

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board met on Thursday, March 14, 2013, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, Virginia 23233.

The following members were present:

Kimberly B. Kacani
Milton W. Matthews, Vice-Chair
Christiaan Melson
Jacquelyn Riggs
Douglas Rogers
Lucia Anna Trigiani, Chair
Katherine Waddell (arrived at 9:49 a.m.)

Board members Enrico Cecchi, Elena Ferranti, and Miyun Sung were not in attendance.

DPOR staff present for all or part of the meeting included:

Gordon Dixon, Director
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Trisha L. Henshaw, Executive Director
Heather Gillespie, Ombudsman
Jill Hrynciw, Board Administrator
Thomas K. Perry, Board Administrator
Betty C. Jones, Administrative Assistant

Steven Jack from the Office of the Attorney General was present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the meeting to order at 9:38 a.m. **Call to Order**

Ms. Trigiani welcomed and introduced the newest Board member, Ms. Jacquelyn Riggs, who was appointed to serve as the time-share industry representative. She also introduced Jill Hrynciw, the Board Administrator for the Common Interest Community Board. Ms. Henshaw introduced LaVerne Farley, a licensing specialist for the Board, to the Board members. **Introduction of New Board Member and Staff**

Ms. Henshaw advised the Board of the emergency evacuation procedures. **Emergency Evacuation**

Procedures

Mr. Rogers moved to approve the revised agenda. Mr. Matthews seconded the motion which was unanimously approved by: Kacani, Matthews, Melson, Riggs, Rogers, and Trigiani.

Approval of Agenda

Mr. Matthews moved that the Board approve the minutes of the September 20, 2012, Board meeting. Mr. Rogers seconded the motion which was unanimously approved by: Kacani, Matthews, Melson, Riggs, Rogers, and Trigiani.

Approval of Minutes

Mr. Melson moved that the Board approve the minutes of the February 27, 2013, Time-Share Regulatory Review Committee meeting. Ms. Riggs seconded the motion which was unanimously approved by: Kacani, Matthews, Melson, Riggs, Rogers, and Trigiani.

Ms. Trigiani opened the floor for public comment. No members of the public present requested to speak.

Public Comment Period

Ms. Henshaw gave an update on the current status of the regulatory review processes for several of the Board's regulatory packages.

Update on Regulatory Review Processes

The Common Interest Community Board Condominium Regulations are currently undergoing review by the Governor's office.

The Common Interest Community Board Time-Share Regulations are currently in the Notice of Intended Regulatory Action stage. These regulations are currently undergoing review by the Department of Planning and Budget.

Ms. Waddell arrived at 9:49 a.m.

Arrival of Board Member

Ms. Henshaw discussed the Governor's Regulatory Reform Initiative to conduct a comprehensive review of all DPOR regulations currently in place and repeal regulations that are unnecessary or no longer in use, reduce unnecessary regulatory burdens on individuals, businesses, and other regulated groups, and identify statutes that require unnecessary or overly burdensome regulations.

Governor's Regulatory Reform Initiative

A public comment period was held from November to early December to receive comments on regulations that could be eliminated or amended to reduce regulatory burdens. Simultaneously, staff conducted a review of the regulations to identify areas that can be reduced or eliminated. No public comments were received. In addition staff recommended no

amendments pursuant to the Regulatory Reform Initiative at this time due, in part, to the number of regulations that have recently undergone review and amendments made pursuant to Executive Order 14.

Ms. Henshaw provided an update on the progress of the Time-Share Regulatory Review Committee. The first meeting was held on February 27, 2013 and consisted primarily of training on the regulatory review process as well as developing a plan to accomplish the Committee's task. The next Committee meeting is scheduled for April 30, 2013. The goal is to present the Committee's final recommendation for consideration at the September 17, 2013, Board meeting.

Report From Time-Share Regulatory Review Committee

The Board discussed a letter from Joash Schulman with Faggert & Frieden, P.C. regarding a request for interpretation of statutes, specifically as regarding (1) extending the time period for expanding/contracting a condominium, (2) extending declarant control period under the Condominium Act, and (3) extending the developer control period under the Property Owners' Association Act. The Board considered the three questions contained in your letter and provided the responses below.

Consider Request for Interpretation Regarding Extending the Time Period For Expanding/ Contracting a Condominium and Extending Declarant Control Period Under the Condominium Act and Extending Developer Control Period Under the Property Owners' Association Act

1. QUESTION: Section 55-79.54(c)(3) of the Code of Virginia includes a provision for extending the time period for expanding an expandable condominium. § 55-79.54(d)(3) of the Code of Virginia regarding a contractible condominium does not contain a similar provision to allow for an amendment to the declaration to extend the time to contract a contractible condominium. Does the Board take the position that such an amendment is not allowed?

BOARD RESPONSE: The statute does not address extending the time period to withdraw land; therefore, it would not be permitted. Such time period extension only applies to an expandable condominium.

2. QUESTION: Does the Board read § 55-79.74 of the Code of Virginia together with the second sentence of § 55-79.54(c)(3) to allow for an extension of the declarant control period if an amendment to the declaration is approved by two-thirds of the unit owner? And does 10 years from the date of recordation serve as the *de facto* expiration date for any such extended declarant control period?

BOARD RESPONSE: This section of the Code underwent amendment during the 2013 General Assembly Session. House Bill 2275, which was passed by the legislature and signed by the Governor, amended § 55-79.74 of the Code of

Virginia. As a result of this amendment, which impacts your original question(s), the Board did not provide a response.

3. QUESTION: The Property Owners' Association Act (Title 55, Chapter 26 of the Code of Virginia) does not contain a provision covering the extension of a developer control period reserved by a developer in a recorded declaration. Could an amendment adopted by two-thirds of the lot owners provide for an extension of the developer control period?
BOARD RESPONSE: The Board does not have any purview over the extension of a developer control period in a property owners' association as it is determined by the declaration and not the Property Owners' Association Act.

The Board was provided with a memorandum from Ms. Hrynciw requesting Board guidance regarding letters of credit pursuant to § 55-79.84:1. Board staff requests that the Board adopt a policy stating letters of credit contemplated by § 55-79.84:1 of the *Code of Virginia* shall be issued by a financial institution whose accounts are insured by the FDIC. This will coincide with § 55-79.95.B.2 of the *Code of Virginia* pertaining to letters of credit in lieu of escrowing deposits and which requires an "irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC..."

Consider Guidance Document Regarding Letters of Credit Pursuant to § 55-79.84:1

The Board discussed and determined, for current purposes, having no more additional information, unless a letter of credit is issued by a financial institution, the financial security cannot be ascertained. Therefore, at this time, letters of credit must be issued by financial institutions whose accounts are insured by the FDIC.

At Ms. Trigiani's suggestion and after discussion, Mr. Matthews made a motion for staff to consult with counsel and research the security of letters of credit issued from institutions other than financial institutions whose accounts are insured by the FDIC. Ms. Kacani seconded the motion which was unanimously approved by: Kacani, Matthews, Melson, Riggs, Rogers, Trigiani, and Waddell. Staff will provide a revised draft guidance document for consideration at the next Board meeting.

The Board reviewed the amendment of the Association Disclosure Packet Notice prepared by staff. The amendment was the result of changes to the content of the association disclosure packet notice as a result of the implementation of the Ombudsman Regulations. After discussion, Mr. Rogers made a motion to adopt and approve the form as

Consider Amendment of Association Disclosure Packet Notice

revised. Mr. Melson seconded the motion which was unanimously approved by: Kacani, Matthews, Melson, Riggs, Rogers, Trigiani, and Waddell.

The Board considered a Request for Waiver of Filing Fee submitted with a Notice of Final Adverse Decision. Ms. Kacani made a motion to approve the waiver of the filing fee. Mr. Rogers seconded the motion. After discussion, Ms. Kacani and Mr. Rogers withdrew their motion and second. Upon further discussion, Ms. Waddell moved to deny the request for waiver of filing fee as there is insufficient information to show undue financial hardship. Mr. Matthews seconded the motion which was unanimously approved by: Kacani, Matthews, Melson, Riggs, Rogers, Trigiani, and Waddell.

**Consider Request
for Waiver of Filing
Fee**

Ms. Henshaw provided a handout of active and inactive legislation affecting the Common Interest Community Board and common interest communities during the 2013 Virginia General Assembly session.

**Update on 2013
General Assembly
Session**

The Board further discussed House Bill 2275 which was passed by the General Assembly and provides an extension of the declarant control period for expandable condominiums within certain parameters. In addition, this bill contains an enactment clause requiring the Board to develop the disclosure statement required in accordance with subsection B of § 55-79.74 of the Code of Virginia within 30 days of the act becoming effective. The Board discussed a draft Notice that was prepared by the Home Builders Association of Virginia in regards to House Bill 2275. In order to meet the enactment clause in the bill, the Board members were advised that an additional Board meeting must be scheduled to adopt the required Notice. Once a meeting date has been set, Ms. Henshaw will provide a deadline to provide amendments to the draft Notice.

**Discuss Notice
Required Pursuant
to House Bill 2275**

Mr. Mike Tolson with Home Builders of Virginia addressed the Board regarding the draft Notice regarding the extension of declarant control period for expandable condominiums as required by past legislation.

The Board recessed for a break at 11:10 a.m. and reconvened at 11:38 a.m.

Break

Ms. Gillespie provided the Board with the 2011-2012 Annual Report on the Office of the Common Interest Community Ombudsman and provided a handout on developing a better understanding of the Office of the Common Interest Community Ombudsman. She indicated the Common Interest Community Ombudsman Regulations became

**Ombudsman's
Report**

effective July 1, 2012.

In addition, Ms. Gillespie provided the Board with a sample determination letter of a notice of final adverse decision. She also shared with the Board some examples of the types of complaints she is currently handling such as: associations are sending final adverse decision notices to the office of the Ombudsman which are not statute related, violations of governing documents, associations charging attorney fees for invalid complaints, time-share complaints, and management companies signing association annual report renewals when there is no complaint process in place.

Ms. Trigiani suggested Ms. Gillespie prepare an article for Community Associations Institute (CAI) publications regarding the required association complaint process.

Ms. Henshaw provided a copy of the current regulant population through February 2013. The chart reflected the number of CIC managers have increased, certified employees are down, and condominium registration filings are down.

**Licensing/
Registration
Statistics**

Ms. Trigiani suggested Ms. Henshaw also prepare an article for Community Associations Institute (CAI) publications regarding certification requirements.

Staff has identified 76 condominium and time-share registrations that are eligible for administrative termination pursuant to §§ 55-79.93:2 and 55-394.2 of the Code of Virginia. Staff mailed 184 letters to attorneys, declarants, developers, and registered agents in an attempt to contact these projects. To date, 17 have been terminated, seven have been resolved, and five are pending compliance.

Ms. Henshaw provided the Board a copy of the most recent financial statement for informational purposes.

**Board Financial
Statements**

A copy of the financial statement for the Common Interest Community Management Recovery Fund for the month ended on January 31, 2013 was provided. No claims have been filed.

**Recovery Fund
Statements**

The Board previously requested that staff compile a calendar of the common interest community-related events and dates that staff and the Ombudsman attend. The requested information was provided to the Board with the agenda package for information purposes only.

**Staff Event
Calendar**

The Board discussed possible meeting dates for the Board to review the draft Notice. Staff will poll the Board members on the availability of certain dates and will notify the Board members of the date with the most Board member availability.

**Set Date for
Additional Board
Meeting**

Staff will prepare a revised draft Notice with statute revisions in accordance with the Board's comments for consideration at this meeting.

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

**Complete Conflict
of Interest Forms
and Travel
Vouchers**

There being no further business, the meeting was adjourned at 12:48 p.m.

Adjourn

Lucia Anna Trigiani, Chair

Gordon N. Dixon, Secretary