

## COMMON INTEREST COMMUNITY BOARD

### MINUTES OF MEETING

The Common Interest Community Board met on Thursday, June 27, 2013, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2<sup>nd</sup> Floor, Board Room 4, Richmond, Virginia 23233.

The following members were present:

Enrico Cecchi  
Elena Ferranti  
Kimberly B. Kacani  
Christiaan Melson  
Jacquelyn Riggs  
Douglas Rogers  
Lucia Anna Trigiani, Chair  
Katherine Waddell

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

Gordon Dixon, Director  
Trisha L. Henshaw, Executive Director  
Heather Gillespie, Ombudsman  
Jill Hrynciw, Board Administrator  
Betty C. Jones, Administrative Assistant  
Cameron Parris, Legal Analyst

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 9:39 a.m. **Call to Order**

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

Ms. Kacani moved to approve the revised agenda. Ms. Waddell seconded the motion which was unanimously approved by: Cecchi, Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell. **Approval of Agenda**

Mr. Rogers moved that the Board approve the minutes of the following meetings: **Approval of Minutes**

- March 20, 2013, Informal Fact-Finding Conferences

- April 15, 2013, Board Meeting
- April 30, 2013, Time-Share Regulatory Review Committee Meeting
- June 6, 2013, Time-Share Regulatory Review Committee Meeting
- June 26, 2013, Training Program Review Committee Meeting

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

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

**Public Comment  
Period**

In the matter of **File Number 2013-01433, Timothy D. Penick**, the Board members reviewed the record which consisted of the application file, exhibits, transcript, and the Summary of the Informal Fact-Finding Conference, as well as the recommendation of the presiding officer. Ms. Parris indicated in the Summary of the Informal Fact-Finding Conference, a number of references to “license” should be changed to “certificate” and to change “Agreement for Licensure” to read “Agreement for Certification.” Ms. Ann Powers-Koch was present and addressed the Board. She referenced multiple letters of recommendation that attest to Mr. Penick’s work ethics and skills in the file. Mr. Timothy Penick was present and addressed the Board. He thanked the Board for letting him speak. He stated he is not proud of his history but expressed his passion for the industry, and that he is proud of his accomplishments.

**File Number 2013-  
01433, Timothy D.  
Penick**

Miss Ferranti made a motion to adopt the Summary of the Informal Fact-Finding Conference and amend the recommendation of the presiding officer and enter into an Agreement for Certification contingent upon Mr. Penick’s agreeing to the following conditions within 14 days:

1. Penick’s certificate be subject to an Agreement for Certification (“Agreement”) for a period of three years wherein Penick must provide quarterly reports to the Board. These quarterly reports are due January 1, April 1, July 1, and October 1, and must include proof of Penick’s ongoing payment toward court ordered restitution, fines and costs;
2. Penick must provide as an exhibit to the Agreement, a copy of the Lighthouse Properties of Virginia, Inc.’s internal controls; and
3. If Penick fails to abide by any terms outlined in the Agreement, he agrees and acknowledges that his certification shall automatically be suspended until such time he comes into full compliance.

Penick understands these restrictions, and agrees to abide by them in consideration of his being granted certification as principal or supervisory employee.

Mr. Rogers seconded the motion which was unanimously approved by: Cecchi, Ferranti, Melson, Riggs, Rogers, Trigiani, and Waddell. As the presiding Board member, Ms. Kacani recused herself from the meeting and was not present during the discussion or vote.

In the matter of **File Number 2013-01434, Lighthouse Properties of Virginia, Inc.**, the Board members reviewed the record which consisted of the application file, exhibits, transcript, and the Summary of the Informal Fact-Finding Conference, as well as the recommendation of the presiding officer. Ms. Ann Powers-Koch was present and addressed the Board. She referenced multiple letters of recommendation that attest to Mr. Penick's work ethics and skills in the file. Mr. Timothy Penick was present and addressed the Board. He thanked the Board for letting him speak. He stated he is not proud of his history but expressed his passion for the industry, and that he is proud of his accomplishments. After discussion, several Board members suggested an additional person be added to the client base and have a second person be certified. Members voting "Yes" were: Cecchi, Ferranti, and Waddell. Members voting "No" were: Melson, Riggs, Rogers, and Trigiani. The motion failed. Mr. Melson made a motion to adopt the Summary of the Informal Fact-Finding Conference and amend the recommendation of the presiding officer and enter into an Agreement for Licensure contingent upon **Lighthouse Properties of Virginia, Inc.** agreeing to the following conditions within 14 days:

**File Number**  
**2013-01434,**  
**Lighthouse**  
**Properties of**  
**Virginia, Inc.**

1. Lighthouse's license be subject to an Agreement for Licensure ("Agreement") for a period of three years wherein Timothy D. Penick ("Penick"), the certified principal or supervisory employee for Lighthouse, must provide quarterly reports to the Board. These quarterly reports are due January 1, April 1, July 1, and October 1, and must include proof of Penick's ongoing payment toward court ordered restitution, fines and costs;
2. Lighthouse must certify that all disbursements greater than \$1,000 contain two signatures;
3. Lighthouse must provide as an exhibit to the Agreement, a copy of Lighthouse's internal controls as amended to include the provision required in number two above;
4. Lighthouse must provide, for a period of three years, a copy of the review or audit, complete with footnotes, conducted in accordance with 54.1-2346.E of the Code of Virginia within 90 days of the end of Lighthouse's fiscal year;

5. Provide proof of fidelity bond coverage or employee dishonesty policy that meets the requirements of 54.1-2346.D of the Code of Virginia and the Board's regulations; and
6. If Lighthouse fails to abide by any terms outlined in the Agreement, it agrees and acknowledges that its licensure shall automatically be suspended until such time it comes into full compliance.

Lighthouse understands these restrictions, and agrees to abide by them in consideration of it being granted licensure as a common interest community manager.

Mr. Cecchi seconded the motion which was unanimously approved by: Cecchi, Ferranti, Melson, Riggs, Rogers, Trigiani, and Waddell. As the presiding Board member, Ms. Kacani recused herself from the meeting and was not present during the discussion or vote.

The Board recessed for a break at 10:32 a.m. and reconvened at 10:45 a.m. **Break**

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 Time-Share Regulations are currently in the Notice of Intended Regulatory Action stage. The public comment period ended on May 22, 2013. No public comment was received.

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

Ms. Henshaw provided an update on the progress of the Time-Share Regulatory Review Committee. Three meetings have been held. The next Committee meeting is scheduled for July 23, 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**

Ms. Henshaw provided a time-line for developing the draft Common Interest Community Board Time-Share Regulations. The Board must adopt and staff must file the proposed text for Executive Branch Review before November 18, 2013. The Committee has reviewed all sections of the draft time-share regulations except Part I - General and Part VI - Alternative Purchase Registration. There are two new sections added to the time-share regulations: alternative purchase and time-share resellers. **Review of Timeline for Regulations**

Mr. Melson thanked the Committee for its work.

Ms. Henshaw provided a copy of the draft Time-Share Regulations to the Board. While the Committee has a few provisions noted in the other parts that need to be revisited, most of the regulation document has been reviewed and amended by the Committee.

**Review of Draft  
Time-Share  
Regulations**

Chair Trigiani suggested that a Board meeting be held immediately following the Training Program Review Committee meeting on September 16<sup>th</sup> at 1 p.m. to begin the review of the draft time-share regulations. The review would continue on September 17<sup>th</sup> at the Board meeting. The Board agreed by consensus.

Ms. Hrynciw provided a summary of the Training Program Review Committee meeting which was held on June 26, 2013. On July 1, 2012, the Common Interest Community Board (CIC) began certifying principal and supervisory employees of common interest community managers. As a condition to renew their certificates, individuals are required to complete two hours of Board-approved Virginia common interest community law and regulation training, as well as two hours of a Board-approved fair housing training that encompasses Virginia fair housing laws related to management of common interest communities. The Committee was convened to review an application from Rees Broome, PC for *Virginia Common Interest Community Law and Regulation for Common Interest Community Managers*.

**Report from June  
26, 2013, Training  
Program Review  
Committee**

The Committee reviewed an application for approval as a Virginia common interest community law and regulation training program pursuant to 18 VAC 48-50-253 of the Board's regulations submitted by Rees Broome, PC, and entitled *Virginia Common Interest Community Law and Regulation for Common Interest Community Managers*. After review by the Committee, the Committee voted to recommend that the Board approve the training program application as presented. After discussion, Ms. Kacani moved that the Board accept the recommendation of the Committee and approve the training program entitled *Virginia Common Interest Community Law and Regulation for the Common Interest Community Managers* provided by Rees Broome, PC, as a training program pursuant to 18 VAC 48-50-253 of the Board's regulations. Ms. Riggs seconded the motion which was unanimously approved by: Cecchi, Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell.

**Virginia Common  
Interest  
Community  
Law and  
Regulation  
Course/Rees  
Broome, PC**

The Board discussed the Training Program Review Committee membership. There are currently two vacancies on the Committee. The

**Discussion of  
Training Program**

Board agreed by consensus to defer further discussion until its next meeting.

**Review Committee Membership**

The Board discussed a letter from Johanna Orleski with Hunton & Williams regarding a request for interpretation regarding the applicability of § 55-79.58:1 of the *Code of Virginia* to commercial condominiums. Ms. Orleski posed two questions in her letter:

**Consider Request for Interpretation Regarding the Applicability of § 55-79.58:1 to Commercial Condominiums**

1. Does the Board have the authority to regulate commercial condominiums?
2. Does the Board accept and hold bonds posted pursuant to Virginia Code § 55-79.58:1 on behalf of commercial condominium regimes?

Ms. Kacani moved to respond as follows:

1. The Board does have the authority to regulate commercial condominiums, except as exempt pursuant to § 55-79.87.B of the *Code of Virginia*.
2. If the declarant of a commercial condominium were to present to the Board a bond pursuant to § 55-79.58:1 of the *Code of Virginia*, the Board would retain the bond in accordance with the Code. Because commercial condominiums are exempt from the application requirements, and therefore are not required to submit plats, plans, and other documentation regarding the condominium, Board staff may not be able to ensure compliance with § 55-79.58:1. Therefore, it may be necessary for Board staff to request such documentation to ensure the bond is in compliance.

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

At the March 14, 2013, Board meeting, the Board was provided with a memorandum from staff regarding letters of credit pursuant to § 55-79.84:1. Board staff requested 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 which requires an “irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC...”

**Follow-Up on Requested Report on Letters of Credit**

After discussion at the March Board meeting, the Board requested Board staff 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. After further research and consultation with Board counsel, staff provided additional information regarding the security of non-FDIC letters of credit.

After discussion, Mr. Cecchi made a motion to adopt a guidance document stating that letters of credit submitted in lieu of bonds as required by Section 55-79.84:1 of the *Code of Virginia* shall be issued by financial institutions that are FDIC insured. Any letter of credit submitted that does not meet this policy will be reviewed on a case by case basis by the Board. Ms. Riggs seconded the motion which was unanimously approved by: Cecchi, Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell.

The Board considered a memorandum from staff regarding §§ 55-509.6.F and 55-79.97:1.F of the *Code of Virginia*. The Board deferred this item to later in the meeting.

**Consider Guidance Document Regarding §§ 55-509.6.F and 55-79.97:1.F**

The following resolutions were presented for consideration by the Board.

**Consideration of Resolutions for Service**

**Resolution for**

**F. James Ahlberg**

WHEREAS, **F. James Ahlberg**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2008 to 2012;

WHEREAS, **F. James Ahlberg**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **F. James Ahlberg**, did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Common Interest Community Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Common Interest Community Board this twenty-seventh day of June 2013 that **F. James Ahlberg**, be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

**Resolution for**

**Milton W. Matthews**

WHEREAS, **Milton W. Matthews**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2008 to 2013;

WHEREAS, **Milton W. Matthews**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **Milton W. Matthews**, did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Common Interest Community Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Common Interest Community Board this twenty-seventh day of June 2013 that **Milton W. Matthews**, be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

**Resolution for**

**Miyun Sung**

WHEREAS, **Miyun Sung**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2010 to 2013;

WHEREAS, **Miyun Sung**, did devote generously of her time, talent and leadership to the Board;

WHEREAS, **Miyun Sung**, did endeavor at all times to render decisions

with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Common Interest Community Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Common Interest Community Board this twenty-seventh day of June 2013 that **Miyun Sung**, be given all honors and respect due her for her outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to her and be made a part of the official minutes of the Board so that all may know of the high regard in which she is held by this Board.

Ms. Kacani made a motion to adopt the resolutions. Mr. Rogers seconded the motion which was unanimously approved by: Cecchi, Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell.

The Board considered a Request for Waiver of Filing Fee with a Notice of Final Adverse Decision. After discussion, Ms. Kacani made a motion to approve the request to waive the filing fee contingent upon Ms. Lienhart submitting documentation to the Board office that confirms the income amount provided on the Request for Waiver of Filing Fee form submitted. Such documentation may be in the form of a W-2, front page of her federal income tax filing, or such other document that adequately verifies the requested information. The filing fee will be refunded once the information requested is received and verified by Board staff. Mr. Rogers seconded the motion which was unanimously approved by: Cecchi, Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell.

**Consider Request  
for Waiver of Filing  
Fee**

At Ms. Trigiani's suggestion and after discussion, Ms. Riggs made a motion for staff to amend the Request for Waiver of Filing Fee form. Mr. Rogers seconded the motion which was unanimously approved by: Cecchi, Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell.

Chair Trigiani suggested staff prepare a draft guidance document for the Board's consideration that contains information regarding the Federal Poverty Guidelines that can be used by staff to review requests for waiver of filing fees. If outside the parameters of the Board's guidance document, the requests for waiver will come before the Board. Staff will provide a draft guidance document for consideration at the next Board meeting.

Ms. Henshaw provided a copy of a press release issued by the Attorney General's Office warning Virginians about travel schemes and deceptive time-share resellers. The press release announced a joint multi-state, multi-national law enforcement initiative coordinated by the Federal Trade Commission. In addition to the FTC, the Office of the Attorney General was joined by DPOR and the Virginia Department of Agriculture and Consumer Services in this initiative.

**OAG/FTC Press Release**

Ms. Henshaw discussed legislation follow-up from 2013 session affecting the Common Interest Community Board or common interest communities.

**Discussion of Legislation/  
Follow-up from  
2013 Session**

Ms. Henshaw provided a memorandum with several legislative ideas for the 2014 General Assembly session. After discussion, the Board agreed to add a legislative proposal to amend § 55-79.58:1 of the *Code of Virginia* to only require the declarant of a condominium that is required to be registered to file the bond or letter of credit with the Board.

**Preparing for 2014 Session**

Mr. Cecchi departed at 12:31 p.m.

**Departure of Board Member**

The Board continued discussing the legislative ideas for the 2014 General Assembly session. After further discussion, the Board agreed to remove one item from the list of legislative ideas. Mr. Rogers made a motion to support the suggested legislative amendments intended to clarify the statutes pertinent to the Board's registration programs and its authority to enforce compliance. Miss Ferranti seconded the motion which was unanimously approved by: Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell.

**Preparing for 2014 Session**

The Board recessed for lunch from 12:39 p.m. to 1:26 p.m.

**Lunch**

Ms. Gillespie provided a handout on the activities of the Office of the Common Interest Community Ombudsman, including statistical information on complaints filed with the Ombudsman's office.

**Ombudsman's Report**

Ms. Henshaw provided a copy of the current regulant population as of May 2013. In addition, for comparison, Ms. Henshaw provided the regulant population from March 31, 2009.

**Licensing/  
Registration  
Statistics**

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

**Board Financial Statements**

Ms. Henshaw indicated the financial statement for the Common Interest Community Management Recovery Fund for the month ended on April 30, 2013 was not available. This information will be provided at the next Board meeting. No claims have been filed.

**Recovery Fund  
Statements**

After discussion, the Board considered the following 2014 Board and Training Program Committee meeting dates:

**2014 Proposed  
Meeting Schedule**

- March 26, 2014 – Training Program Review Committee Meeting
- March 27, 2014 – Board Meeting
  
- June 25, 2014 – Training Program Review Committee Meeting
- June 26, 2014 – Board Meeting
  
- September 24, 2014 – Training Program Review Committee Meeting
- September 25, 2014 – Board Meeting
  
- December 3, 2014 – Training Program Review Committee Meeting
- December 4, 2014 – Board Meeting

Ms. Waddell made a motion to adopt the 2014 meeting dates. Mr. Rogers seconded the motion which was unanimously approved by: Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell.

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. Ms. Henshaw expressed her appreciation to Mr. Dixon for supporting her attendance at events that are important for outreach and education in the Common Interest Community industry.

**Staff Event  
Calendar**

The Board considered the Guidance Document regarding §§ 55-509.6.F and 55-79.97:1.F of the *Code of Virginia* prepared by staff.

**Consider Guidance  
Document  
Regarding §§ 55-  
509.6.F and 55-  
79.97:1.F**

The Consumer Price Index-Urban on 12/31/07 was 210.036, on 12/31/08 was 210.228, on 12/31/09 was 215.949, on 12/31/10 was 219.179, on 12/31/11 was 225.672, and on 12/31/12 was 229.601. With a starting point of 100, the compounded increase between 12/31/07 and 12/31/12 was 9.31%. Mr. Melson made a motion to adopt a guidance

document that in order to be consistent in calculation, the Board adopt the following policy indicating the exact compounded monetary amounts that are the maximum allowable fees to be charged by the preparers of disclosure packets and resale certificates, as applicable.

1. The inspection pursuant to §§ 55-509.6.B.1 and 55-79.97:1.B.1 of the *Code of Virginia*, a fee not to exceed **\$109.31**;
2. The preparation and delivery of the disclosure packet or resale certificate, as applicable, pursuant to §§ 55-509.6.B.2 and 55-79.97:1.B.2 of the *Code of Virginia*, in (i) paper format, a fee not to exceed **\$163.97** for no more than two hard copies, or (ii) electronic format, a fee not to exceed **\$136.64**, for no more than two electronic copies.
3. Expediting the inspection, preparation, and delivery of the disclosure packet or resale certificate, as applicable, pursuant to §§ 55-509.6.B.3 and 55-79.97:1.B.3 of the *Code of Virginia*, an additional expedite fee not to exceed **\$54.66**;
4. Pursuant to §§ 55-509.6.B.4 and 55-79.97:1.B.4 of the *Code of Virginia*, an additional hard copy of the disclosure packet or resale certificate, as applicable, a fee not to exceed **\$27.33** per hard copy;
- ...
6. Pursuant to §§ 55-509.6.B.6 and 55-79.97:1.B.6 of the *Code of Virginia*, a post-closing fee to the purchaser of the property or unit, as applicable, a fee not to exceed **\$54.66**.

Ms. Waddell seconded the motion which was unanimously approved by: Ferranti, Kacani, Melson, Riggs, Rogers, Trigiani, and Waddell.

Ms. Kacani announced that Ms. Trigiani was inducted as a member of the 2013 Class of Fellows of the Virginia Law Foundation. Also, Ms. Trigiani received the 2012 President's Award from Community Association Institute (CAI) during the organization's 2013 Annual Conference and Exposition this spring. The Board members and staff congratulated Ms. Trigiani on these achievements.

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 2:06 p.m. **Adjourn**

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Lucia Anna Trigiani, Chair

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Gordon N. Dixon, Secretary

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