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## Final Regulation Agency Background Document

<b>Agency name</b>	Common Interest Community Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC48-60
<b>VAC Chapter title(s)</b>	Common Interest Community Management Information Fund Regulations
<b>Action title</b>	2018 Common Interest Community Management Information Fund Regulations General Review
<b>Date this document prepared</b>	May 14, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Common Interest Community Management Information Fund Regulations implement the requirements and duties imposed upon the Common Interest Community Board ("the Board") by Virginia law, including Article 2 of Chapter 23.3 (§ 54.1-2354.1 et seq.) of Title 54.1 of the Code of Virginia, which establishes the Common Interest Community Information Management Fund ("the Fund").

The regulation prescribes when and how common interest community associations (property owners' associations, condominium unit owners' associations, and proprietary lessees' associations in real estate cooperatives) are to register with the Board by filing an annual report in accordance with Chapters 18, 19, and 21 of Title 55.1 of the Code of Virginia, respectively. The regulation establishes registration application filing fees, procedures for obtaining and renewing registrations, and requirements for updating registration information.

This action significantly revises the current regulation to (i) provide better clarity for regulants and the public; (ii) better complement statutory requirements; and (iii) reflect current agency practice regarding association registration.

The action amends the title of the regulation to Common Interest Community Association Registration Regulations to more accurately reflect the purpose of the regulation. The amendments also include:

1. Adding several definitions, including for the terms registration and annual report;
2. Creating a new section that comprehensively outlines association registration requirements, including the potential consequences outlined in statute to associations that fail to comply;
3. Consolidating several existing sections regarding registration timeframes into a single section;
4. Removal of language indicating that an SCC Annual Report may be submitted by an association in lieu of a Board-designated annual report form; and
5. Establishing clearer procedures for renewal of a registration, including a one-year timeframe for an association to renew.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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"CIC" means common interest community.

"DPOR" means Department of Professional and Occupational Regulation.

"POA" means property owners' association.

"SCC" means State Corporation Commission.

"UOA" means condominium unit owners' association.

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On March 12, 2020, the Common Interest Community Board adopted final amendments to the Common Interest Community Management Information Fund Regulations.

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to previously reported information regarding the impetus for this regulatory change.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The agency is the Common Interest Community Board.

Section 54.1-2349(A) of the Code of Virginia specifies the Board shall administer the provisions of Chapter 23.3 of Title 54.1 of the Code of Virginia, and states, in part:

A. The Board shall administer and enforce the provisions of this article. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

- 1. Promulgate regulations necessary to carry out the requirements of this article in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.)...
- 8. Issue a certificate of registration to each association that has properly filed in accordance with this chapter;

In addition, § 54.1-2350 of the Code of Virginia states, in part:

In addition to the provisions of § 54.1-2349, the Board shall:

- 1. Administer the provisions of Article 2 (§ 54.1-2354.1 et seq.);
- 2. Develop and disseminate an association annual report form for use in accordance with §§ 55.1-1836, 55.1-1980, and 55.1-2182...

Further, § 54.1-2351 of the Code of Virginia states, in part:

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this article, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this article or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.*

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In 2008, the General Assembly transferred authority over the Fund and the Common Interest Community Management Information Fund Regulations from the Real Estate Board to the newly created Common Interest Community Board. The Board determined a comprehensive review was necessary to ensure that the regulation complements current statutory requirements, provides minimal burdens on regulants while still protecting the public, achieves its intended objective in the most efficient, cost-effective manner, is clearly written and understandable, and reflects current procedures and policies of the Department.

The General Assembly created the Fund to be used in the discretion of the Board to promote the improvement and more efficient operation of common interest communities through research and education. CIC associations are required by statute to finance the Fund on an annual basis through the filing of annual reports with the Board and payment of fees.

Monies from the Fund support the operations of the Office of the Common Interest Community Ombudsman. The Ombudsman's office protects the public welfare through fulfilling its statutory obligations to

- (i) assist association members in understanding their rights and the processes available to them according to the laws and regulations governing common interest communities;
- (ii) provide members and other citizens information concerning common interest communities upon request; and
- (iii) receive notices of final adverse decision from association members and members of the public.

The Fund also supports the functions of the Board which protects the public welfare, in part, by enforcing the requirements of the Property Owners' Association Act ("POA Act") (Chapter 18 of Title 55.1 of the Code of Virginia), the Virginia Condominium Act (Chapter 19 of Title 55.1 of the Code of Virginia), and the Virginia Real Estate Cooperative Act (Chapter 21 of Title 55.1 of the Code of Virginia); and by discharging its duties under §§ 54.1-2350, 54.1-2350, and 54.1-2351 of the Code of Virginia.

Unlike most DPOR regulatory programs, the Board's association registration program does not grant a license or other authorization for an association to operate or exist. However, the General Assembly has imposed on associations certain obligations that are tied to registration with the Board. The 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 POA Act calls the legally required information a disclosure packet. The packet must be requested by the seller, prepared by the association, and delivered to the potential purchaser. One component of the disclosure packet is documentation the association has a current registration with the Board. If an association does not have a current registration, then the disclosure packet is deemed not available, and the purchaser may cancel a purchase contract. The Virginia Condominium Act imposes a similar requirement on UOAs, but calls the disclosure packet a resale certificate. Failure of a POA or UOA to comply with registration requirements poses a risk of financial harm to innocent third parties, namely purchasers and sellers in real estate transactions, due to the potential for contract cancellation and civil litigation.

In addition, POAs are authorized by the POA Act to collect certain fees during real estate transactions in order to offset costs imposed on associations for the preparation and distribution of association disclosure packets. However, this authorization is tied to the requirement for a POA to be registered. A POA that does not have a current registration with the Board is prohibited from collecting these fees. Failure of a POA's governing board to obtain and maintain a registration with the Board prevents it from lawfully recouping costs incurred to comply with the law; which poses a financial risk to both the association and its members.

The public welfare will be enhanced by (i) changing the name of the regulation to more accurately reflect its objective, (ii) providing greater specificity as to what constitutes association registration, how registration is obtained, maintained, and renewed, and (iii) providing notice as to the potential consequences for failure to comply with registration requirements.

Unlike most DPOR statutes that pertain to licensure or registration, which are located in a single chapter in the Code of Virginia, requirements pertaining to registration of CIC associations are spread out across multiple chapters of the Code. Members of the public, including association governing board members, often contact the Board's office as they are unsure of registration requirements, in particular, where registration requirements are established. In a given month, the Board's office can receive between 15-20 inquiries pertaining to why associations are required to register, where registration requirements can

be found, and what can happen if an association does not register. An anticipated benefit of the changes in this action is that association registration requirements established in the Code will be more clearly outlined and referenced in a single source. Similarly, an anticipated benefit of this action is that the process for initial registration and registration renewal will be more clear to the public. The existing regulation does little in way of outlining procedurally how initial registration and registration renewal are achieved. Consequently, the Board's office receives inquiries regarding processes for registration or renewal of a registration, and there is the risk of inconsistent application of these processes without clear provisions in the regulation.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The amendments will change the title of the regulation to Common Interest Community Association Registration Regulations, which more accurately reflects the purpose of the regulation. The amendments also make the following substantive changes.

### Sections Repealed:

1. Section 18VAC48-60-20, which permits an association to submit an SCC annual report to satisfy the annual reporting requirement.
2. Sections 18VAC48-60-30, 18VAC48-60-40, and 18VAC48-60-50, which outline timeframes for registration of condominium associations, proprietary lessee's associations (cooperatives), and property owners' associations. These requirements are consolidated into a new, single section.

### Sections Amended:

1. Section 18VAC48-60-13 to add several new definitions: "Annual report"; "Board"; "Common interest community"; "Contact person"; "Property owners' association"; "Proprietary lessees' association"; "Registration"; and "Renew."
2. Section 18VAC48-60-17 to more clearly outline procedures for renewal of a registration, and establish a one-year renewal period.
3. Section 18VAC48-60-60 to clarify the difference between initial registration and renewal fees, and clarify that the fee schedule is based on number of lots/units subject to the association's declaration. In addition, the section will reference the requirement established in § 54.1-2354.5 of the Code of Virginia for an association to make a payment to the Common Interest Community Management Recovery Fund upon initial registration.

### New Sections Created:

1. Section 18VAC48-60-14 to outline general association registration requirements and consequences for associations that fail to register in accordance with the chapter.
2. Section 18VAC48-60-15 to outline the specific registration timeframes for (i) condominium unit owners' associations; (ii) proprietary lessees' associations (real estate cooperatives); and (iii) property owners' associations.
3. Section 18VAC48-60-25 to outline requirement for associations to notify the Board of changes in contact person's address; change of governing board members; and any other changes to association information reported on an annual report.

Section 18VAC48-60-55 to outline general requirements pertaining to fees paid to the Board, including the non-refundability of fees.

## Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

The primary advantages to the public are that the amended regulation provides needed clarification, updates the regulation to better complement statutory requirements, and incorporates current agency practice.

The current title of the regulation, Common Interest Community Management Information Fund Regulations, suggests the regulation might pertain to the use and/or operation of the Fund, when in fact the regulation outlines the requirements and procedures for association registration required by the Code of Virginia. The amended regulation title more clearly communicates the purpose and function of the regulation. Associations subject to the Property Owners' Association Act, Virginia Condominium Act, or Virginia Real Estate Cooperative Act are required by statute to file annual reports with the Board and become registered. The amended regulation more clearly spells out how registration is to occur, how registration is renewed, maintained, and the potential consequences associations may face if they fail to register as required. The amendments also provide clarity and complement statute by providing definitions for terms, such as registration, and annual report, which are not defined in statute. The amended regulation also incorporates current agency practice regarding registration processes.

Associations are already required to register with the Board, file annual reports, and pay fees into the Fund. The amended regulation does not add any new requirements for registration or renewal of a registration. There are no identifiable disadvantages to the public.

The Department and the Board will primarily benefit from having a regulation that more clearly reflects statutory requirements and current agency practice. An anticipated advantage is that associations, both registered and unregistered, will have a better understanding of the requirement to register, and will be more inclined to comply. There are no identifiable disadvantages to the agency or the Commonwealth.

## Requirements More Restrictive than Federal

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously reported information.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously reported information.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

Committer	Comment	Agency response
Cynthia Gale (Public Hearing)	The commenter noted that 48-60-13 provides a definition for property owners’ association, but does not provide definitions for condominium unit owners’ association and proprietary lessees’ association.	<p>The Board thanks the commenter.</p> <p>The revisions to 48-60-13 incorporate by reference into the regulation the definition of “property owners’ association” provided in the Property Owners’ Association Act (§ 55.1-1800 et seq. of the Code of Virginia). The Virginia Condominium Act (§ 55.1-1900 et seq. of the Code of Virginia) does not provide a definition for the term condominium unit owners’ association. An attempt by the Board to define the term in this regulation may have unanticipated ramifications.</p> <p>Sections 48-60-14 and 48-60-15 will be revised to replace the term condominium unit owners’ association.</p> <p>Section 55.1-2100 of the Code of Virginia provides a definition for “proprietary lessees’ association.” Section 48-60-13 will be revised to incorporate this definition by reference.</p>
Cynthia Gale (Public Hearing)	The commenter noted that 48-60-14.C does not cite all reasons a property owners’ association may not collect fees for preparation of an association disclosure packet authorized by the Property Owners’ Association Act. The statute lists four items as to why a	<p>The Board thanks the commenter.</p> <p>Section 55.1-1810(N) of the Property Owners’ Association Act states:</p> <p>No association may collect fees authorized by this section unless the association (i) is registered with the Common Interest Community Board, (ii) is current in filing the most recent annual report and fee with the</p>

	<p>disclosure packet may not be paid for by a recipient.</p>	<p>Common Interest Community Board pursuant to § 55.1-1835, (iii) is current in paying any assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5, and (iv) provides the disclosure packet electronically if so requested by the requester.</p> <p>Section 55.1-1811(J) of the Property Owners' Association Act states:</p> <p>No association may collect fees authorized by this section unless the association (i) is registered with the Common Interest Community Board, (ii) is current in filing the most recent annual report and fee with the Common Interest Community Board pursuant to § 55.1-1835, and (iii) is current in paying any assessment made by the Common Interest Community Board pursuant to § 54.1-2354.5.</p> <p>Subsection C of 48-60-14 references the requirements of § 55.1-1810(N)(i) through § 55.1-1810(N)(iii), and § 55.1-1811(J) because these provisions are tied to the requirement for the association to register with the Board. Subsection C of 48-60-14 does not reference § 55.1-1810(N)(iv) as it pertains to providing the disclosure packet electronically if requested because the requirement is not related to registration of the association.</p>
<p>Cynthia Gale (Public Hearing)</p>	<p>The commenter proposed 48-60-15.A reference §§ 55.1-1972(A)(4) and 55.1-1972(B) of the Virginia Condominium Act, as these provisions exempt associations from following certain requirements of the Act.</p>	<p>The Board thanks the commenter.</p> <p>Section 48-60-15 outlines the timeframe for associations to register with the Board by filing an annual report.</p> <p>Section 55.1-1980 of the Virginia Condominium Act establishes the requirement for a condominium unit owners' association to file an annual report (i.e. register) with the Common Interest Community Board following the termination of the declarant control period.</p> <p>Section 55.1-1972 of the Virginia Condominium Act states, in part:</p> <p>A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 55.1-1974 through 55.1-1979, subsections B and D of § 55.1-1982, and §§ 55.1-1990 and 55.1-1991 do not apply to:</p>



		<p>4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units;</p> <p>Section 55.1-1972(A)(4) exempts the offering and disposition of units in a residential condominium containing three or fewer units from certain requirements of the Act, including that outlined in § 55.1-1974 for the declarant to register the condominium with the Common Interest Community Board. However, the unit owners' association annual report requirement in § 55.1-1980 is not included within the scope of § 55.1-1972(A). Therefore, 48-60-15.A would be applicable to these types of condominiums.</p> <p>Section 55.1-1972(B) exempts condominiums in which all units are restricted to non-residential use from certain requirements of the Act, including the unit owners' association annual report requirement in § 55.1-1980. A condominium unit owners' association in this type of condominium is exempt from the requirement to register with the Board. The regulation, including Section 48-60-15, would not be applicable to these types of condominiums. Therefore, reference to § 55.1-1972(B) would not be necessary.</p>
<p>Cynthia Gale (Public Hearing)</p>	<p>The commenter proposed 48-60-60.A reference § 54.1-2354.5 of the Code of Virginia regarding the requirement for associations to pay an assessment to the Common Interest Community Management Recovery Fund upon initial registration.</p>	<p>The Board thanks the commenter.</p> <p>Section 48-60-60.A will be revised to reference the requirement for an association filing its first annual report to pay the assessment required by § 54.1-2354.5.</p>
<p>Cynthia Gale (Public Hearing)</p>	<p>The commenter suggested the Board consider revising the registration fee so that associations are charged a fixed fee for each lot or unit in the community instead of a tiered fee structure based on a range of lots/units. The commenter indicated that under the current fee structure associations with smaller numbers of lots may be paying</p>	<p>The Board thanks the commenter.</p> <p>The Board elects not to change the current fee structure in the regulation at this time. However, the Board may elect to review this section of the regulation in the future to ensure that fees are appropriate.</p>

	<p>more per lot than associations with larger numbers of lots. The commenter noted that the State of Nevada charges \$4.25 per lot to register an association in that state; though was not suggesting the Board impose this level of fee.</p>	
<p>Cynthia Gale (Public Hearing)</p>	<p>The commenter suggested the Board clarify the meaning of the term “lots or units subject to the declaration” in 48-60-60. Does this mean what the number of lots or units in the association will be when the declaration is recorded, or the number of lots or units that have been conveyed or issued a certificate of occupancy? The commenter explained by way of example that a community under development may have numerous lots planned (e.g. 5,700); however, at the time the declarant is required to register the association, within 30 days of recording the declaration, the developer may not have yet even cleared the land for that number of properties.</p>	<p>The Board thanks the commenter.</p> <p>The term “subject to the declaration” would refer to lots or units that have been incorporated into the community by way of the recorded governing documents for the community, or any recorded amendments to such governing documents. This is reflective of the approach the Board has generally taken with respect to the size of the community for purposes of the registration or renewal fee.</p>
<p>Cynthia Gale (Public Hearing)</p>	<p>The commenter explained that association governing board members are volunteers who have either been appointed or elected to serve, and have trouble with, among other things, proper notice of board meetings, when to enter or exit executive sessions, the purpose of executive sessions, adoption of reserve studies, and obtaining proper insurance. It may not be entirely fair to hold the association responsible for registration requirements, when often the board members are unaware of the requirement, and many boards rely on licensed community managers to handle these responsibilities.</p>	<p>The Board thanks the commenter.</p> <p>The Property Owners’ Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), and the Virginia Real Estate Cooperative Act (§ 55.1-2100) each impose the obligation on the association to file an annual report with the Board. These obligations imposed on associations were established by the General Assembly. Section 54.1-2351 of the Code of Virginia outlines the Board’s enforcement authority with respect to associations, and authorizes that the Board take action against the governing board of an association in the event of non-compliance. It is ultimately the responsibility of the governing board of an association to ensure it complies with applicable common interest community laws and regulations.</p> <p>To the extent the governing board of an association has contracted with a licensed</p>

		<p>common interest community manager and delegated to it as agent the authority and responsibility to perform certain duties in order to meet its obligations under the law or regulation, the governing board may have cause for complaint to the Board in the event its managing agent fails to provide management services according to the terms of its contract with the governing board.</p>
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**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
*48-60-13			<p>Add definition for “proprietary lessees’ association.”</p> <p>Remove definition for “gross assessment income.”</p>	<p>No new requirement is imposed. Incorporates by reference the definition of “proprietary lessees’ association” outlined in § 55.1-2100 in the Virginia Real Estate Cooperative Act. This definition was added in response to a comment received during public comment that the term proprietary lessees’ association was not defined in this chapter. This change will make the regulation clearer and complement applicable statute.</p> <p>The term “gross assessment income” was initially included at the proposed stage, but was removed prior to publication in the Register due to an intervening change in statue (effective July 1, 2019) which eliminated requirements in</p>

				the POA Act, Virginia Condominium Act, and Virginia Real Estate Cooperative Act for associations to make a payment to the Board based on gross assessment income received by the association. The term was removed because it was no longer applicable.
48-60-13			<p>Add provision that words, and terms identified in the section have the meanings as reflected in the provided definition unless context requires another meaning.</p> <p>Technical changes are made to several definitions.</p>	<p>No new requirement is imposed. This language was added to provide clarity regarding the terms that are defined and used in the chapter. This or similar language is used in other regulations adopted by the Board.</p> <p>Technical changes are made to the terms Board, Common interest community, and Property owners' association to comport with current style guidelines.</p>
	48-60-14		<p>Remove the term "condominium unit owners' association" from subsection B. Replace with the phrase "an association governing a condominium."</p>	<p>The requirements imposed by this new section are essentially unchanged. The change was made in response to a public comment received that the chapter does not provide a definition for "condominium unit owners' association" which, though used frequently in the Virginia Condominium Act, is not defined in that statute.</p> <p>The revision will still ensure that the regulation reflects the requirement of the Virginia Condominium Act that a condominium unit owners' association to have a current registration with the Board in order to comply with condominium resale certificate</p>

				requirements in § 55.1-1990.
	48-60-15		Remove the term “condominium unit owners’ association” from subsection A. Replace with the phrase “an association governing a condominium.”	<p>The requirements imposed by this new section are essentially unchanged. The change was made in response to a public comment received that the chapter does not provide a definition for “condominium unit owners’ association” which, though used frequently in the Virginia Condominium Act, is not defined in that statute.</p> <p>The revision will still ensure that the regulation reflects the requirement of the Virginia Condominium Act that a condominium unit owners’ association file an annual report with the Board, as required by § 55.1-1980, following termination of the declarant control period.</p>
	*48-60-70		Section 48-60-70 was initially included at the proposed stage, but was removed prior to publication in the Register.	<p>The section, which required associations to pay an annual assessment payment on association gross assessment income established by statute, was removed from the action due to an intervening change in statute (effective July 1, 2019) that eliminated requirements in the POA Act, Virginia Condominium Act, and Virginia Real Estate Cooperative Act for associations to make a payment to the Board based on gross assessment income received by the association.</p> <p>The proposed new section was removed because it was no longer applicable.</p>

48-60			References to provisions of the POA Act (Title 26), Virginia Condominium Act (Title 4.2), Virginia Real Estate Cooperative Act (Title 24), and Common Interest Community Management Information Fund (Chapter 29) of Title 55 were revised to reflect the recodification of Title 55 of the Code of Virginia.	Effective October 1, 2019, Title 55 of the Code of Virginia was recodified into a new Title 55.1. Citations of provisions in the POA Act (Title 18), Virginia Condominium Act (Chapter 19), Virginia Real Estate Cooperative Act (Title 21), and Common Interest Community Management Information Fund (Article 2 of Chapter 23.3 of Title 54.1) were made to ensure the regulation comported with current statute.
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**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

<b>Current chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>Current requirement</b>	<b>Change, intent, rationale, and likely impact of updated requirements</b>
*48-60-13	N/A	Outlines definitions used in the chapter.	Changes include adding several definitions to the chapter. The terms “annual report,” and “registration” are relevant terms used in the Code of Virginia, but were not defined by the General Assembly. Addition of these terms complements statute. Other added definitions are terms used in the regulation and which require definition. Technical revisions are made to the existing definitions in the regulation for purposes of clarity and style.
*48-60-20	48-60-14	Requires associations to file an annual report on a form designated by the Board or submit a copy of the annual report the association filed with the SCC. Requires associations filing an annual report to pay an	Section 48-60-20 is repealed and replaced, in part, with a new section, 48-60-14. Section 48-60-14 outlines general association registration requirements that are established by statute.

		<p>application fee prescribed by the Board.</p>	<p>Section 48-60-20 currently permits an association to file an SCC annual report with the Board in lieu of a Board-designated form. This aspect of the regulation will be eliminated, as current agency practice does not allow for acceptance of SCC annual report filings. The information requested by the SCC for purposes of registering a corporate entity is wholly different than the information requested by the Board for the purposes of association registration.</p> <p>Subsection A outlines that an association becomes registered upon the Board's acceptance of the association's annual report, and issuance of a certificate of filing by the Board, as referenced in § 54.1-2349(A) (8) of the Code of Virginia.</p> <p>Subsection B outlines potential consequences to UOAs and POAs resulting from failure to properly register with the Board. The Virginia Condominium Act and the POA Act stipulate that in the event a UOA or POA is not properly registered with the Board (by having filed a current annual report) then the condominium resale certificate or property owners' association disclosure packet, as applicable, is deemed not available to a purchaser; thereby creating a cause for the purchaser to cancel the contract.</p> <p>Subsection C outlines an additional potential consequence to POAs resulting from failure to properly register with the Board. The POA Act allows associations to collect fees for the preparation and distribution of disclosure packets, as well as certain fees for services related to preparation of packets. However, POAs may only collect these fees if properly registered with the Board and current in payments due to the Board.</p> <p>Subsection D refers to the Board's authority, outlined in the Code of Virginia, to take enforcement action against the governing board of an</p>
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			<p>association that fails to register with the Board. Actions available to the Board include imposition of a cease and desist order, an affirmative order to file an annual report, and imposition of a monetary penalty not to exceed \$1,000.</p> <p>Subsections A, B, C, and D are intended to complement current statutory requirements and provide clarity.</p> <p>The requirement in Section 48-60-20 pertaining to the annual report filing fee is incorporated into the new definition of annual report outlined in Section 48-60-13.</p>
<p>*48-60-30; 48-60-40; and 48-60-50</p>	<p>48-60-15</p>	<p>Establish timeframe for POAs, UOAs, and proprietary lessees' associations (cooperatives) to file annual reports with the Board. UOAs are required to file within 30 days of termination of declarant control period over association. Cooperative associations are required to file within 30 days of termination of declarant control period. POAs are required to file within 30 days of creation of the POA.</p> <p>All associations are required to file an annual report every year after filing their initial annual report.</p>	<p>Sections 48-60-30, 48-60-40, and 48-60-50 are repealed and replaced with Section 48-30-15 that consolidates these requirements.</p> <p>For UOAs and proprietary lessees' associations, the timeframe for filing is unchanged.</p> <p>For POAs, the timeframe for filing is essentially unchanged. However, the language reflects a change in statute regarding the event triggering the requirement. Effective July 1, 2019, § 55-501.9 of the POA Act (now 55.1-1802) requires the developer of a development to register the POA with the Board within 30 days of recordation of the declaration. The Board does not have regulatory authority over developers, so the regulation places the obligation to register on the POA.</p> <p>The section also revises language referring to these CIC associations to accurately reflect terminology used in statute. In addition, the section references applicable sections of the Code of Virginia which require these CIC associations to file annual reports.</p> <p>Consolidating three existing sections of the regulation into a single section, employing accurate terminology, and referencing applicable sections of statute should (i) make locating</p>



			<p>registration requirements in the regulation easier; and (ii) complement existing statute by tying registration requirements to their statutory basis. This should improve clarity and understanding of the regulations.</p>
<p>*48-60-17</p>	<p>N/A</p>	<p>Establishes that a registration expires one-year after it is issued. Establishes requirement for how a registration is renewed. Requires an association to notify the Board within 30 days of certain changes to its information, including change of address, and change of governing board members.</p>	<p>Requirements pertaining to the updating of association information are removed from this section, and are reflected in a newly created section.</p> <p>The registration expiration date and requirement to renew a registration are unchanged.</p> <p>Subsections B and C incorporate existing agency practice regarding registration renewal into regulation. This includes notice to the registered association, stipulation that failure to receive notice does not relieve an association from the requirement to renew a registration, and that renewal is accomplished with filing of completed annual report and payment of fees. The language in this subsection is consistent with that employed in regulations for other DPOR programs.</p> <p>Subsection D establishes that an association that does not renew its registration within 12 months of expiration can no longer renew the registration, and must re-register. This change incorporates a process employed in other DPOR programs, which allow for a “reinstatement” period following the expiration of license. After the end of such period, a license may not be renewed. The regulation currently does not address what happens after a registration expires. Under current agency practice, an association with an expired registration can essentially reinstate a registration, regardless of how long after expiration, by submitting a completed annual report, fee, and annual payment. This subsection incorporates current agency practice, but establishes a specified timeframe for reinstatement.</p>

			Subsection E references the Board's enforcement authority as it pertains to an association that fails to comply with registration requirements. This is consistent with language employed in other DPOR programs.
*48-60-17	48-60-25	Requires an association to notify the Board within 30 days of certain changes to its information, including change of address, and change of governing board members.	<p>Newly created section that incorporates requirement for associations to notify the Board within 30 days of change in certain association information. This requirement was previously contained in Section 48-60-17.</p> <p>Clarifies the existing requirement by incorporating agency practice regarding a change of address. Under current practice, an association is to provide the Board with the name and address for a contact person, an individual designated to receive notices and other correspondence from the Board on behalf of the association. The change also clarifies that an association is to provide notice of any other changes in information furnished on the association's annual report.</p>
*48-60-60	N/A	<p>Establishes the application fee schedule for initial registration and renewal of registration. Fee rates are established in tiers based on the number of lots or units in the community subject to the declaration.</p> <p>Establishes that fees are non-refundable.</p> <p>Establishes a temporary reduction of application fees for a certain period.</p>	<p>Changes clarify existing requirements by segmenting the section into two subsections.</p> <p>Subsection A addresses the basic registration fee structure, which is based progressively on the number of lots or units in the community. Clarifies the difference between a fee paid for initial registration of an association, and a fee paid for renewal of a registration. Subsection A also references the requirement for an association to make a payment to the CIC Recovery Fund when filing its first annual report.</p> <p>Subsection B addresses the temporary reduction of registration fees. Starting in 2015, the Board adopted a policy of temporarily reducing registration fees in an effort to address a high balance in the Fund. The temporary fee reduction is effective through June 30, 2020, and will not be extended for an</p>

			<p>additional period, as the issue regarding the balance of the Fund was resolved.</p> <p>Reference to the “size” of an association is replaced by more precise terminology so that associations are better able to determine the application fee that is applicable when filing an annual report.</p> <p>Reference to the non-refundability of fees is removed, as this provision is incorporated into a newly created section addressing general fee requirements.</p>
48-60-60	48-60-55	Establishes that fees are non-refundable.	<p>Establishes general requirement for fees received by the agency by stipulating (i) all fees are non-refundable and cannot be prorated; (ii) the date the fee is received by the agency determines whether the fee is received on time; and (iii) to whom checks or money orders are to be made payable. The change incorporates existing agency practice as it pertains to fees; and is consistent with similar regulatory provisions in other DPOR programs.</p> <p>Incorporates provision regarding non-refundability of fees previously outlined in Section 48-60-60.</p>