation of § 55-510.1(B) of the POA Act, which requires all agenda packets and materials furnished to members of an association board of directors (or a subcommittee or committee thereof) be made available for inspection by association members at the same time they are furnished to board members. The association explained that Hook had been given incorrect information, and that it intended to provide a copy of the draft budget at the same time it was presented to the association's membership. The association further explained that the draft budget was included in the board agenda packet that was available in the management office at the same time the board received its agenda packet for the meeting; though, it acknowledged that the draft budget was erroneously omitted from the homeowner packet available at the meeting. However, all association members were mailed a copy of the budget. The Ombudsman noted that a draft document that has not yet been approved by a board is generally not considered to be part of the books and records of an association, and could not find the association at fault for not providing a copy of the draft budget, especially if the board had not yet seen or approved it. She further noted that common interest community law does not specifically define when a document becomes part of the books and records, and, therefore, could not provide a definitive decision on that particular issue. The Ombudsman also noted, though, that if the association considers a draft budget to be part of its books and records, it must provide a copy of such draft to anyone who requests it in compliance with the applicable statute. If the association does not consider the draft budget to be part of the books and records until after it has been approved, then it is not required to be provided.

Hook further claimed the association failed to provide continual notice of board meetings, in accordance with § 55-510.1(B) of the POA Act, which stipulates that a lot owner may make a request to be notified on a continual basis of any board meetings (or of any subcommittee or other committee). The request must be made in writing at least once a year. The association must provide notice of the time, date, and place of any board of directors meeting to a requesting owner by first-class mail or email (or by email in the case of a subcommittee or committee meeting). Hook said he had made requests for continual notification annually for two years, in 2016 and 2017. In 2016, the association provided Hook with notice of board meetings and due process hearing meetings. But in 2017, Hook only received notice of board of directors meetings. He did not receive notice of due process hearing meetings. Hook claimed that either these meetings did not occur, or that he did not receive notice of them. The

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

association explained that it responded to Hook’s requests for continual notice, and provided him such notices by email. Though Hook had requested to be provided notice by both mail and email, the statute gives the association the option of sending notice of board meetings by either mail or email. Regarding due process hearing meetings, the association said that notice was provided that these would be held as needed immediately before board meetings. The Ombudsman determined that the association did provide continual notice to Hook, but concurred with Hook’s claim that notice was insufficient. While primary board meeting notice was provided, additional meeting notices, such as due process hearing meeting notices, were not provided, and simply stating that these meetings will be held on an as needed basis prior to scheduled board meetings was not sufficient notice. The Ombudsman noted that the association must ensure it provides continual notice to those who request it. The time, date, and place of all board meetings, including committees and subcommittees, must be provided to the individual requesting continual notice.

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

## Recent Cease and Desist Actions

At its meeting on November 30, 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.

Regency at Ashburn Greenbrier Condominium (Registration No. 0517131081)  
Ashburn, VA  
Declarant: Toll VA IV, LP

(Order lifted December 5, 2017, following declarant’s compliance.)

Vineyard Terraces, A Condominium at the Virginian  
(Registration No. 0517130116)  
Bristol, VA  
Declarant: The Virginian Golf Club, L.C.

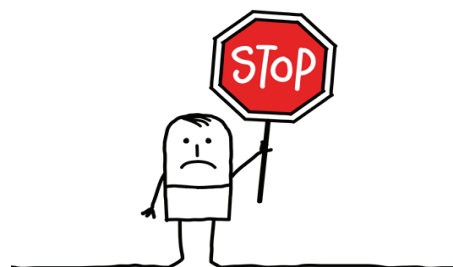
(Order lifted December 28, 2017, following declarant’s compliance.)

Waterhouse Condominium  
(Registration No. 0517060269)  
Charlottesville, VA  
Declarant: Waterhouse LLC

Shamrock Garden Villas Condominium  
(Registration No. 0517080112)  
Norfolk, VA  
Declarant: Ocean Pines LLC

Riverviews Artspace Condominium  
(Registration No. 0517080176)  
Lynchburg, VA  
Declarant: Riverviews

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



## A Word About Condominium Registration

The Condominium Act requires the declarant of a condominium to register the project with the Common Interest Community Board (“the Board”) in order to offer or dispose of any interest in units in the condominium. The Act also requires the declarant file an annual report with the Board, in a form prescribed by the Board’s regulations, within 30 days of the anniversary date of the condominium’s order of registration. Board Regulation 18

VAC 48-30-540 outlines the requirements for declarant annual reports.

The purpose of the annual report is for the declarant to update the Board on the status of the project, including the number of units recorded, the number of units conveyed, the status of completion of condominium common elements, and the status of declarant control. As part of the annual report process, the declarant is required to review the public offering statement being delivered to purchasers and determine if the public offering

## A Word About Condominium Registration (continued)

statement is current. If the offering statement is current, then the declarant must certify in the annual report that the offering statement is current. However, if the offering statement is not current, then the declarant must amend the public offering statement and file the amended public offering statement with the Board, in accordance with Board Regulation 18 VAC 48-30-490. As part of the annual report, the declarant is also required to submit evidence from the surety company or financial institution that issued any bonds or letters of credit (e.g. assessment bond, completion bond) posted with the Board for the registration verifying the status of these instruments, including the beneficiary, dollar amount, and expiration date; or, if necessary, to file appropriate replacement bonds or letters of credit.

The Board's staff will typically mail a notice to the declarant (or its designated agent, such as an attorney) of a registered project in advance of the anniversary date to advise that the annual report is due. If an annual report is not received from the declarant, staff will issue a follow-up notice advising that an annual report was not received and that the failure to file the report could lead to action by the Board, including imposition of a cease and desist order against the declarant. Imposition of a cease and desist order usually entails a prohibition on the declarant offering and selling of units in the condominium. Failure to receive notices from the Board does not excuse a declarant from the requirement to file an annual report. It is the declarant's regulatory obligation to ensure that the annual report is timely and properly filed with the Board.

Upon receipt of a declarant annual report, the Board's staff will conduct a review of the annual report, and, where needed, update the registration record for the condominium. If the annual report is accepted, the Board will issue a letter to the declarant advising that the annual report has been accepted. Board Regulation 18 VAC 48-30-550 provides that during review, the Board may make inquiries or request additional documentation in order to amplify or clarify information provided in the annual report. If the Board does not accept the annual report filing, and the filing is not completed within 60 days of a request by the Board for additional information, the Board may undertake enforcement action against the declarant under the Condominium Act for failing to file an annual report.

The declarant's obligation to file annual reports for the registration continues until the registration is eligible for termination, even if the declarant has already turned over control to the unit owners' association. A project is eligible for termination once all units in the condominium have been disposed of (conveyed to purchasers) and all periods for expansion or conversion of the condominium have expired. The Board's regulations specify that a declarant may effect termination of a condominium registration by (1) submitting a declarant annual report in accordance with the Condominium Act and the Board's regulations that indicates all units in the condomini-

um have been disposed of, and all periods for expansion or conversion of the condominium have expired; or (2) providing written notification to the Board attesting that all units have been disposed of and that all periods for conversion or expansion have expired, and all common elements have been completed. A declarant may also terminate a registration by providing written notification to the Board that it is requesting termination pursuant to § 55-79.72:1 of the Condominium Act.

In addition, when the declarant has transitioned control of the unit owners' association to the unit owners, the Board's regulations require the declarant, in addition to the requirements contained in § 55-79.74 of the Code of Virginia, to notify the Board in writing of the date of the transition, and provide the Board with the name and contact information for members of the association's board of directors, or the association's common interest community manager.

A declarant is required to post and maintain an assessment bond or letter of credit until such time as the declarant owns less than 10% of units in the condominium and is current in payment of assessments. For condominiums containing less than 10 units, the bond/letter of credit must be maintained until the declarant owns only one unit. When the declarant meets these conditions, the declarant must submit a written request to the Board asking for return of the bond/letter of credit, in which it attests it meets these conditions, and provide the Board with the contact information for the unit owners' association. Upon receipt of the declarant's request, the Board will contact the unit owners' association to request confirmation of the information supplied by the declarant. The managing agent for the association may confirm the information supplied by the declarant. However, the person confirming the information on behalf of the association must not be affiliated with the declarant. The Board must return the bond/letter of credit to the declarant when the association confirms the declarant meets the conditions for its return, or, if the association does not provide a response to the Board, within 90 days of the Board's request to the association. However, if the association attests that the declarant is not current in payment of assessments, then the Board must retain the bond/letter of credit until it receives satisfactory evidence that the declarant is current in payment of assessments.





## So, Who Needs a Common Interest Community Manager License Anyway?

In July of this year, the CIC Board will observe its 10th anniversary. The General Assembly created the Board in part to protect the public welfare by ensuring that only those with the requisite education, experience, and character provide management services to common interest communities in Virginia by becoming licensed. The Board's upcoming anniversary presents an opportunity to visit the subject of who is required to be licensed as a common interest community manager, and the exemptions to licensure.

### Who is required to obtain a CIC Manager license?

Section 54.1-2346 of the Code of Virginia provides that any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, unless exempted, shall hold a valid license prior to engaging in such management services.

### What constitutes "management services?"

"Management services" is defined in § 54.1-2345 of the Code of Virginia as:

(i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and non-members; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

### Who does not need to have a license?

Section 54.1-2347 of the Code of Virginia provides several, narrowly tailored, exemptions from the licensure requirement. These include:

- An employee of a duly licensed common interest community manager providing management services within the scope of the employee's employment by the duly licensed common interest community manager;
- An employee of an association providing management services for that association's common interest community;
- A resident of a common interest community acting without compensation providing management services for that common interest community;
- A resident of a common interest community providing bookkeeping, billing, or recordkeeping services for that common interest community for compensation; provided the blanket fidelity bond or employee dishonesty insurance policy maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;
- A member of the governing board of an association acting without compensation providing management services for that association's common interest community;
- A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court providing management services for a common interest community;
- A duly licensed attorney-at-law representing an association or a common interest community manager in any business that constitutes the practice of law;
- A duly licensed certified public accountant providing bookkeeping or accounting services to an association or a common interest community manager; or
- A duly licensed real estate broker or agent selling, leasing, renting, or managing lots within a common interest community;

In addition, an association, exchange agent, exchange company, management agent or managing entity of registered time-share project does not need a license to provide management services for such time-share project.

*(continued on next page)*

## So, Who Needs a Common Interest Community Manager License Anyway? (continued)

### Does a real estate license allow someone to provide management services to a common interest community?

No. A real estate licensee (broker or salesperson) may provide property management services to a lot or lots (individual properties) that are within a common interest community (these include units in a condominium or cooperative association), but may not provide management services to the association.

### How about someone who is providing bookkeeping services to a common interest community? Does he/she need a license?

If the individual is duly licensed as a certified public accountant (CPA), the individual may provide only bookkeeping and accounting services to the association without needing a common interest community manager license. A resident of an association may provide these services without the need for a license, and may do so for compensation provided the association's blanket fidelity bond or employee dishonesty insurance policy insures the association against losses resulting from theft or dishonesty committed by such person.

### What are the potential consequences of providing management services to a common interest community without having a license?

Section 54.1-2346 of the Code of Virginia states:

Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111

Section 54.1-111 of the Code of Virginia makes it unlawful for a person to do, among other things:

- Practice a profession or occupation without holding a valid license as required by statute or regulation;
- Perform any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed; and
- Fail to register as a practitioner of a profession or occupation as required by statute or regulation.

Any person who willfully engages in any unlawful act enumerated in § 54.1-111 would be guilty of a Class 1 misdemeanor. A Class 1 misdemeanor is punishable by up to 12 months jail and/or a fine of up to \$2,500.

The Department of Professional and Occupation Regulation is authorized to investigate allegations of unlicensed activity. When the staff for the CIC Board become aware of possible unlicensed activity, staff will refer these matters for further investigation.



## Title 55 Recodification Update

As part of its 2016-2017 workplan, the Virginia Code Commission has been 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. Commission staff 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, participated in a workgroup with specific focus on those chapters in Title 55 that relate to common interest communities and time-shares. The workgroup met periodically throughout 2016 and 2017. At its meeting on June 26, 2017, the Commission reviewed the workgroup's recommendations for the Condominium Act (Chapter 4.2), the Real Estate Cooperative Act (Chapter 24) and the Property Owners' Association Act (Chapter 26). At its meeting on August 14, 2017, the Commission reviewed the workgroup's recommendations for the Virginia Real Estate Time-Share Act (Chapter 21).

According to the Commission, a final report on the recodification of Title 55 is expected to be released in 2018. The Commission anticipates that legislation enacting a new title, Title 55.1, will be introduced during the 2019 General Assembly Session.

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

## Myths About Reserve Studies

*This article originally appeared in the September 2017 edition of Quorum™ - a publication of the Washington Metropolitan Chapter of the Community Associations Institute (WMCCAI). Reprinted with permission.*

**By Doug White, P.E.**

The reserve study is an essential guide to fortifying your community's economic strength, but it is not written on two stone tablets that came from the top of Mount Sinai. It demands attention to adapt to the evolving needs of your community. To be the commander of the community that is your vessel, you must fully understand the purpose of reserves studies, and this article attempts to debunk a few myths about reserve studies.

**Myth #1 – There is a correct amount of funding for your reserves.**

The reserve assessment will evolve over time with changing community priorities and conditions. Engineering, management, and the board of directors are all involved in evaluating these factors, and the net result is that there is no "right" answer.

For example, a reserve study report might reasonably estimate the normal service life of shingle roofing as 30 years, but after a severe wind storm that blew off many shingles, the community may decide to replace the roof after only 20 years rather than make extensive repairs.

**Myth #2 – There is one preferred method of calculating reserves.**

There are many ways to evaluate reserves:

(1) In the component or straight-line method, the estimated cost of each component is divided by its normal useful life. The values for all the components are added up to calculate the annual assessment. (2) Using the cash flow method, the estimated costs for all the reserve items are added up for each year. This creates a projection of future expenses. Different levels of assessments can be applied to

calculate if enough money is collected to fund the projected expenses over time.

(3) For an accrued fund balance, the amount of funds that should have accumulated are calculated by components, and the values are added up for all reserve items. The total is what should have been accumulated for reserves at a particular time, which can be compared to the amount currently in reserves to yield a percent funded value. (4) Baseline funding is when a cash flow projection is used to find the assessments needed so that the reserve fund never has a shortfall during the study period. (5) Under threshold funding, a cash flow projection is used to find the assessments needed so that the reserve fund never falls below a certain level (the threshold) during the study period.

**Myth #3 - Reserves are only for capital cost items.**

Reserves can include capital expenses but also other large maintenance or repair expenses. Items that are capitalized for tax purposes are based on expenditures, not the funding source. Accountants can decide which items are capitalized based on whether or not the expenses qualify for depreciation under tax law.

The operating budget is normally for items that occur annually like mass mailings and pool cleaning. It is easier to plan budgets and assessments when line items do not vary by large amounts each year. Reserves are a useful budget tool for handling large costs that do not occur every year, like roof replacement and road sealing. By calculating the assessments needed on an ongoing basis to fund large projects that occur at irregular intervals, the reserve assessment line item in the budget also becomes a stable and predictable amount.

**Myth #4 - You must fund reserves according to the reserve report.**

Reserve analysts have no authority to decide how to fund reserves. They can calculate future funding needs, but how to raise the money is decided by the board.

**Myth #5 - The reserve report is a spending plan.**

The reserve report usually includes a schedule of future projects listed by year. However, communities should not perform projects just because they appear at a certain time in the reserve schedule. The actual need for a project should be decided based on physical conditions at the time, not if it appears in the reserve schedule for that year. This should highlight the importance of continually updating your reserve study.

**Myth #6 – All states have laws that require reserve funding.**

Some states have requirements for reserves. **Virginia** mandates that a reserve report is updated at least every five years and reviewed annually, but the statute does not mandate that reserves be funded. **Maryland** requires that community budgets include something for reserves. There are no requirements for funding or what items should be included in reserves. The **District of Columbia** currently has no specific requirements for reserves. It is always important to keep up with your local legislation for any changes that may have occurred.

In sum, your reserves study can be the most useful tool for budgeting and maintaining your community, but it cannot go unattended because it is a living and breathing document that if left to stale, becomes less effective.

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**About the Author:** Mr. White is a principal at Thomas Downey, Ltd., Consulting Engineers. He has over 30 years of diversified experience in engineering design of buildings, structural engineering, building investigations, reserve studies, forensic engineering, construction project management and administration, and construction cost estimating.

## 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

### 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.*

**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/](https://commonwealth.virginia.gov/va-government/gubernatorial-appointments_old/)**

Lucia Anna (Pia) Trigiani (Attorney) Second four-year term ends June 30, 2019 <b>Board Chair</b>	Paul L. Orlando (Community Manager) First four-year term ends June 30, 2019 <b>Board Vice-Chair</b>	Maureen A. Baker (Community Manager) Unexpired term ends June 30, 2020
Mary Elizabeth (Beth) Johnson (CPA) First four-year term ends June 30, 2021	Kimberly (Kim) B. Kacani (Developer) Second four-year term ends June 30, 2018	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
David (Dave) Watts (Citizen Serving on an Association Board) First four-year term ends June 30, 2018	Vacant (Community Manager)	Jay DeBoer Director, Department of Professional and Occupational Regulation <b>Board Secretary</b>

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

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

## CIC Board Staff

- ◆ Trisha L. Henshaw  
Executive Director  
[Trisha.Henshaw@dpor.virginia.gov](mailto:Trisha.Henshaw@dpor.virginia.gov)
- ◆ Lisa T. Robinson  
Licensing Operations Administrator  
[Lisa.Robinson@dpor.virginia.gov](mailto:Lisa.Robinson@dpor.virginia.gov)
- ◆ Joseph C. Haughwout, Jr.  
CIC Board and Regulatory Administrator  
[Joseph.Haughwout@dpor.virginia.gov](mailto:Joseph.Haughwout@dpor.virginia.gov)
- ◆ Tanya Pettus  
Administrative Assistant
- ◆ Lee Bryant  
Program Administration Specialist
- ◆ Ben Tyree  
Licensing Specialist