DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
STRUCTURAL INTEGRITY AND RESERVES WORK GROUP

***Tentative* AGENDA February 7, 2023**
10:00 A.M.

VIRGINIA TECH Newport News Center
700 Tech Center Pkwy Suite 305
Newport News, Virginia

I. CALL TO ORDER

II. EMERGENCY EVACUATION PROCEDURES

III. APPROVAL OF AGENDA
a. Work Group Agenda, February 7, 2023

IV. APPROVAL OF MINUTES
a. Workgroup Meeting, November 16, 2022

V. PUBLIC COMMENT PERIOD

VI. DISCUSSION
a. Primary Topics for Final Report
b. Discussion of Survey Results

VII. RESOURCES AND INFORMATION
a. Correspondence from the Honorable Scott A. Surovell, Patron of SB 740 (2022)
b. CIC Statutes and Regulations
    1. Chapter 23.3 of Title 54.1 of the Code of Virginia
    2. Chapter 18 of Title 55.1 of the Code of Virginia
    3. Chapter 19 of Title 55.1 of the Code of Virginia
    4. Chapter 21 of Title 55.1 of the Code of Virginia Information
    5. Condominium Regulations (18VAC48-30)
    6. Common Interest Community Manager Regulations (18VAC48-50)
    7. Common Interest Community Association Registration Regulations (18VAC48-60)
c. USBC
    1. Chapter 6 of Title 36 of the Code of Virginia
    2. Chapter 22 of Title 15.2 of the Code of Virginia
    3. Department of Housing and Community Development Regulations (13VAC5-63)
d. CIC Board's Guidelines for Development of Reserve Studies for Capital Components
e. CAI Publications
    1. CAI Condominium Safety Public Policy Report
    2. Condominium Safety Resource Guide
    3. Virginia Condominium Statistics
    4. Reserve Study/Funding Laws for Condominium Associations
    5. Reserve Specialist Designation - National Reserve Study Standards
    6. Breaking Point: Examining Aging Infrastructure in Community Associations
    7. Volunteer Immunity State Laws (2012)
f. Florida SB 4-D
    1. Florida SB 4-D
    2. Florida SB 4-D Bill Summary
g. News and Journal Articles
    1. CAI Leadership Meets with HUD to Discuss Condo Safety

2. Florida Lawmakers Pass Condominium Safety Legislation
3. New Rules After Surfside Tragedy Make it Harder to Buy Condo Nationwide
4. One Year Later: The Surfside Condo Collapse

VIII. OTHER BUSINESS

IX. FUTURE MEETING DATES

X. COMPLETE CONFLICT OF INTEREST FORMS AND TRAVEL VOUCHERS

XI. ADJOURN

Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the Department at (804) 367-0362 at least ten days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The Department fully complies with the Americans with Disabilities Act.

EMERGENCY EVACUATION PROCEDURES

STRUCTURAL INTEGRITY AND RESERVES STUDY (SB 740) WORKGROUP

MINUTES OF MEETING

The Structural Integrity and Reserves Study Workgroup met on November 16, 2022, at the Virginia Tech Research Center Arlington, 900 N. Glebe Rd, Arlington, Virginia 22203.

The following members were present:

Lucia Anna (Pia) Trigiani, Chair
Walter Alcorn
Michelle Baldry
Erin Barton
Gary Beveridge
Steven Brumfield
Walter Diercks
Mark Dix
Lee Frame
Heather Gillespie
Colin Horner
Kimberly Kacani
Rafael Martinez
Theresa Melson
Phoebe Neseth
Edward O'Connell
John Olivieri
Phoebe Rolen
Lynette Wuensch

Workgroup members Jon Bach, John Bailey, Jeffrey Brown, Ron Clements, Anne Sheehan, and Chris Stone were not present at the meeting.

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

Trisha L. Lindsey, Executive Director, Common Interest Community Board
Joseph C. Haughwout, Jr., CIC Board and Regulatory Administrator
Jennifer Sayegh, Policy and Legislative Affairs Manager
Raven Custer, Administrative Coordinator

Mel Jones, Terry Clower, Mark Goldberg-Foss, Bob McNab, and Matt Vogel were present as meeting facilitators.

Ms. Trigiani, Chair, called the meeting to order at 10:13 a.m. **Call to Order**

Ms. Jones advised the Workgroup of the emergency evacuation procedures. **Emergency Evacuation Procedures**

Mr. Brumfield moved to approve the agenda. Mr. Alcorn seconded the motion, which was unanimously approved by: Alcorn, Baldry, Barton, **Approval of Agenda**

Beveridge, Brumfield, Diercks, Dix, Frame, Gillespie. Horner, Kacani, Martinez, Melson, Neseth, O'Connell, Olivieri, Rolen, Trigiani, and Wuensch.

Approval of Minutes

Mr. Frame moved to approve the October 19, 2022, Structural Integrity and Reserves Workgroup meeting minutes as presented. Mr. Brumfield seconded the motion which was unanimously approved by: Alcorn, Baldry, Barton, Beveridge, Brumfield, Diercks, Dix, Frame, Gillespie. Horner, Kacani, Martinez, Melson, Neseth, O'Connell, Olivieri, Rolen, Trigiani, and Wuensch.

Public Comment Period

There were no members of the public present who wished to address the Workgroup.

Presentations

Ms. Jones welcomed the Structural Integrity and Reserves Study Workgroup to their third meeting and shared an introductory presentation.

Ms. Jones shared a presentation on structural integrity.

Mr. McNab shared a presentation on liabilities.

Mr. Goldberg-Foss shared a presentation on insurance for common interest communities.

Departure of Workgroup Member

Mr. O'Connell departed from the Workgroup meeting at 11:36 a.m.

Presentations Continued

Mr. Goldberg-Foss continued his presentation on insurance for common interest communities.

Ms. Jones shared a presentation on financing and borrowing for common interest communities.

Ms. Jones shared a presentation on condominium and household characteristics. Ms. Jones reviewed breakout session topics for consideration and provided points to consider on each topic. The breakout session topics were: Board Responsibility, Liability and Insurance; Criteria for Structural Integrity; and Financing and Rehabilitation. Workgroup members were asked to provide staff with their preference for the breakout session they would attend.

Recess and Departure of Workgroup Member

The Board recessed from 12:20 p.m. to 12:55 p.m. Mr. Beveridge departed during the recess.

The Workgroup went into breakout sessions lead by Mel Jones, Mark Goldberg-Foss, and Bob McNab at 12:55 and returned as the full group at 2:03 p.m.	**Breakout Sessions**
Mr. Dix departed from the Workgroup meeting at 2:03 pm.	**Departure of Workgroup Member**
The Workgroup was provided with (i) a letter from the Honorable Scott A. Surovell, patron of SB 740; (ii) current versions of applicable common interest community laws and regulations-; (iii) provisions of the Uniform State Building Code; (iv) CIC Board guidelines for development reserve studies for capital components; (v) various CAI publications related to reserve studies, condominium and condominium safety, infrastructure in community associations, and state volunteer immunity laws; (vi) Florida SB 4-D; and additional news and journal articles in relation to Champlain Towers.	**Resources and Information**
The Workgroup discussed key topics from the breakout sessions as a full group.	**Other Business**
Ms. Jones reminded the committee of the upcoming Workgroup meeting on February 7, 2023, in Newport News	**Future Meeting Dates**
Ms. Trigiani reminded Workgroup members to complete their conflict of interest forms	**Complete Conflict of Interest Forms**
There being no further business, the meeting adjourned at 2:14 p.m.	**Adjourn**

Lucia Anna Trigiani, Chair

Demetrios J. Melis, Secretary

PUBLIC COMMENT PERIOD

Five minute public comment, per person, with the exception of any open disciplinary or application files.

DISCUSSION

a. Primary Topics for Final Report
b. Discussion of Survey Results

RESOURCES AND INFORMATION

SENATE OF VIRGINIA

SCOTT A. SUROVELL
36TH SENATORIAL DISTRICT
PART OF FAIRFAX, PRINCE WILLIAM,
AND STAFFORD COUNTIES
POST OFFICE BOX 289
MOUNT VERNON, VIRGINIA 22121
(571) 249-4484

COMMITTEE ASSIGNMENTS:
COMMERCE AND LABOR
JUDICIARY
PRIVILEGES AND ELECTIONS
REHABILITATION AND SOCIAL SERVICES
TRANSPORTATION

July 21, 2022

Lucia Anna "Pia" Trigiani
Structural Integrity and Reserves Work Group
112 South Alfred Street
Alexandria, VA 22314

Re: Structural integrity task force

Dear Chair Trigiani:

I am writing to you regarding my views on the matters before the Structural Integrity Task Force. I ask that you all seriously consider a few ideas that guided me when I introduced SB740 in the 2022 Regular Session of the General Assembly.

First, the Surfside Condo collapse exposed a problem that been lingering for some time. In 2017, the River Towers Condominium nearly collapsed in the Mt. Vernon area after a steel girder failed due to long-term corrosion relating to lack of maintenance or careful inspection. We know the age of many multifamily buildings, but we do not know the entire scope of the deferred maintenance problem in Virginia. We need that information aggregated because problems that can be measured are problems that can be solved.

Second, the lack of maintenance on buildings and common interest communities generally is a function of several variables including:

(1) Refusal of associations to raise dues and maintain adequate reserves;
(2) A lack of transparency about reserve shortfalls and maintenance issues;
(3) Insufficient inspections by localities;
(4) A lack of professional building management; and
(5) Zero accountability for boards that fail to honor their fiduciary responsibilities to other property owners.

My analysis is that these problems could be solved by enhanced insurance products and assigning legal responsibility to community governing boards instead of asking local governments to assume full responsibility for frequent or robust inspections. Local governments are often underfunded and unaccountable due to sovereign immunity, and no one's safety in their home should be dependent on their zip code.

The Virginia homeownership rate is sixty-six percent, and the home is the primary asset of most households. Due to current Virginia Law, the loss of a home in a common interest community is the only asset that a Virginian cannot fully insure against risk of loss. This is unjust and it must change.

These are the solutions I think should be considered:

Increased Transparency

- All reserve studies should be filed with the state upon completion;
- A state agency should maintain a long-term, searchable, public database of multi-family residential buildings with dates of construction, major renovation, current reserves, stated needed reserves, stated reserve shortfalls, and all filed reserve studies; and
- By the year 2027, any residential real estate purchase in a common interest community should include a specific disclosure regarding the unfunded portion of reserves divided by the number of units in a community so the purchaser can see what they are buying into.

Liability Changes

- The state law providing immunity to board members should only apply to the extent the board has acted consistent with recommendations in all reserve studies and made repairs consistent with building inspections;
- The Bureau of Insurance should require any entity providing liability insurance to a community association to also provide coverage for the loss of all covered assets from the negligence of board members and not solely from losses caused by earthquake, flood or fire; and
- All community associations should be required to carry insurance to cover the loss of all assets from any loss other than willful, malicious misconduct by the Board.

Regulate Building Management

- Require licensing of building managers or minimum standards for individuals responsible for managing buildings of a certain size or value including liability insurance requirements.
- Prohibit association self-management of structures over a certain size or dollar value unless building manager possesses license or certification above.

With these incentives in place, the insurance industry could take the lead on building inspection and documenting compliance with reserve studies. Requiring community associations that might otherwise avoid maintenance to bear the cost of such insurance will allow markets to correctly price the risk of these living arrangements. Doing so will replace our current system of inefficiently socializing the inspection cost across all taxpayers and writing off future tragedies caused by the insufficient inspection or repairs through board immunity and sovereign immunity.

Let me know if I can provide any further thoughts or assistance.

Sincerely Yours,

Senator Scott A. Surovell
36th District

cc: Senator George L. Barker, Chair, General Laws Committee
Mr. Demetrios J. Melis, Director, Department of Professional and Occupational Regulation
Ms. Trisha L. Lindsey, Executive Director, Common Interest Community Board

CIC STATUTES AND REGULATIONS

7/21/2022

Code of Virginia
Title 54.1. Professions and Occupations
Subtitle II. Professions and Occupations Regulated by the Department of Professional and Occupational Regulation and Boards within the Department

Chapter 23.3. Common Interest Communities

Article 1. Common Interest Community Board

§ 54.1-2345. Definitions

As used in this chapter, unless the context requires a different meaning:

"Association" includes condominium, cooperative, or property owners' associations.

"Board" means the Common Interest Community Board.

"Common interest community" means real estate subject to a declaration containing lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses, provided that for the purposes of this chapter only, a common interest community does not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.) or any additional land that is a part of such registration. "Common interest community" does not include an arrangement described in § 54.1-2345.1.

"Common interest community manager" means a person or business entity, including a partnership, association, corporation, or limited liability company, that, for compensation or valuable consideration, provides management services to a common interest community.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual assessment in connection with the provision of maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition.

"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors or other governing body of a property owners' association.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative.

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (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.

2008, cc. 851, 871; 2019, c. 712; 2020, c. 592.

§ 54.1-2345.1. Certain real estate arrangements and covenants not deemed to constitute a common interest community

A. An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community, or an arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. Assessments against the lots in the common interest community required by such arrangement shall be included in the periodic budget for the common interest community, and the arrangement shall be disclosed in all required public offering statements and disclosure packets.

B. A covenant requiring the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree to create such community.

2019, c. 712.

§ 54.1-2346. License required; certification of employees; renewal; provisional license

A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this article prior to engaging in such management services.

B. 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 article shall be subject to the provisions of § 54.1-111.

C. On or after July 1, 2012, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be $10,000.

E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of

fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

2008, cc. 851, 871; 2011, cc. 334, 605; 2019, c. 712.

§ 54.1-2347. Exceptions and exemptions generally

A. The provisions of this article shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;

2. An employee of an association from providing management services for that association's common interest community;

3. A resident of a common interest community acting without compensation from providing management services for that common interest community;

4. A resident of a common interest community from 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;

5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;

6. 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 from providing management services for a common interest community;

7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;

8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.) from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this article if he would be otherwise exempt from such licensure.

2008, cc. 851, 871; 2010, c. 511; 2011, cc. 334, 605; 2019, c. 712.

§ 54.1-2348. Common Interest Community Board; membership; meetings; quorum

There is hereby created the Common Interest Community Board (the Board) as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. Members of the Board shall be appointed by the Governor and consist of 11 members as follows: three shall be representatives of Virginia common interest community managers, one shall be a Virginia attorney whose practice includes the representation of associations, one shall be a representative of a Virginia certified public accountant whose practice includes providing attest services to associations, one shall be a representative of the Virginia time-share industry, two shall be representatives of developers of Virginia common interest communities, and three shall be Virginia citizens, one of whom serves or who has served on the governing board of an

association that is not professionally managed at the time of appointment and two of whom reside in a common interest community. Of the initial appointments, one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of two years and one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of three years; the Virginia attorney shall serve a term of three years; the Virginia certified public accountant shall serve a term of one year; the Virginia citizen who serves or who has served on the governing board of an association shall serve a term of two years, and the two Virginia citizens who reside in a common interest community shall serve terms of one year. All other initial appointments and all subsequent appointments shall be for terms for four years, except that vacancies may be filled for the remainder of the unexpired term. Each appointment of a representative of a Virginia common interest community manager to the Board may be made from nominations submitted by the Virginia Association of Community Managers, who may nominate no more than three persons for each manager vacancy. In no case shall the Governor be bound to make any appointment from such nominees. No person shall be eligible to serve for more than two successive four-year terms.

The Board shall meet at least once each year and at other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. A majority of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this article.

2008, cc. 851, 871; 2010, c. 511; 2012, c. 522; 2019, c. 712.

§ 54.1-2349. Powers and duties of the Board

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.), including the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. Upon application for license and each renewal thereof, the applicant shall pay a fee established by the Board, which shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the Community Association Managers International Certification Board, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this article;

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this article;

8. Issue a certificate of registration to each association that has properly filed in accordance with this chapter; and

9. Develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act (§ 55.1-1800 et seq.).

B. 1. The Board shall have the sole responsibility for the administration of this article and for the promulgation of regulations to carry out the requirements thereof.

2. The Board shall also be responsible for the enforcement of this article, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this article with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

3. For purposes of enforcement of this article or the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

D. Notwithstanding the provisions of subsection A of § 54.1-2354.4, the Board may receive a complaint directly from any person aggrieved by an association's failure to deliver a resale certificate or disclosure packet within the time period required under § 55.1-1809, 55.1-1810, 55.1-1811, 55.1-1900, 55.1-1992, or 55.1-2161.

2008, cc. 851, 871; 2009, c. 557; 2010, cc. 511, 615; 2011, c. 334; 2012, cc. 481, 797; 2015, c. 268; 2017, cc. 387, 393, 405, 406; 2019, cc. 391, 712.

§ 54.1-2350. Annual report; form to accompany resale certificates and disclosure packets

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 §§ 55.1-1835, 55.1-1980, and 55.1-2182; and

3. Develop and disseminate a form to accompany resale certificates required pursuant to § 55.1-1990 and association disclosure packets required pursuant to § 55.1-1809, which form shall summarize the unique characteristics of common interest communities generally that may affect a prospective purchaser's decision to purchase a lot or unit located in a common interest community. The form shall include information on the following, which may or may not be applicable to a particular common interest community: (i) the obligation on the part of an owner to pay regular annual or special assessments to the association; (ii) the penalty for failure or refusal to pay such assessments; (iii) the purposes for which such assessments, if any, may be used, including for the construction or maintenance of stormwater management facilities; (iv) the importance the declaration of restrictive covenants or condominium instruments, as applicable, and other governing documents play in association living; (v) limitations on an owner's ability to rent his lot or unit; (vi)

limitations on an owner's ability to park or store certain types of motor vehicles or boats within the common interest community; (vii) limitations on an owner's ability to maintain an animal as a pet within the lot or unit, or in common areas or common elements; (viii) architectural guidelines applicable to an owner's lot or unit; (ix) limitations on an owner's ability to operate a business within a dwelling unit on a lot or within a unit; (x) the period or length of declarant control; and (xi) that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law. The form shall also provide that (a) the purchaser remains responsible for his own examination of the materials that constitute the resale certificate or disclosure packet and of any table of contents that may be contained therein; (b) the purchaser shall carefully review the entire resale certificate or disclosure packet; and (c) the contents of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies between the form and the resale certificate or disclosure packet.

2008, cc. 851, 871; 2017, c. 257; 2018, cc. 70, 733; 2019, cc. 390, 712; 2022, cc. 65, 66.

§ 54.1-2351. General powers and duties of Board concerning associations

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.

B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act or practice in violation of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action involving a violation by a declarant or a developer of a time-share project of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this article.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order, the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this article, the Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than $1,000 per violation against any governing board that violates any provision of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or any of the Board's regulations or orders. In determining the amount of the penalty, the Board shall consider the

degree and extent of harm caused by the violation. No monetary penalty may be assessed under this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or any of the Board's regulations or orders unless the governing board has been given notice and an opportunity to be heard pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

2008, cc. 851, 871; 2009, c. 557; 2010, c. 615; 2019, c. 712.

§ 54.1-2352. Cease and desist orders

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this article, if the Board determines after notice and hearing that the governing board of an association has:

1. Violated any statute or regulation of the Board governing the association regulated pursuant to this article, including engaging in any act or practice in violation of this article, the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or any of the Board's regulations or orders;

2. Failed to register as an association or to file an annual report as required by statute or regulation;

3. Materially misrepresented facts in an application for registration or an annual report; or

4. Willfully refused to furnish the Board information or records required or requested pursuant to statute or regulation.

B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary order to cease and desist or to take such affirmative action as may be deemed appropriate by the Board. Prior to issuing the temporary order, the Board shall give notice of the proposal to issue a temporary order to the person. Every temporary order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

2008, cc. 851, 871; 2009, c. 557; 2019, cc. 467, 712.

§ 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains

an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection

G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Recovery Fund as a cost of administering the Fund pursuant to § 54.1-2354.5, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. The provisions of this article are declared to be remedial. The purpose of this article is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this article shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

2008, cc. 851, 871; 2011, cc. 334, 605; 2019, c. 712.

§ 54.1-2354. Variation by agreement

Except as expressly provided in this article, provisions of this article may not be varied by agreement, and rights conferred by this article may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this article and the provisions of the Property Owners' Association Act (§ 55.1-1800 et seq.), the Virginia Condominium Act (§ 55.1-1900 et seq.), the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), as applicable.

2008, cc. 851, 871; 2019, c. 712.

Article 2. Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund

§ 54.1-2354.1. Definitions

As used in this article, unless the context requires a different meaning:

"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions A 1, 2, and 4 of § 2.2-4519, and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations to the fund.

"Claimant" means, upon proper application to the Director, a receiver for a common interest community manager appointed pursuant to § 54.1-2353 in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver.

"Director" means the Director of the Department of Professional and Occupational Regulation.

1993, c. 958; 2008, cc. 851, 871, § 55-528; 2019, c. 712.

§ 54.1-2354.2. Common Interest Community Management Information Fund

A. There is hereby created the Common Interest Community Management Information Fund, referred to in this section as "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. The Fund shall be established on the books of the Comptroller. The Fund shall consist of money paid into it pursuant to §§ 54.1-2349, 55.1-1835, 55.1-1980, and 55.1-2182, and such money shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to § 54.1-2354.5.

B. Expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Common Interest Community Ombudsman, shall be paid first from interest earned on deposits constituting the Fund and the balance from the moneys collected annually in the Fund. The Board may use the remainder of the interest earned on the balance of the Fund and of the moneys collected annually and deposited in the Fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;

2. Expeditious and inexpensive procedures for resolving complaints about an association from members of the association or other citizens;

3. Seminars and educational programs designed to address topics of concern to community associations; and

4. Other programs deemed necessary and proper to accomplish the purpose of this article.

C. Following the close of any biennium, when the Common Interest Community Management Information Fund shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the Board, the Board shall revise the fees levied by it for placement into the Fund so that the fees are sufficient but not excessive to cover expenses. A fee established pursuant to § 55.1-1835, 55.1-1980, or 55.1-2182 shall not exceed $25 unless such fee is based on the number of units or lots in the association.

1993, c. 958, § 55-529; 2008, cc. 851, 871; 2019, cc. 391, 712.

§ 54.1-2354.3. Common Interest Community Ombudsman; appointment; powers and duties

A. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.

B. The Office shall:

1. Assist members in understanding rights and the processes available to them according to the laws and regulations governing common interest communities and respond to general inquiries;

2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;

3. Receive notices of final adverse decisions;

4. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;

5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;

6. Maintain data on inquiries received, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;

7. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;

8. Monitor changes in federal and state laws relating to common interest communities;

9. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and

10. Carry out activities as the Board determines to be appropriate.

1993, c. 958, § 55-530; 1997, c. 222; 1998, c. 463; 2001, c. 816; 2008, cc. 851, 871; 2010, cc. 59, 208; 2012, cc. 481, 797; 2019, c. 712.

§ 54.1-2354.4. Association complaint procedures; final adverse decisions

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.

2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mailing address of the Office. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

B. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a $25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

C. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.

1993, c. 958, § 55-530; 1997, c. 222; 1998, c. 463; 2001, c. 816; 2008, cc. 851, 871; 2010, cc. 59, 208; 2012, cc. 481, 797; 2019, c. 712.

§ 54.1-2354.5. Common Interest Community Management Recovery Fund

A. There is hereby created the Common Interest Community Management Recovery Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date shall be assessed $25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three business days after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency shall be secured under the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 64.2-1502.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest Community Management Information Fund, established pursuant to § 54.1-2354.2, or accrue to the Fund.

C. On and after July 1, 2011, the minimum balance of the Fund shall be $150,000. Whenever the Director determines that the principal balance of the Fund is or will be less than such minimum principal balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount from the Common Interest Community Management Information Fund to the Fund to bring the principal balance of the Fund to the amount required by this subsection. Such transfer shall be considered by the Board within 30 days of the notification of the Director.

D. If any such transfer of funds is insufficient to bring the principal balance of the Fund to the minimum amount required by this section, or if a transfer to the Fund has not occurred, the Board shall assess each association and each common interest community manager, within 30 days of notification by the Director, a sum sufficient to bring the principal balance of the Fund to the required minimum amount. The amount of such assessment shall be allocated among the associations and common interest community managers in proportion to each payor's most recently paid annual

assessment, or if an association or common interest community manager has not paid an annual assessment previously, in proportion to the average annual assessment most recently paid by associations or common interest community managers, respectively. The Board may order an assessment at any time in addition to any required assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

Notice to common interest community managers and the governing boards of associations of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within 45 days after the mailing of such notice.

E. If any common interest community manager fails to remit the required payment within 45 days of the mailing, the Director shall notify the common interest community manager by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

F. If any association fails to remit the required payment within 45 days of the mailing, the Director shall notify the association by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, it shall be deemed a knowing and willful violation of this section by the governing board of the association.

G. At the close of each fiscal year, whenever the balance of the Fund exceeds $5 million, the amount in excess of $5 million shall be transferred to the Virginia Housing Trust Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36. Except for payments of costs as set forth in this article and transfers pursuant to this subsection, there shall be no transfers out of the Fund, including transfers to the general fund, regardless of the balance of the Fund.

H. A claimant may seek recovery from the Fund subject to the following conditions:

1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, the Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § 54.1-2353 by the court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, as certified by the court appointing the receiver.

3. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment of the amount of such shortfall to the claimant from the Fund, provided that in no event shall such payment exceed the balance in the Fund. When the Fund balance is not sufficient to pay the aggregate amount of such shortfall, the Board shall direct that payment be applied first in satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore the funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager. If the Board has reason to believe that there may be additional claims against the Fund, the Board may withhold any payment from the Fund for a period of not more than one year. After such one-year period, if the aggregate of claims received exceeds the Fund balance, the Fund balance shall be prorated by the Board among the claimants and paid in the above payment order from the Fund in proportion to the amounts of claims remaining unpaid.

4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the Fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations receiving distributions from the Fund against the common interest community manager to the extent that such rights were satisfied from the Fund.

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a case decision as defined in § 2.2-4001, and judicial review of these findings shall be in accordance with § 2.2-4025 of the

Administrative Process Act (§ 2.2-4000 et seq.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court that is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the Fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions resulted in payment from the Fund. The common interest community manager whose license was so revoked shall not be eligible to apply for a license as a common interest community manager until he has repaid in full the amount paid from the Fund on his account, plus interest at the judgment rate of interest from the date of payment from the Fund.

8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action against any common interest community manager for any violation of statute or regulation, nor shall the repayment in full by a common interest community manager of the amount paid from the Fund on such common interest community manager's account nullify or modify the effect of any disciplinary proceeding against such common interest community manager for any such violation.

2008, cc. 851, 871, § 55-530.1; 2009, c. 557; 2013, c. 754; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

7/21/2022

Code of Virginia
Title 55.1. Property and Conveyances
Subtitle IV. Common Interest Communities

Chapter 18. Property Owners' Association Act

Article 1. General Provisions

§ 55.1-1800. Definitions

As used in this chapter, unless the context requires a different meaning:

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association or a committee that is exercising the power of the executive body by resolution or bylaw.

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

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

"Common interest community" means the same as that term is defined in § 54.1-2345.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

"Development" means real property located within the Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through 9 of § 55.1-1809. The update shall include a copy of the original disclosure packet.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § 55.1-1809.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"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.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

1989, c. 679, § 55-509; 1991, c. 667; 1996, c. 618; 1998, c. 623; 2001, c. 715; 2002, c. 459; 2003, c. 422; 2008, cc. 851, 871; 2011, c. 334; 2015, cc. 93, 410; 2019, c. 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1801. Applicability

A. This chapter applies to developments subject to a declaration initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the Subdivided Land Sales Act (§ 55.1-2300 et seq.). For the purposes of this chapter, as used in the Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation, and control of a development are deemed to correspond with the term "declaration."

"Developer" is deemed to correspond with the term "declarant."

"Subdivision" is deemed to correspond with the term "development."

B. This chapter supersedes the Subdivided Land Sales Act (§ 55.1-2300 et seq.), and no development shall be subject to the Subdivided Land Sales Act on or after July 1, 1998.

This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998, provided, however, that this chapter shall be applicable to any development established prior to the enactment of the Subdivided Land Sales Act (§ 55.1-2300 et seq.)(i) located in a county with an urban county executive form of government, (ii) containing 500 or more lots, (iii) each lot of which is located within the boundaries of a watershed improvement district established pursuant to Article 3 (§ 10.1-614 et seq.) of Chapter 6 of Title 10.1, and (iv) each lot of which is subject to substantially similar deed restrictions, which shall be considered a declaration under this chapter.

In addition, any development established prior to July 1, 1978, may specifically provide for the applicability of the provisions of this chapter.

C. This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent that the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this

chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

D. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§ 55.1-1900 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski, and other recreational facilities both to its members and to the general public.

1989, c. 679, § 55-508; 1991, c. 667; 1992, c. 677; 1998, cc. 32, 623; 2003, c. 422; 2005, c. 668; 2008, cc. 851, 871; 2018, c. 645; 2019, c. 712.

§ 55.1-1802. Developer to register and file annual report; payment of real estate taxes attributable to the common area

A. Unless control of the association has been transferred to the members, the developer shall register the association with the Common Interest Community Board within 30 days after recordation of the declaration and thereafter shall ensure that the report required pursuant to § 55.1-1835 has been filed.

B. Upon the transfer of the common area to the association, the developer shall pay all real estate taxes attributable to the open or common space as defined in § 58.1-3284.1 through the date of the transfer to the association.

1993, c. 956, § 55-509.1; 2018, c. 733; 2019, c. 712.

§ 55.1-1803. Limitation on certain contracts and leases by declarant

A. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group shall be entered into for a period in excess of five years. Any such contract or agreement may be terminated without penalty by the association or its board of directors upon not less than 90 days' written notice to the other party given no later than 60 days after the expiration of the period of declarant control contemplated by the declaration.

B. If entered into any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, or employment contract that is directly or indirectly made by or on behalf of the association, its board of directors, or the lot owners as a group may be renewed for periods not in excess of five years; however, at the end of any five-year period, the association or its board of directors may terminate any further renewals or extensions of such contract or lease.

C. If entered into at any time prior to the expiration of the period of declarant control contemplated by the declaration, any contract, lease, or agreement, other than those subject to the provisions of subsection A or B, may be entered into by or on behalf of the association, its board of directors, or the lot owners as a group if such contract, lease, or agreement is bona fide and is commercially reasonable to the association at the time entered into under the circumstances.

D. This section shall be strictly construed to protect the rights of the lot owners.

2012, c. 671, § 55-509.1:1; 2019, c. 712.

§ 55.1-1804. Documents to be provided by declarant upon transfer of control

Unless previously provided to the board of directors of the association, once the majority of the members of the board of directors other than the declarant are owners of improved lots in the association and the declarant no longer holds a majority of the votes in the association, the declarant shall provide to the board of directors or its designated agent the following: (i) all association books and records held by or controlled by the declarant, including minute books and rules and regulations and all amendments to such rules and regulations that may have been promulgated; (ii) a statement of

receipts and expenditures from the date of the recording of the association documents to the end of the regular accounting period immediately succeeding the first election of the board of directors by the lot owners, not to exceed 60 days after the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) the number of lots subject to the declaration; (iv) the number of lots that may be subject to the declaration upon completion of development; (v) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (vi) all association insurance policies that are currently in force; (vii) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any, relative to all common area improvements, including stormwater facilities; (viii) any contracts in which the association is a contracting party; (ix) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the association property; (x) the number of members of the board of directors and number of such directors appointed by the declarant together with names and contact information of members of the board of directors; and (xi) an inventory and description of stormwater facilities located on the common area or which otherwise serve the development and for which the association has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements for maintenance thereof.

The requirement for delivery of stormwater facility information required by clause (xi) shall be deemed satisfied by delivery to the association of a final site plan or final construction drawings showing stormwater facilities as approved by a local government jurisdiction and applicable recorded easements or agreements, if any, containing requirements for the maintenance, repair, or replacement of the stormwater facilities.

If the association is managed by a common interest community manager in which the declarant, or its principals, has no pecuniary interest or management role, then such common interest community manager shall have the responsibility to provide the documents and information required by clauses (i), (ii), (vi), and (viii).

1996, c. 618, § 55-509.2; 2008, cc. 851, 871; 2012, c. 671; 2019, cc. 712, 724.

§ 55.1-1805. Association charges

Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no association shall (i) make an assessment or impose a charge against a lot or a lot owner unless the charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to the provisions set out in § 55.1-1810 or 55.1-1811 that is not expressly authorized in those sections. Nothing in this chapter shall be construed to authorize an association or common interest community manager to charge an inspection fee for an unimproved or improved lot except as provided in § 55.1-1810 or 55.1-1811. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2352.

2008, cc. 851, § 55-509.3, 871; 2011, c. 334; 2014, c. 216; 2015, c. 277; 2019, c. 712; 2020, c. 592.

§ 55.1-1806. Rental of lots

A. Except as expressly authorized in this chapter, in the declaration, or as otherwise provided by law, no association shall:

1. Condition or prohibit the rental to a tenant of a lot by a lot owner or make an assessment or impose a charge except as provided in § 55.1-1805;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of $50 during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55.1-1805;

4. Require the lot owner to use a lease or an addendum to the lease prepared by the association;

5. Charge any deposit from the lot owner or the tenant of the lot owner;

6. Have the authority to evict a tenant of any lot owner or to require any lot owner to execute a power of attorney authorizing the association to evict such a tenant; or

7. Refuse to recognize a person designated by the lot owner as the lot owner's authorized representative under the provisions of § 55.1-1823. Notwithstanding the foregoing, the requirements of § 55.1-1828 and the declaration shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

B. The association may require the lot owner to provide the association with (i) the names and contact information of and vehicle information for the tenants and authorized occupants under such lease and (ii) the name and contact information of any authorized agent of the lot owner. The association may require the lot owner to provide the association with the tenant's acknowledgment of and consent to any rules and regulations of the association.

C. The provisions of this section shall not apply to lots owned by the association.

2015, c. 277, § 55-509.3:1; 2016, c. 471; 2019, c. 712; 2022, cc. 65, 66.

§ 55.1-1807. Statement of lot owner rights

Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. 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 § 55.1-1815, including records of all financial transactions;

2. The right to cast a vote on any matter requiring a vote by the association's membership in proportion to the lot owner's ownership interest, unless the declaration provides otherwise;

3. The right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection G of § 55.1-1815 and § 55.1-1816;

4. The right to have (i) notice of any proceeding conducted by the board of directors or other tribunal specified in the declaration against the lot owner to enforce any rule or regulation of the association and (ii) the opportunity to be heard and represented by counsel at such proceeding, as provided in § 55.1-1819, and the right of due process in the conduct of that hearing; and

5. The right to serve on the board of directors if duly elected and a member in good standing of the association, unless the declaration provides otherwise.

The rights enumerated in this section shall be enforceable by any such lot owner pursuant to the provisions of § 55.1-1828.

2015, c. 286, § 55-509.3:2; 2018, c. 663; 2019, c. 712.

Article 2. Disclosure Requirements; Authorized Fees

§ 55.1-1808. Contract disclosure statement; right of cancellation

A. For purposes of this article, unless the context requires a different meaning:

"Delivery" means that the disclosure packet is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Ratified real estate contract" includes any addendum to such contract.

"Receives," "received," or "receiving" the disclosure packet means that the purchaser or purchaser's authorized agent has received the disclosure packet by one of the methods specified in this section.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

B. Subject to the provisions of subsection A of § 55.1-1814, an owner selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Property Owners' Association Act (§ 55.1-1800 et seq.); (ii) the Property Owners' Association Act (§ 55.1-1800 et seq.) requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days, or up to seven days if extended by the ratified real estate contract, after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection G of § 55.1-1810 or subsection D of § 55.1-1811, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (a) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55.1-1835, (b) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection A of § 55.1-1809, or (c) written notice has been provided by the association that a packet is not available.

C. If the contract does not contain the disclosure required by subsection B, the purchaser's sole remedy is to cancel the contract prior to settlement.

D. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection G or H of § 55.1-1810 or subsection D or E of § 55.1-1811, as appropriate. The purchaser may cancel the contract (i) within three days, or up to seven days if extended by the ratified real estate contract, after the date of the contract if, on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet, is notified that the association disclosure packet will not be available, or receives an association disclosure packet that is not in conformity with the provisions of § 55.1-1809; (ii) within three days, or up to seven days if extended by the ratified real estate contract, after receiving the association disclosure packet if the association disclosure packet, notice that the association disclosure packet will not be available, or an association disclosure packet that is not in conformity with the provisions of § 55.1-1809 is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt is obtained; or (iii) within six days, or up to 10 days if extended by the ratified real estate contract, after the postmark date if the association disclosure packet, notice that the association disclosure packet will not be available, or an association disclosure packet that is not in conformity with the provisions of § 55.1-1809 is sent to the purchaser by United States mail. The purchaser also may cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser.

Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing in the form of a certificate of service prepared by the sender confirming such mailing;

3. Electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be in the form of an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser.

E. Whenever any contract is canceled based on a failure to comply with subsection B or D or pursuant to subsection C, any deposit or escrowed funds shall be returned within 30 days of the cancellation, unless the parties to the contract specify in writing a shorter period.

F. Any rights of the purchaser to cancel the contract provided by this chapter are waived if not exercised prior to settlement.

G. Except as expressly provided in this chapter, the provisions of this section and § 55.1-1809 may not be varied by agreement, and the rights conferred by this section and § 55.1-1809 may not be waived.

H. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the disclosure packet may be made by the lot owner or the lot owner's authorized agent.

I. If the lot is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last disclosure packet or resale certificate.

2008, cc. 851, 871, § 55-509.4; 2010, c. 165; 2014, c. 216; 2016, c. 471; 2017, cc. 387, 405; 2018, c. 226; 2019, cc. 364, 513, 712; 2020, cc. 121, 592, 605.

§ 55.1-1809. Contents of association disclosure packet; delivery of packet

A. Within 14 days after receipt of a written request and instructions by a seller or the seller's authorized agent, the association, the association's managing agent, or any third party preparing an association disclosure packet on behalf of the association shall deliver an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in the Commonwealth;

2. A statement of any expenditure of funds approved by the association or the board of directors that requires an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to the right of use of common areas, and the status of the account;

4. A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;

5. The current reserve study report or summary of such report, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;

6. A copy of the association's current budget or a summary of such budget, prepared by the association, and a copy of its statement of income and expenses or statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;

7. A statement of the nature and status of any pending action or unpaid judgment (i) to which the association is a party and (ii) that could or would have a material impact on the association or its members or that relates to the lot being purchased;

8. A statement setting forth the insurance coverage that is provided for all lot owners by the association, including the fidelity coverage maintained by the association, and any additional insurance that is required or recommended for each lot owner;

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned to such lot, is or is not in violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association;

10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including reasonable restrictions as to the size, place, and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

12. A statement setting forth any restrictions as to the size, place, duration, or manner of placement or display of political signs by a lot owner on his lot;

13. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to install or use solar energy collection devices on the owner's property;

14. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;

15. A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the disclosure packet;

16. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

17. A copy of the fully completed form developed by the Common Interest Community Board pursuant to § 54.1-2350;

18. Certification that the association has filed with the Common Interest Community Board the annual report required by § 55.1-1835. Such certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing; and

19. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies.

B. Failure to receive copies of an association disclosure packet shall not excuse any failure to comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

C. The disclosure packet shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the disclosure packet shall be delivered electronically or in hard copy, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. The disclosure packet required by this section shall not, in and of itself, be deemed a security as defined in § 13.1-501.

D. The seller or the seller's authorized agent may request that the disclosure packet be provided in hard copy or in electronic form. An association or common interest community manager may provide the disclosure packet electronically; however, the seller or the seller's authorized agent shall have the right to request that the association disclosure packet be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the disclosure packet in person at the principal place of business of the association. If the seller or the seller's authorized agent requests that the disclosure packet be provided in electronic format, neither the association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The disclosure packet shall not be delivered in hard copy if the requester has requested delivery of such disclosure packet electronically. If the disclosure packet is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § 55.1-1810. If the seller or the seller's authorized agent asks that the disclosure packet be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the property owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § 55.1-1810. Regardless of whether the disclosure packet is delivered

in paper form or electronically, the preparer of the disclosure packet shall provide such disclosure packet directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

2008, cc. 851, 871, § 55-509.5; 2013, cc. 357, 492; 2015, c. 277; 2016, c. 471; 2018, c. 70; 2019, c. 712; 2020, c. 441; 2022, cc. 65, 66.

§ 55.1-1810. Fees for disclosure packet; professionally managed associations

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55.1-1809, and for such other services as set out in this section. The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered.

B. A reasonable fee may be charged by the preparer as follows:

1. For the inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and as required to prepare the association disclosure packet, a fee not to exceed $100;

2. For the preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed $150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of $125 for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. The preparer of the disclosure packet shall provide the disclosure packet directly to the designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

3. At the option of the seller or the seller's authorized agent, with the consent of the association or the common interest community manager, for expediting the inspection, preparation, and delivery of the disclosure packet, an additional expedite fee not to exceed $50;

4. At the option of the seller or the seller's authorized agent, for an additional hard copy of the disclosure packet, a fee not to exceed $25 per hard copy;

5. At the option of the seller or the seller's authorized agent, for hand delivery or overnight delivery of the overnight disclosure packet, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service; and

6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of establishing the purchaser as the owner of the property in the records of the association, a fee not to exceed $50.

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1833, if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever occurs first.

For purposes of this section, an expedite fee shall be charged only if the inspection and preparation of delivery of the disclosure packet are completed within five business days of the request for a disclosure packet.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and responsibilities of the association under this chapter. No additional fee shall be charged for access to the association's or common interest community manager's website. The association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so the seller or the seller's authorized agent will know such fees at the time of requesting the packet.

D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale of the lot and shall be due and payable out of the settlement proceeds in accordance with this section. The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. The seller shall be responsible for all costs associated with the preparation and delivery of the association disclosure packet, except for the costs of any disclosure packet update or financial update, which costs shall be the responsibility of the requester, payable at settlement. Neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the association disclosure packet.

E. If settlement does not occur within 60 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1834. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requester shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the disclosure packet update or financial update may be charged by the preparer not to exceed $50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the association or the common interest community manager perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed $100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. Neither the association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No association or common interest community manager may require the requester to request the specified update electronically. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requester asks that the specified update be provided in electronic format, neither the association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or the seller's authorized agent.

K. When an association disclosure packet has been delivered as required by § 55.1-1809, the association shall, as to the purchaser, be bound by the statements set forth in the disclosure packet as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55.1-1809, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $1,000. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the association disclosure packet within 14 days against any (i) property owners' association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2352.

N. 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, (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.

2008, cc. 851, 871, § 55-509.6; 2009, c. 557; 2011, cc. 334, 577, 585; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 387, 405; 2018, c. 226; 2019, cc. 391, 712; 2020, c. 592.

§ 55.1-1811. Fees for disclosure packet; associations not professionally managed

A. An association that is not professionally managed may charge a fee for the preparation and issuance of the association disclosure packet required by § 55.1-1809. Any fee shall reflect the actual cost of the preparation of the association disclosure packet, but shall not exceed $0.10 per page of copying costs or a total of $100 for all costs incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify whether the association disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent, the preparer shall provide the disclosure packet directly to the designated persons at the same time it is delivered to the seller or his authorized agent. The association shall advise the requester if electronic delivery of the disclosure packet or the disclosure packet update or financial update is not available, if electronic delivery has been requested by the seller or his authorized agent.

B. At the option of the seller or the seller's authorized agent, with the consent of the association, a reasonable fee may be charged for (i) expediting the inspection, preparation, and delivery of the disclosure packet, if completed within five business days of the request, not to exceed $50; (ii) an additional hard copy of the disclosure packet not to exceed $25 per hard copy; and (iii) third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet not to exceed an amount equal to the actual cost paid.

C. No fees other than those specified in this section shall be charged by the association for compliance with duties and responsibilities under this section. Any fees charged pursuant to this section shall be collected at the time of delivery of the disclosure packet. If unpaid, any such fees shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55.1-1833. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association.

D. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requester shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request for such disclosure packet update.

E. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the

update shall be delivered. The financial update shall be delivered within three business days of the written request for such financial update.

F. A reasonable fee for the disclosure packet update or a financial update may be charged by the preparer not to exceed $50. At the option of the purchaser or his authorized agent, the requester may request that the association perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed $50. Any fees charged for the specified update shall be collected at the time of delivery of the update. The association shall not require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requester may request that the specified update be provided in hard copy or in electronic form.

G. No association may require the requester to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the association's principal place of business. If the requester asks that the specified update be provided in electronic format, the association shall not require the requester to pay any fees to use the provider's electronic network or system. If the requester asks that the specified update be provided in electronic format, the requester may designate no more than two additional recipients to receive the specified update in electronic format at no additional charge. A copy of the specified update shall be provided to the seller or his authorized agent.

H. When a disclosure packet has been delivered as required by § 55.1-1809, the association shall, as to the purchaser, be bound by the statements set forth in the disclosure packet as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines, and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

I. If the association has been requested to furnish the association disclosure packet required by this section, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

J. 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.

K. An association that is not professionally managed may charge and collect fees for inspection of the property, the preparation and issuance of an association disclosure packet, and such other services as set out in § 55.1-1810, provided that the association provides the disclosure packet electronically if so requested by the requester and otherwise complies with § 55.1-1810.

2008, cc. 851, 871, § 55-509.7; 2010, c. 165; 2011, c. 334; 2018, c. 226; 2019, cc. 391, 712.

§ 55.1-1812. Properties subject to more than one declaration

If the lot is subject to more than one declaration, the association or its common interest community manager may charge the fees authorized by § 55.1-1810 or 55.1-1811 for each of the applicable associations, provided, however, that no association shall charge inspection fees unless the association has architectural control over the lot.

2008, cc. 851, 871, § 55-509.8; 2019, c. 712.

§ 55.1-1813. Requests by settlement agents

A. The settlement agent may request a financial update from the preparer of the disclosure packet. The preparer of the disclosure packet shall, upon request from the settlement agent, provide the settlement agent with written escrow

instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions. However, a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the disclosure packet with (i) the complete record name of the seller, (ii) the address of the subject lot, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

2008, cc. 851, 871, § 55-509.9; 2019, c. 712.

§ 55.1-1814. Exceptions to disclosure requirements

A. The contract disclosures required by § 55.1-1808 and the association disclosure packet required by § 55.1-1809 shall not be provided in the case of:

1. A disposition of a lot by gift;

2. A disposition of a lot pursuant to court order if the court so directs;

3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;

4. A disposition of a lot by a sale at an auction, where the association disclosure packet was made available as part of an auction package for prospective purchasers prior to the auction sale; or

5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

B. In any transaction in which an association disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the association disclosure packet from the association and provide the packet to the purchaser.

C. In the case of an initial disposition of a lot by the declarant, the association disclosure packet required by § 55.1-1809 need not include the information referenced in subdivisions A 2, 3, 5, or 9 of § 55.1-1809, and it shall include the information referenced in subdivision A 18 of § 55.1-1809 only if the association has filed an annual report prior to the date of such disclosure packet.

2008, cc. 851, 871, § 55-509.10; 2009, c. 69; 2013, c. 357; 2019, c. 712; 2020, c. 441.

Article 3. Operation and Management of Association

§ 55.1-1815. Access to association records; association meetings; notice

A. The association shall keep detailed records of receipts and expenditures affecting the operation and administration of the association. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, all books and records kept by or on behalf of the association shall be available for examination and copying by a member in good standing or his authorized agent, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and

2. The actual salary of the six highest compensated employees of the association earning over $75,000 and aggregate salary information of all other employees of the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.

C. Books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the association documents or rules and regulations promulgated pursuant to § 55.1-1819;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the board of directors held in accordance with subsection C of § 55.1-1816;

8. Documentation, correspondence, or management or board reports compiled for or on behalf of the association or the board by its agents or committees for consideration by the board in executive session; or

9. Individual lot owner or member files, other than those of the requesting lot owner, including any individual lot owner's or member's files kept by or on behalf of the association.

D. Books and records kept by or on behalf of an association shall be withheld from inspection and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records to a member in good standing under this section, the association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs of such materials and labor. Charges may be imposed only in accordance with a cost schedule adopted by the board of directors in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all members in good standing, and (iii) be provided to such requesting member at the time the request is made.

F. Notwithstanding the provisions of subsections B and C, all books and records of the association, including individual salary information for all employees and payments to independent contractors, shall be available for examination and copying upon request by a member of the board of directors in the discharge of his duties as a director.

G. Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 14 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each member notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all members at the address of their respective lots unless the member has provided to such officer or his agent an address other than the address of the member's lot. In lieu of sending such notice by United States mail, notice may instead be (i) hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the member, or (ii) sent to the member by electronic mail, provided that the member has elected to receive such notice by electronic mail and, in the event that such electronic mail is returned as undeliverable, notice is subsequently sent by United States mail. Except as provided in subdivision C 7, draft minutes of the board of directors shall be open for inspection and copying (a) within 60 days from the conclusion of the meeting to which such minutes appertain or (b) when such minutes are distributed to board members as part of an agenda package for the next meeting of the board of directors, whichever occurs first.

H. Unless expressly prohibited by the governing documents, a member may vote at a meeting of the association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the board of directors has adopted guidelines for such voting by electronic means. Members voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

1989, c. 679, § 55-510; 1991, c. 667; 1992, cc. 69, 71; 1993, cc. 365, 827; 1999, cc. 594, 654, 1029; 2000, cc. 905, 1008; 2001, c. 419; 2003, c. 442; 2004, c. 193; 2007, c. 675; 2008, cc. 851, 871; 2009, c. 665; 2011, c. 361; 2013, c. 275; 2014, c. 207; 2018, c. 663; 2019, cc. 368, 712; 2020, c. 592; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1816. Meetings of the board of directors

A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

Any member may record any portion of a meeting that is required to be open. The board of directors or subcommittee or other committee of the board of directors conducting the meeting may adopt rules (a) governing the placement and use of

equipment necessary for recording a meeting to prevent interference with the proceedings and (b) requiring the member recording the meeting to provide notice that the meeting is being recorded.

Except for the election of officers, voting by secret or written ballot in an open meeting shall be a violation of this chapter.

C. The board of directors or any subcommittee or other committee of the board of directors may (i) convene in executive session to consider personnel matters; (ii) consult with legal counsel; (iii) discuss and consider contracts, pending or probable litigation, and matters involving violations of the declaration or rules and regulations adopted pursuant to such declaration for which a member or his family members, tenants, guests, or other invitees are responsible; or (iv) discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee of the board of directors, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the board of directors, the board of directors shall provide a designated period during each meeting to allow members an opportunity to comment on any matter relating to the association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the board of directors may limit the comments of members to the topics listed on the meeting agenda.

1999, c. 1029, § 55-510.1; 2000, c. 905; 2001, c. 715; 2003, c. 404; 2004, c. 333; 2005, c. 353; 2019, c. 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1817. Distribution of information by members

The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

2001, c. 715, § 55-510.2; 2019, c. 712.

§ 55.1-1818. Common areas; notice of pesticide application

The association shall post notice of all pesticide applications in or upon the common areas. Such notice shall consist of conspicuous signs placed in or upon the common areas where the pesticide will be applied at least 48 hours prior to the application.

2011, c. 264, § 55-510.3; 2019, c. 712.

§ 55.1-1819. Adoption and enforcement of rules

A. Except as otherwise provided in this chapter, the board of directors shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed throughout the development. At a special meeting of the association convened in accordance with the provisions of the association's bylaws, a majority of votes cast at such meeting may repeal or amend any rule or regulation adopted by the board of directors. Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including application for injunctive relief or actual damages, during which the court shall award to the prevailing party court costs and reasonable attorney fees.

B. The board of directors shall also have the power, to the extent the declaration or rules and regulations duly adopted pursuant to such declaration expressly so provide, to (i) suspend a member's right to use facilities or services, including

utility services, provided directly through the association for nonpayment of assessments that are more than 60 days past due, to the extent that access to the lot through the common areas is not precluded and provided that such suspension shall not endanger the health, safety, or property of any owner, tenant, or occupant, and (ii) assess charges against any member for any violation of the declaration or rules and regulations for which the member or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member at the address required for notices of meetings pursuant to § 55.1-1815. If the violation remains uncorrected, the member shall be given an opportunity to be heard and to be represented by counsel before the board of directors or other tribunal specified in the documents.

Notice of a hearing, including the actions that may be taken by the association in accordance with this section, shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association at least 14 days prior to the hearing. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the member at the address of record with the association.

D. The amount of any charges so assessed shall not be limited to the expense or damage to the association caused by the violation, but shall not exceed $50 for a single offense or $10 per day for any offense of a continuing nature, and shall be treated as an assessment against the member's lot for the purposes of § 55.1-1833. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The board of directors may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief arising from any violation of the declaration or duly adopted rules and regulations.

F. After the date an action is filed in the general district or circuit court by (i) the association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the lot owner challenging any such charges, no additional charges shall accrue. If the court rules in favor of the association, the association shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the lot owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the lot owner to abate or remedy the violation.

G. In any action filed in general district court pursuant to this section, the court may enter default judgment against the lot owner on the association's sworn affidavit.

1989, c. 679, § 55-513; 1991, c. 667; 1993, c. 956; 1994, c. 368; 1997, cc. 173, 417; 2000, cc. 846, 905; 2002, c. 509; 2008, cc. 851, 871; 2011, cc. 372, 378; 2014, c. 784; 2019, c. 712; 2021, Sp. Sess. I, c. 131.

§ 55.1-1819.1. Limitation of smoking in development

Except to the extent that the declaration provides otherwise, the board of directors may establish reasonable rules that restrict smoking in the development, including rules that prohibit smoking in the common areas. For developments that include attached private dwelling units, such rules may prohibit smoking within such dwelling units. Rules adopted pursuant to this section may be enforced in accordance with § 55.1-1819.

2021, Sp. Sess. I, c. 131.

§ 55.1-1820. Display of the flag of the United States; necessary supporting structures; affirmative defense

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), no association shall prohibit any lot owner from displaying upon property to which the lot owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code (4 U.S.C. § 1 et seq.), or any rule or custom pertaining to the proper display of the flag. The association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property, provided that such restrictions are necessary to protect a substantial interest of the association.

B. The association may restrict the display of such flag in the common areas.

C. In any action brought by the association under § 55.1-1819 for violation of a flag restriction, the association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the association.

D. In any action brought by the association under § 55.1-1819, the lot owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitations pertaining to the display of flags or any flagpole or similar structure necessary to display such flags was not contained in the disclosure packet required pursuant to § 55.1-1809.

2000, c. 891, § 55-513.1; 2007, cc. 854, 910; 2008, cc. 851, 871; 2010, cc. 166, 453; 2019, c. 712.

§ 55.1-1820.1. Installation of solar energy collection devices

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the association establishes such a prohibition. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any disclosure packet pursuant to § 55.1-1809 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the association. An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

2006, c. 939, §§ 67-700, 67-701; 2008, c. 881; 2009, c. 866; 2013, c. 357; 2014, c. 525; 2020, cc. 272, 795; 2021, Sp. Sess. I, c. 387.

§ 55.1-1821. Home-based businesses permitted; compliance with local ordinances

A. Except to the extent that the declaration provides otherwise, no association shall prohibit any lot owner from operating a home-based business within his personal residence. The association may, however, establish (i) reasonable restrictions as to the time, place, and manner of the operation of a home-based business and (ii) reasonable restrictions as to the size, place, duration, and manner of the placement or display of any signs on the owner's lot related to such home-based business. Any home-based business shall comply with all applicable local ordinances.

B. If a development is located in a locality that classifies home-based child care services as an accessory or ancillary residential use under the locality's zoning ordinance, the provision of home-based child care services in a personal residence shall be deemed a residential use unless expressly (i) prohibited or restricted by the declaration or (ii) restricted by the association's bylaws or rules as provided in subsection A.

2013, c. 310, § 55-513.2; 2019, cc. 2, 30, 712.

§ 55.1-1822. Use of for sale signs in connection with sale

Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall require the use of any for sale sign that is (i) an association sign or (ii) a real estate sign that does not

comply with the requirements of the Real Estate Board. An association may, however, prohibit the placement of signs in the common area and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed.

2008, cc. 851, 871, § 55-509.4; 2010, c. 165; 2014, c. 216; 2016, c. 471; 2017, cc. 387, 405; 2018, c. 226; 2019, c. 712.

§ 55.1-1823. Designation of authorized representative

Except as expressly authorized in this chapter or in the declaration or as otherwise provided by law, no property owners' association shall require any lot owner to execute a formal power of attorney if the lot owner designates a person licensed under the provisions of § 54.1-2106.1 as the lot owner's authorized representative, and the association shall recognize such representation without a formal power of attorney, provided that the association is given a written authorization that includes the designated representative's name, contact information, and license number and the lot owner's signature. Notwithstanding the foregoing, the requirements of § 13.1-849 of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) and the association's declaration, bylaws, and articles of incorporation shall be satisfied before any such representative may exercise a vote on behalf of a lot owner as a proxy.

2008, cc. 851, 871, § 55-509.4; 2010, c. 165; 2014, c. 216; 2016, c. 471; 2017, cc. 387, 405; 2018, c. 226; 2019, c. 712; 2022, cc. 65, 66.

§ 55.1-1823.1. Electric vehicle charging stations permitted

A. Except to the extent that the declaration or other recorded governing document provides otherwise, no association shall prohibit any lot owner from installing an electric vehicle charging station for the lot owner's personal use on property owned by the lot owner. An association may establish reasonable restrictions concerning the number, size, place, and manner of placement or installation of such electric vehicle charging station on the exterior of property owned by the lot owner.

B. An association may prohibit or restrict the installation of electric vehicle charging stations on the common area within the development served by the association and may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of electric vehicle charging stations on the common area.

C. Any lot owner installing an electric vehicle charging station shall indemnify and hold the association harmless from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of the installation, maintenance, operation, or use of such electric charging station. An association may require the lot owner to obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, or use of the electric vehicle charging station and require the association to be included as a named insured on such policy.

2020, c. 1012.

§ 55.1-1824. Assessments; late fees

Except to the extent that the declaration or any rules or regulations promulgated pursuant to such declaration provide otherwise, the board may impose a late fee that does not exceed the penalty provided in § 58.1-3915 for any assessment or installment that is not paid within 60 days of the due date for payment of such assessment.

2013, c. 256, § 55-513.3; 2014, c. 239; 2019, c. 712.

§ 55.1-1825. Authority to levy special assessments

A. In addition to all other assessments that are authorized in the declaration, the board of directors shall have the power to levy a special assessment against its members if (i) the purpose in so doing is found by the board to be in the best

interests of the association and (ii) the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the association's bylaws within 60 days of promulgation of the notice of the assessment shall rescind or reduce the special assessment. No director or officer of the association shall be liable for failure to perform his fiduciary duty if a special assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the owners pursuant to this section, and the association shall indemnify such director or officer against any damage resulting from any such claimed breach of fiduciary duty.

B. The failure of a member to pay the special assessment allowed by subsection A shall entitle the association to the lien provided by § 55.1-1833 as well as any other rights afforded a creditor under law.

C. The failure of a member to pay the special assessment allowed by subsection A will provide the association with the right to deny the member access to any or all of the common areas. However, the member shall not be denied direct access to the member's lot over any road within the development that is a common area.

1989, c. 679, § 55-514; 1991, c. 667; 1992, c. 450; 1998, cc. 32, 751; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1826. Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1800;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1800;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-514.1; 2019, cc. 33, 44, 712.

§ 55.1-1827. Deposit of funds; fidelity bond

A. All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the association and shall be segregated for each account in the managing agent's records in a manner that permits the funds to be identified on an individual association basis.

B. Any association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the association or committed by any managing agent or employees of the managing agent. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $1 million or the amount of the reserve balances of the association plus one-fourth of the aggregate annual assessment income of such association. The minimum coverage amount shall be $10,000. The board of directors or managing agent may obtain such bond or insurance on behalf of the association.

2007, cc. 696, 712, § 55-514.2; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1828. Compliance with declaration

A. Every lot owner, and all those entitled to occupy a lot, shall comply with all lawful provisions of this chapter and all provisions of the declaration. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the association or by its board of directors or any managing agent on behalf of such association or, in any proper case, by one or more aggrieved lot owners on their own behalf or as a class action. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section shall not preclude an action against the association and authorizes the recovery by the prevailing party in any such action of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a lot owner for nonpayment of assessments in which the lot owner has failed to pay assessments levied by the association on more than one lot or in which such lot owner has had legal actions taken against him for nonpayment of any prior assessment, and the prevailing party is the association or its board of directors or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the association, whether any judicial proceedings are filed.

C. A declaration may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the development is located, or as mutually agreed to by the parties.

1989, c. 679, § 55-515; 1993, c. 956; 2012, c. 758; 2014, c. 569; 2019, c. 712.

§ 55.1-1829. Amendment to declaration and bylaws; consent of mortgagee

A. In the event that any provision in the declaration requires the written consent of a mortgagee in order to amend the bylaws or the declaration, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, or by regular mail with proof of mailing to the mortgagee at the address supplied by such mortgagee in a written request to the association to receive notice of proposed amendments to the declaration and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise. If the mortgagee has not supplied an address to the association, the association shall be deemed to have received the written consent of a mortgagee if the association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the association, unless the declaration expressly provides otherwise.

B. Subsection A shall not apply to amendments that alter the priority of the lien of the mortgagee or that materially impair or affect a lot as collateral or the right of the mortgagee to foreclose on a lot as collateral.

C. Where the declaration is silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the declaration does not specifically affect mortgagee rights.

D. Except as otherwise provided in the declaration, a declaration may be amended by a two-thirds vote of the lot owners.

E. An action to challenge the validity of an amendment adopted by the association may not be brought more than one year after the amendment is effective.

F. Agreement of the required majority of lot owners to any amendment of the declaration adopted pursuant to subsection D shall be evidenced by their execution of the amendment, or ratifications of such amendment, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the association or by such other officer or officers as the declaration may specify, that the requisite majority of the lot owners signed the amendment or ratifications of such amendment.

G. Subsections D and F shall not be construed to affect the validity of any amendment recorded prior to July 1, 2017.

1997, c. 887, § 55-515.1; 1998, c. 32; 1999, c. 805; 2003, cc. 59, 74; 2017, c. 374; 2019, c. 712.

§ 55.1-1830. Validity of declaration; corrective amendments

A. All provisions of a declaration shall be deemed severable, and any unlawful provision of the declaration shall be void.

B. No provision of a declaration shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of a declaration restraining the alienation of lots other than such lots as may be restricted to residential use only.

E. The rule of property law known as the doctrine of merger shall not apply to any easement included in or granted pursuant to a right reserved in a declaration.

F. The declarant may unilaterally execute and record a corrective amendment or supplement to the declaration to correct a mathematical mistake, an inconsistency, or a scrivener's error or clarify an ambiguity in the declaration with respect to an objectively verifiable fact, including recalculating the liability for assessments or the number of votes in the association appertaining to a lot, within five years after the recordation of the declaration containing or creating such mistake, inconsistency, error, or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. Regardless of the date of recordation of the declaration, the principal officer of the association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the board of directors. All corrective amendments and supplements recorded prior to July 1, 1997, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

1998, c. 32, § 55-515.2; 2001, c. 271; 2019, c. 712.

§ 55.1-1831. Reformation of declaration; judicial procedure

A. An association may petition the circuit court in the county or city in which the development or the greater part of the development is located to reform a declaration where the association, acting through its board of directors, has attempted to amend the declaration regarding ownership of legal title of the common areas or real property using provisions outlined in such declaration to resolve (i) ambiguities or inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the association or individual lot owners or (ii) scrivener's errors, including incorrectly identifying the association, incorrectly identifying an entity other than the association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common areas or real property to:

1. Reform, in whole or in part, any provision of a declaration; and

2. Correct any mistake or other error in the declaration that may exist with respect to the declaration for any other purpose.

C. A petition filed by the association with the court setting forth any inconsistency or error made in the declaration, or the necessity for any change in the declaration, shall be deemed sufficient basis for the reformation, in whole or in part, of the declaration, provided that:

1. The association has made three good faith attempts to convene a duly called meeting of the association to present for consideration amendments to the declaration for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the development still owns a lot or other property in the development, the declarant joins in the petition of the association;

4. A copy of the petition is sent to all owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the association.

D. Any mortgagee of a lot in the development shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any lot as collateral for a mortgage, or affect a mortgagee's right to foreclose on a lot as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1829.

2014, c. 659, § 55-515.2:1; 2019, c. 712.

§ 55.1-1832. Use of technology

A. Unless expressly prohibited by the declaration, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any declaration or bylaw provision or any provision of this chapter may be accomplished using electronic means.

B. The association, the lot owners, and those entitled to occupy a lot may perform any obligation or exercise any right under any declaration or bylaw provision or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any declaration or bylaw provision or any provision of this chapter.

D. Voting on, consent to, and approval of any matter under any declaration or bylaw provision or any provision of this chapter may be accomplished by electronic means, provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

E. Subject to other provisions of law, no action required or permitted by any declaration or bylaw provision or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the board of directors.

F. Any meeting of the association, the board of directors, or any committee may be held entirely or partially by electronic means, provided that the board of directors has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons entitled to participate in such meetings have an opportunity to do so. The board of directors shall determine whether any such meeting may be held entirely or partially by electronic means.

G. If any person does not have the capability or desire to conduct business using electronic means, the association shall make available a reasonable alternative, at its expense, for such person to conduct business with the association without use of such electronic means.

H. This section shall not apply to any notice related to an enforcement action by the association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

2010, c. 432, § 55-515.3; 2019, c. 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1833. Lien for assessments

A. The association shall have a lien, once perfected, on every lot for unpaid assessments levied against that lot in accordance with the provisions of this chapter and all lawful provisions of the declaration. The lien, once perfected, shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that lot, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of such lien. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens. Notice of a memorandum of lien to a holder of a credit line deed of trust under § 55.1-318 shall be given in the same fashion as if the association's lien were a judgment.

B. The association, in order to perfect the lien given by this section, shall file, before the expiration of 12 months from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such development is situated, a memorandum, verified by the oath of the principal officer of the association or such other officer or officers as the declaration may specify, which contains the following:

1. The name of the development;

2. A description of the lot;

3. The name or names of the persons constituting the owners of that lot;

4. The amount of unpaid assessments currently due or past due relative to such lot together with the date when each fell due;

5. The date of issuance of the memorandum;

6. The name of the association and the name and current address of the person to contact to arrange for payment or release of the lien; and

7. A statement that the association is obtaining a lien in accordance with the provisions of the Property Owners' Association Act as set forth in Chapter 18 (§ 55.1-1800 et seq.) of Title 55.1.

It shall be the duty of the clerk in whose office such memorandum is filed as provided in this section to record and index the same as provided in subsection D, in the names of the persons identified in such memorandum as well as in the name of the association. The cost of recording and releasing the memorandum shall be taxed against the person found liable in any judgment or order enforcing such lien.

C. Prior to filing a memorandum of lien, a written notice shall be sent to the property owner by certified mail, at the property owner's last known address, informing the property owner that a memorandum of lien will be filed in the circuit court clerk's office of the applicable county or city. The notice shall be sent at least 10 days before the actual filing date of the memorandum of lien.

D. Notwithstanding any other provision of this section or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1989, all memoranda of liens arising under this section shall be recorded in the deed books in the clerk's office. Any memorandum shall be indexed in the general index to deeds, and the general index shall identify the lien as a lien for lot assessments.

E. No action to enforce any lien perfected under subsection B shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded;

however, the filing of a petition to enforce any such lien in any action in which the petition may be properly filed shall be regarded as the institution of an action under this section. Nothing in this subsection shall extend the time within which any such lien may be perfected.

F. The judgment or order in an action brought pursuant to this section shall include reimbursement for costs and reasonable attorney fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

G. When payment or satisfaction is made of a debt secured by the lien perfected by subsection B, the lien shall be released in accordance with the provisions of § 55.1-339. Any lien that is not so released shall subject the lien creditor to the penalty set forth in subdivision B 1 of § 55.1-339. For the purposes of § 55.1-339, the principal officer of the association, or any other officer or officers as the declaration may specify, shall be deemed the duly authorized agent of the lien creditor.

H. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55.1-1828.

I. At any time after perfecting the lien pursuant to this section, the property owners' association may sell the lot at public sale, subject to prior liens. For purposes of this section, the association shall have the power both to sell and convey the lot and shall be deemed the lot owner's statutory agent for the purpose of transferring title to the lot. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The association shall give notice to the lot owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the lot owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the lot. The notice shall further inform the lot owner of the right to bring a court action in the circuit court of the county or city where the lot is located to assert the nonexistence of a debt or any other defense of the lot owner to the sale.

2. After expiration of the 60-day notice period specified in subdivision 1, the association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which such development is situated. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection D, in the names of the persons identified in such appointment as well as in the name of the association. The association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the lot owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the lot owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the lot. Those conditions are that the lot owner (i) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (ii) pay all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees.

4. In addition to the advertisement required by subdivision 5, the association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, including the name, address, and telephone number of the trustee, by hand delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust, provided that the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders and their assigns, at the addresses noted in the memorandum of lien, by United States mail, postage prepaid, no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the association shall be in a newspaper having a general circulation in the county or city in which the property to be sold, or any portion of such property, is located pursuant to the following provisions:

a. The association shall advertise once a week for four successive weeks; however, if the property or some portion of such property is located in a city or in a county immediately contiguous to a city, publication of the advertisement on five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the association. It shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b, the association may further advertise as the association finds appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. The association shall have the following powers and duties upon a sale:

a. Written one-price bids may be made and shall be received by the trustee from the association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the declaration, the association may bid to purchase the lot at a foreclosure sale. The association may own, lease, encumber, exchange, sell, or convey the lot. Whenever the written bid of the association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision I 10 and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the association, its agent, or its attorney.

b. The association may require any bidder at any sale to post a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or, if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the association in connection with that sale.

c. The property owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the owner or his assigns, provided, however, that, as to the payment of such residue, the association shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the lot with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale of such property or to deliver possession of the lot to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309, and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55.1-1815 upon the written request of the prior lot owner, the current lot owner, or

any holder of a recorded lien against the lot at the time of the sale. The association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a lot is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts the sale is set aside by the court or an appeal is filed in the Court of Appeals or granted by the Supreme Court and an order is entered requiring such sale to be set aside.

1989, c. 679, § 55-516; 1991, c. 667; 1997, cc. 760, 766; 2000, c. 905; 2004, cc. 778, 779, 786; 2019, c. 712; 2021, Sp. Sess. I, c. 489.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 55.1-1834. Notice of sale under deed of trust

In accordance with the provisions of § 15.2-979, the association shall be given notice whenever a lot becomes subject to a sale under a deed of trust. Upon receipt of such notice, the board of directors, on behalf of the association, shall exercise whatever due diligence it deems necessary with respect to the lot subject to a sale under a deed of trust to protect the interests of the association.

2015, cc. 93, 410, § 55-516.01; 2019, c. 712.

§ 55.1-1835. Annual report by association

The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The annual report shall be accompanied by a fee in an amount established by the Board, which shall be paid into the state treasury and credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

1993, c. 958, § 55-516.1; 2008, cc. 851, 871; 2009, c. 557; 2012, cc. 481, 797; 2019, cc. 391, 712.

§ 55.1-1836. Condemnation of common area; procedure

When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment for such portion shall be paid to the association, which shall be a party in interest in the condemnation proceeding. The common area that is affected shall be valued on the basis of the common area's highest and best use as though it were free from restriction to sole use as a common area.

Except to the extent that the declaration or any rules and regulations duly adopted pursuant to such declaration otherwise provide, the board of directors shall have the authority to negotiate with the condemning authority, agree to an award or payment amount with the condemning authority without instituting condemnation proceedings, and, upon such agreement, convey the subject common area to the condemning authority. Thereafter, the president of the association may unilaterally execute and record the deed of conveyance to the condemning authority.

A member of the association, by virtue of his membership, shall be estopped from contesting the action of the association in any proceeding held pursuant to this section.

1995, c. 377, § 55-516.2; 1998, c. 32; 2016, c. 719; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

7/21/2022

Code of Virginia
Title 55.1. Property and Conveyances
Subtitle IV. Common Interest Communities

Chapter 19. Virginia Condominium Act

Article 1. General Provisions

§ 55.1-1900. Definitions

As used in this chapter, unless the context requires a different meaning:

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

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents to or interests in such real property, lawfully subject to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" means, collectively, the declaration, bylaws, and plats and plans recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification recorded with a condominium instrument shall be deemed an integral part of that condominium instrument. Once recorded, any amendment or certification of any condominium instrument shall be deemed an integral part of the affected condominium instrument if such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit.

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium.

"Conversion condominium" means a condominium containing structures that before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a portion of the common elements within which additional units or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium that a declarant may convert into one or more units or common elements, including limited common elements, in accordance with the provisions of the declaration and this chapter.

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of its interest in a condominium unit not previously disposed of, including an institutional lender that may not have succeeded to or

accepted any special declarant rights pursuant to § 55.1-1947; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), "declarant" does not include an institutional lender that acquires title by foreclosure or deed in lieu of foreclosure unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55.1-1947. "Declarant" does not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but does not include the transfer or release of security for a debt.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. A meeting conducted by electronic means includes a meeting conducted via teleconference, videoconference, Internet exchange, or other electronic methods. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act has the meaning set forth in that section.

"Executive board" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and this chapter.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest in such land, within which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser that is in no way binding on the prospective purchaser and that may be canceled without penalty at the sole discretion of the prospective purchaser.

"Offer" means any inducement, solicitation, or attempt to encourage any person to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing that expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered shall be considered an "offer."

"Officer" means any member of the executive board or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having

substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value may be considered substantially identical within the meaning of §§ 55.1-1917 and 55.1-1918.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person, other than a declarant, that acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

"Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the plat and plans and rounded to the nearest whole number. Certain spaces within the units, including attic, basement, or garage space, may be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium; (ii) contract a contractable condominium; (iii) convert convertible land or convertible space or both; (iv) appoint or remove any officers of the unit owners' association or the executive board pursuant to subsection A of § 55.1-1943; (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer, or the executive board; or (vi) maintain sales offices, management offices, model units, and signs pursuant to § 55.1-1929.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection D of § 55.1-1925.

"Unit owner" means one or more persons that own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest in the condominium extends for the entire balance of the unexpired term. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person holding an interest in a condominium unit solely as security for a debt.

1974, c. 416, § 55-79.41; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977; 2001, c. 715; 2002, c. 459; 2003, c. 442; 2008, cc. 851, 871; 2015, cc. 93, 410; 2019, c. 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1901. Application and construction of chapter

A. This chapter applies to all condominiums and to all horizontal property regimes or condominium projects. This chapter supersedes the Horizontal Property Act (§ 55.1-2000 et seq.), and no condominium shall be established under the Horizontal Property Act on or after July 1, 1974. This chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded prior to July 1, 1974. For the purposes of this chapter, as used in the Horizontal Property Act (§ 55.1-2000 et seq.):

"Apartment" corresponds to the term "unit."

"Co-owner" corresponds to the term "unit owner."

"Council of co-owners" corresponds to the term "unit owners' association."

"Developer" corresponds to the term "declarant."

"General common elements" corresponds to the term "common elements."

"Horizontal property regime" and "condominium project" correspond to the term "condominium."

"Master deed" and "master lease" correspond to the term "declaration" and are included in the term "condominium instruments."

B. This chapter does not apply to condominiums located outside the Commonwealth. Sections 55.1-1971, 55.1-1974 through 55.1-1982, and 55.1-1985 through 55.1-1989 apply to all contracts for the disposition of condominium units signed in the Commonwealth by any person, unless exempt under § 55.1-1972.

C. Subsection B of § 55.1-1955 and § 55.1-1982 do not apply to the declarant of a conversion condominium if that declarant is a proprietary lessees' association that, immediately before the creation of the condominium, owned fee simple title to or a fee simple reversionary interest in the real estate described pursuant to subdivision A 3 of § 55.1-1916.

1974, c. 416, § 55-79.40; 1982, c. 545; 1989, c. 63; 2006, c. 646; 2019, c. 712.

§ 55.1-1902. Variation by agreement

Except as expressly provided in this chapter, provisions of this chapter shall not be varied by agreement, and rights conferred by this chapter shall not be waived. A declarant shall not act under power of attorney or use any other device to evade the limitations or prohibitions of this chapter or of the condominium instruments.

1982, c. 545, § 55-79.41:1; 2019, c. 712.

§ 55.1-1903. Separate assessments, titles, and taxation

Except as otherwise provided in this section, each condominium unit constitutes a separate parcel of real estate. If there is any unit owner other than the declarant, each unit, together with its common element interest, but excluding its common element interest in convertible land and in any withdrawable land within which the declarant has the right to create units or limited common elements, shall be separately assessed and taxed. Each convertible land and withdrawable land within which the declarant has the right to create units or limited common elements shall be separately assessed and taxed against the declarant.

1974, c. 416, § 55-79.42; 1986, c. 324; 2019, c. 712.

§ 55.1-1904. Association charges

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55.1-1964, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55.1-1992. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349 and may issue a cease and desist order pursuant to § 54.1-2352.

2015, c. 277, § 55-79.42:1; 2019, c. 712; 2020, c. 592.

§ 55.1-1905. Local ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations

A. No zoning or other land use ordinance shall prohibit condominiums solely on the basis of the form of ownership, nor shall any condominium be treated differently by any zoning or other land use ordinance that would permit a physically identical project or development under a different form of ownership. Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.

B. Subdivision and site plan ordinances in any locality shall apply to any condominium in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership; however, the declarant need not apply for or obtain subdivision approval to record condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

C. During development of a condominium containing additional land or withdrawable land, phase lines created by the condominium instruments shall not be considered property lines for purposes of subdivision. If the condominium can no longer be expanded by the addition of additional land, then the owner of the land not part of the condominium shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the condominium, the condominium and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided that such land is subject to an approved site plan.

D. During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, the declarant has the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including related conditional zoning proffers and agreements that do not create an affirmative obligation on the unit owners' association without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the declarant is not the owner of the land.

In accordance with subsection B of § 55.1-1956, once the declarant no longer has such authority, the executive board of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including related conditional zoning proffers and agreements that do not create an affirmative obligation on the declarant without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and occupancy permits, the unit owner, including the declarant if the declarant is the unit owner, shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land.

E. Localities may provide by ordinance that the declarant of a proposed conversion condominium that does not conform to the zoning, land use, and site plan regulations of the respective locality in which the property is located shall secure a special use permit, a special exception, or a variance, as the case may be, prior to such property's becoming a conversion condominium. The local authority shall grant a request for such a special use permit, special exception, or variance filed on or after July 1, 1982, if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. The local authority shall not unreasonably delay action on any such request. In the event of an approved conversion to condominium ownership, a locality, sanitary district, or other political subdivision may impose such charges and fees as are lawfully imposed by such locality, sanitary district, or political subdivision as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the locality, sanitary district, or political subdivision as a result of the conversion.

F. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.) or any local ordinances regulating design and construction of roads, sewer and water lines, stormwater management facilities, and other public infrastructure to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

1974, c. 416, § 55-79.43; 1975, c. 415; 1982, c. 663; 1991, c. 497; 2006, cc. 9, 317; 2019, c. 712.

§ 55.1-1906. Eminent domain

A. If any portion of the common elements is taken by eminent domain, the award for such taking shall be paid to the unit owners' association, provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the order to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than one unit at the time of the taking, then the portion of the award attributable to the taking of such limited common element shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element that cannot be reassigned or that can be reassigned only with the consent of the unit owner of the unit to which it is assigned in accordance with § 55.1-1919.

B. If one or more units are taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter an order reflecting the reallocation of undivided interests produced by such taking, and the award shall include just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

C. 1. If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced, in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking.

2. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements, with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with subdivision 1.

3. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested by operation of subdivision 1 and not revested by operation of subdivision 2, as well as for that portion of his unit taken by eminent domain.

D. If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter an order reflecting the reallocation of undivided interests produced thereby, and the award shall include just compensation to the unit owner of such unit for his entire undivided interest in the common elements and for his entire unit.

E. Votes in the unit owners' association, rights to future common surpluses, and liabilities for future common expenses not specially assessed, appertaining to any unit taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, with any units partially taken participating in such reallocation as though their voting strength in the unit owners' association had been reduced in proportion to the reduction in their undivided interests in the common elements, and the order of the court shall provide accordingly.

F. The order of the court shall require the recordation of such order among the land records of the county or city in which the condominium is located.

1974, c. 416, § 55-79.44; 1975, c. 415; 1982, c. 545; 1998, c. 32; 2019, c. 712; 2020, c. 592.

Article 2. Creation, Alteration, and Termination of Condominiums

§ 55.1-1907. How condominium may be created

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections A and B of § 55.1-1920.

1974, c. 416, § 55-79.45; 2019, c. 712.

§ 55.1-1908. Release of liens

A. At the time of the conveyance to the first purchaser of a condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens affecting all of the condominium or a greater portion of the condominium than the condominium unit conveyed shall be paid and

satisfied of record, or the declarant shall forthwith have such condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as the period of declarant control specified in § 55.1-1943 has expired and so long as the bylaws authorize such action. This subsection does not apply to any lien on more than one condominium unit in a condominium in which all units are restricted to nonresidential use and in which all unit owners whose condominium units will be subject to such lien expressly agree to assume or take subject to such lien.

B. If any lien, other than a deed of trust or mortgage, becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove his condominium unit from that lien by payment of the amount attributable to his condominium unit. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to subsection D of § 55.1-1964. Subsequent to such payment, discharge, or other satisfaction, the unit owner of that condominium unit shall be entitled to have that lien released as to his condominium unit in accordance with the provisions of § 55.1-341, and the unit owners' association shall not assess, or have a valid lien against, that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 55.1-1964 and 55.1-1966.

1974, c. 416, § 55-79.46; 1985, c. 107; 1992, c. 72; 1993, c. 667; 2019, c. 712.

§ 55.1-1909. Description of condominium units

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm if it sets forth the identifying number of that unit, the name of the condominium, the name of the county or city in which the condominium is situated, and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to in the description.

1974, c. 416, § 55-79.47; 1975, c. 415; 2019, c. 712.

§ 55.1-1910. Execution of condominium instruments

The declaration and bylaws, and any amendments to either made pursuant to § 55.1-1934, shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. The phrase "owners and lessees" in this section and in § 55.1-1926 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, any person whose land is subject to an easement included in the condominium, or, in the case of a leasehold condominium subject to any lease executed before July 1, 1962, any lessor of the submitted land who is not a declarant.

1974, c. 416, § 55-79.48; 1980, c. 702; 1984, c. 21; 1990, c. 831; 2019, c. 712.

§ 55.1-1911. Recordation of condominium instruments

All condominium instruments and all amendments and certifications of such condominium instruments shall be recorded in every county and city in which any portion of the condominium is located. The condominium instruments, amendments, and certifications shall set forth the county or city in which the condominium is located, the name of the condominium, and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk.

1974, c. 416, § 55-79.49; 1975, c. 415; 1982, c. 545; 2019, c. 712; 2020, c. 592.

§ 55.1-1912. Construction of condominium instruments

Except to the extent otherwise provided by the condominium instruments:

1. The terms defined in § 55.1-1900 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context requires a different meaning.

2. To the extent that walls, floors, or ceilings are designated as the boundaries of the units or of any specified units, all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces of such walls, floors, or ceilings are part of such units, while all other portions of such walls, floors, or ceilings are a part of the common elements.

3. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions serving only that unit are a part of that unit, while any portions serving more than one unit or any portion of the common elements are a part of the common elements.

4. Subject to the provisions of subdivision 3, all space, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of that unit.

5. Any shutters, awnings, doors, windows, window boxes, doorsteps, porches, balconies, patios, or other apparatus designed to serve a single unit, but located outside the boundaries of such unit, are limited common elements appertaining to that unit exclusively, except that if a single unit's electrical master switch is located outside the designated boundaries of the unit, the switch and its cover are a part of the common elements.

1974, c. 416, § 55-79.50; 1982, cc. 206, 545; 2019, c. 712.

§ 55.1-1913. Complementarity of condominium instruments; controlling construction

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the condominium instruments, the declaration shall control; but particular provisions shall control more general provisions, except that a construction consistent with the statute shall in all cases control over any inconsistent construction.

1974, c. 416, § 55-79.51; 1975, c. 415; 2019, c. 712.

§ 55.1-1914. Validity of condominium instruments; discrimination prohibited

A. All provisions of the condominium instruments shall be deemed severable, and any unlawful provision of such condominium instruments shall be void.

B. No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments restraining the alienation of condominium units other than such units as may be restricted to residential use only.

1974, c. 416, § 55-79.52; 1975, c. 415; 1998, cc. 32, 454; 2019, c. 712.

§ 55.1-1915. Compliance with condominium instruments

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association or by its executive board or any managing agent on behalf of such association or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55.1-1956. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This

section does not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a unit owner for nonpayment of assessments in which the unit owner has failed to pay assessments levied by the unit owners' association on more than one unit or such unit owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association or its executive board or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent unit owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the unit owners' association, whether any judicial proceedings are filed.

C. The condominium instruments may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the condominium is located or as mutually agreed by the parties.

1974, c. 416, § 55-79.53; 1975, c. 415; 1993, c. 667; 1996, c. 977; 2012, c. 758; 2014, c. 569; 2019, c. 712.

§ 55.1-1916. Contents of declaration

A. The declaration for every condominium shall contain the following:

1. The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium."

2. The name of the county or city in which the condominium is located.

3. A legal description by metes and bounds of the land submitted in accordance with this chapter.

4. A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries.

5. A description or delineation of any limited common elements, other than those that are limited common elements by virtue of subdivision 5 of § 55.1-1912, showing or designating the unit or units to which each is assigned.

6. A description or delineation of all common elements not within the boundaries of any convertible lands that may subsequently be assigned as limited common elements, together with a statement that (i) they may be so assigned and a description of the method by which any such assignments shall be made in accordance with the provisions of § 55.1-1919 or (ii) once assigned, the conditions under which they may be unassigned and converted to common elements in accordance with § 55.1-1919.

7. The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 55.1-1917.

8. A statement of the extent of the declarant's obligation to complete improvements labeled "NOT YET COMPLETED" or to begin and complete improvements labeled "NOT YET BEGUN" on plats recorded pursuant to the requirements of this chapter. Such statement shall be specific as to the type and quality of materials to be used, the size or capacity of the improvements when material, and the time by which such improvements shall be completed.

9. Such other matters as the declarant deems appropriate.

B. If the condominium contains any convertible land, the declaration shall also contain the following:

1. A legal description by metes and bounds of each convertible land within the condominium.

2. A statement of the maximum number of units that may be created within each such convertible land.

3. A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created in such convertible land that may be occupied by units not restricted exclusively to residential use. Such statement is not required if none of the units on other portions of the submitted land are restricted exclusively to residential use.

4. A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used, and architectural style.

5. A description of all other improvements that may be made on each convertible land within the condominium.

6. A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created in such convertible land.

7. A description of the declarant's reserved right, if any, to create limited common elements within any convertible land or to designate common elements in such convertible land that may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land.

Plats and plans may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 1, 4, 5, 6, and 7.

C. If the condominium is an expandable condominium, the declaration shall also contain the following:

1. The explicit reservation of an option to expand the condominium.

2. A statement of any limitations on that option, including a statement as to whether the consent of any unit owners shall be required, and, if so, a statement as to the method by which such consent shall be ascertained, or a statement that there are no such limitations.

3. A time limit, not exceeding 10 years after the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, that will terminate that option prior to the expiration of the time limit so specified. After the expiration of any period of declarant control reserved pursuant to subsection A of § 55.1-1943, such time limit may be extended by an amendment to the declaration made pursuant to § 55.1-1934.

4. A legal description by metes and bounds of all land that may be added to the condominium, henceforth referred to as "additional land."

5. A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added and, if not, a statement of any limitations as to what portions may be added, or a statement that there are no such limitations.

6. A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds of such portions or regulating the order in which they may be added to the condominium.

7. A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard.

8. A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with subdivision 6, the declaration shall also state the maximum number of units that may be created on each such portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with subdivision 6, then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium.

9. A statement, with respect to the additional land and to any portion of such additional land that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created on such additional land that may be occupied by units not restricted exclusively to residential use. Such statement is not required if none of the units on the submitted land are restricted exclusively to residential use.

10. A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards.

11. A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made on such additional land, or a statement that no assurances are made in that regard.

12. A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created on such additional land, or a statement that no assurances are made in that regard.

13. A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium or to designate common elements in such additional land that may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards.

Plats and plans may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 4, 5, 6, 7, 10, 11, 12, and 13.

D. If the condominium is a contractable condominium, the declaration shall also contain the following:

1. The explicit reservation of an option to contract the condominium.

2. A statement of any limitations on that option, including a statement as to whether the consent of any unit owners shall be required, and, if so, a statement as to the method whereby such consent shall be ascertained, or a statement that there are no such limitations.

3. A time limit, not exceeding 10 years after the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, that will terminate that option prior to the expiration of the time limit so specified.

4. A legal description by metes and bounds of all land that may be withdrawn from the condominium, hereinafter referred to as "withdrawable land."

5. A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds or regulating the order in which they may be withdrawn from the condominium.

6. A legal description by metes and bounds of all of the submitted land to which the option to contract the condominium does not extend. This subdivision shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 55.1-1937.

Plats may be recorded as exhibits to the declaration to supplement information furnished pursuant to subdivisions 4, 5, and 6.

E. If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth the county or city in which such lease is recorded and the deed book and page number where the first page of each such lease is recorded, and the declaration shall also contain the following:

1. The date upon which each such lease is due to expire.

2. A statement as to whether any land or improvements will be owned by the unit owners in fee simple and, if so, either (i) a description of the same, including a legal description by metes and bounds of any such land, or (ii) a statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease involved, or a statement that they shall have no such rights.

3. A statement of the rights the unit owners shall have to redeem any reversion, or a statement that they shall have no such rights.

After the recording of the declaration, no lessor who executed such declaration, and no successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person designated in the declaration for the receipt of such rent and who otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder does not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

F. Wherever this section requires a legal description by metes and bounds of land that is submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient description of any easements that are submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, as appropriate. In the case of each such easement, the declaration shall contain the following:

1. A description of the permitted use or uses.

2. If less than all of those entitled to the use of all of the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization.

3. If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the easement.

G. Wherever this section requires a legal description by metes and bounds of land that is submitted pursuant to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estate in such lands. No such lands shall be shown on the same plat or plats showing other portions of the condominium but shall be shown instead on separate plats.

1974, c. 416, § 55-79.54; 1975, c. 415; 1977, c. 428; 1982, c. 545; 1993, c. 667; 1998, c. 32; 2012, c. 520; 2019, c. 712.

§ 55.1-1917. Allocation of interests in the common elements

A. The declaration may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55.1-1920 an undivided interest in the common elements proportionate to either the size or par value of each unit. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit or any undivided interest in the common elements, voting rights in the unit owners' association, or liability for common expenses assigned on the basis of such par value.

B. If the basis for allocation provided in subsection A is not used, then the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

C. The undivided interests in the common elements allocated in accordance with subsection A or B shall add up to 1 if stated as fractions or 100 percent if stated as percentages.

D. If, in accordance with subsection A or B, an equal undivided interest in the common elements is allocated to each unit, the declaration may state that fact and need not express the fraction or percentage so allocated.

E. Unless an equal undivided interest in the common elements is allocated to each unit, the undivided interest allocated to each unit in accordance with subsection A or B shall be reflected by a table in the declaration, or by an exhibit to the declaration, containing three columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated to such units.

F. Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains is void.

G. The common elements shall not be subject to any action for partition until and unless the condominium is terminated.

1974, c. 416, § 55-79.55; 2019, c. 712.

§ 55.1-1918. Reallocation of interests in common elements

A. If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

1. Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections A and B of § 55.1-1920; or

2. Prohibits the creation of any units not described pursuant to subdivision B 6 of § 55.1-1916, in the case of convertible lands, and subdivision C 12 of § 55.1-1916, in the case of additional land, and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

B. Interests in the common elements shall not be allocated to any units to be created within any convertible land or within any additional land until plats and plans depicting the same are recorded pursuant to subsection C of § 55.1-1920. But simultaneously with the recording of such plats and plans, the declarant shall execute and record an amendment to the declaration reallocating undivided interests in the common elements so that the units depicted on such plats and plans shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded simultaneously with the declaration pursuant to subsections A and B of § 55.1-1920.

C. If all of a convertible space is converted into common elements, including limited common elements, then the undivided interest in the common elements appertaining to such space shall then appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced by such conversion.

D. In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium that reduces the number of units, then the undivided interest in the common elements appertaining to any units withdrawn from the condominium shall then appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced by such contraction.

1974, c. 416, § 55-79.56; 2019, c. 712.

§ 55.1-1919. Assignments of limited common elements; conversion to common element

A. All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common

elements without the consent of all unit owners adversely affected by such amendment as evidenced by their execution of such amendment, except to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common element.

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to a common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer as the condominium instruments may specify. The officer to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by the unit owners concerned and recorded by an officer of the unit owners' association or his agent following payment by the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned only pursuant to subdivision A 6 of § 55.1-1916. The amendment to the declaration making such an assignment shall be prepared and executed by the declarant, the principal officer of the unit owners' association, or by such other officer as the condominium instruments may specify. Such amendment shall be recorded by the declarant or his agent, without charge to any unit owner, or by an officer of the unit owners' association or his agent following payment by the unit owners of the units concerned of all reasonable costs for the preparation, acknowledgment, and recordation of such amendment. The amendment is effective when recorded, and the recordation of such amendment shall be conclusive evidence that the method prescribed pursuant to subdivision A 6 of § 55.1-1916 was adhered to. A copy of the amendment shall be delivered to the unit owners of the units concerned. If executed by the declarant, such an amendment recorded prior to July 1, 1983, shall not be invalid because it was not prepared by an officer of the unit owners' association.

D. If the declarant does not prepare and record an amendment to the declaration to effect the assignment of common elements as limited common elements in accordance with rights reserved in the condominium instruments, but has reflected an intention to make such assignments in deeds conveying units, then the principal officer of the unit owners' association may prepare, execute, and record such an amendment at any time after the declarant ceases to be a unit owner.

E. The declarant may unilaterally record an amendment to the declaration converting a limited common element appurtenant to a unit owned by the declarant into a common element as long as the declarant continues to own the unit.

1974, c. 416, § 55-79.57; 1983, c. 230; 1991, c. 497; 1998, c. 32; 2019, c. 712; 2020, c. 592.

§ 55.1-1920. Contents of plats and plans

A. There shall be recorded simultaneously with the declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements that are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise subject to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there is more than one such land, the plats shall label each such land with one or more letters or numbers different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands and shall label each such land as a withdrawable land. The plats shall show the location and dimensions of any additional lands and shall label each such land as an additional land. If, with respect to any portion, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portion, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the plats shall label each such land with one or more letters or numbers different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion of such submitted land is subject and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on

any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "NOT YET BEGUN" and which, if any, have been begun but have not been substantially completed by the use of the phrase "NOT YET COMPLETED." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and compliance with the provisions of this subsection by a licensed land surveyor, and the surveyor shall certify in such document or on the face of the plat that all units or portions of such units depicted on such plat pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

B. Plans shall also be recorded with the declaration. Such plans shall show every structure that contains or constitutes all or part of any unit and that is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions of the submitted units so depicted shall bear their identifying numbers. In addition, each convertible space so depicted shall be labeled as convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of such structures, subject to the following exception: In the case of any such unit that does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified on their face or in another recorded document as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer, or licensed land surveyor, and such architect, engineer, or land surveyor shall certify on the plans or in the recorded document that all units or portions of the submitted units depicted on such plans have been substantially completed.

C. When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record, with regard to any structures on the land being converted or added, either plats of survey conforming to the requirements of subsection A and plans conforming to the requirements of subsection B, or certifications conforming to the certification requirements of such subsections of plats and plans previously recorded pursuant to § 55.1-1922.

D. Notwithstanding the provisions of subsections A and B, a time-share interest in a unit that has been subjected to a time-share instrument pursuant to § 55.1-2208 may be conveyed prior to substantial completion of that unit if (i) a completion bond has been filed in compliance with subsection B of § 55.1-1921 and remains in full force and effect until the unit is certified as substantially complete in accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring the time-share estate in the unit certifies to the purchaser in writing, based on information provided by the Common Interest Community Board, that the bond has been filed with the Common Interest Community Board.

E. When converting all or any portion of any convertible space into one or more units or limited common elements, the declarant shall record, with regard to the structure or portion of such structure constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer, or licensed land surveyor.

F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall show the identifying number of the unit to which it is assigned, if it has been assigned, unless the provisions of subdivision 5 of § 55.1-1912 make such designations unnecessary.

1974, c. 416, § 55-79.58; 1975, c. 415; 1984, c. 601; 1991, c. 497; 1999, c. 560; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1921. Bond to insure completion of improvements

A. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the declarant's obligation as stated in the declaration, of all improvements to the common elements of the condominium labeled in the plat or plats as "NOT YET COMPLETED" or "NOT YET BEGUN" located upon submitted land and which the declarant reasonably believes will not be substantially complete at the time of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation to complete such improvements in strict conformity with the plans and specifications for the same as described in the declaration.

B. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share interest is conveyed before the unit has been certified as substantially complete in accordance with subsections A and B of § 55.1-1920. The bond required by this subsection shall be conditioned upon the faithful performance of the declarant's obligation to complete such improvements in strict conformity with the plans and specifications for the same as described in the declaration.

C. All bonds required in this section shall be executed by a surety company authorized to transact business in the Commonwealth or by such other surety as is satisfactory to the Board.

D. The Board may promulgate reasonable regulations that govern the return of bonds submitted in accordance with this section.

1977, c. 428, § 55-79.58:1; 1988, c. 15; 1999, c. 560; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1922. Preliminary recordation of plats and plans

Plats and plans previously recorded pursuant to subsections A, B, and C of § 55.1-1916 may be used in lieu of new plats and plans to satisfy in whole or in part the requirements of subsection B of § 55.1-1918, subsection B of § 55.1-1924, or § 55.1-1926 if certifications of such plats and plans are recorded by the declarant in accordance with subsections A and B of § 55.1-1920; and if such certifications are recorded, the plats and plans that they certify shall be deemed recorded pursuant to subsection C of § 55.1-1920 within the meaning of §§ 55.1-1918, 55.1-1924, and 55.1-1926. All condominium instruments for condominiums created prior to July 1, 1991, are hereby validated notwithstanding that the plats were prerecorded as if in compliance with this section and not recorded with amendments converting convertible land or adding additional land if the plats or subsequent amendments contained the required certifications.

1974, c. 416, § 55-79.59; 1991, c. 497; 2019, c. 712.

§ 55.1-1923. Easement for encroachments

To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or employees, and not to relieve the declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

1974, c. 416, § 55-79.60; 2019, c. 712.

§ 55.1-1924. Conversion of convertible lands

A. The declarant may convert all or any portion of any convertible land into one or more units or limited common elements subject to any restrictions and limitations that the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B of this section and subsection C of § 55.1-1920.

B. Simultaneously with the recording of plats and plans pursuant to subsection C of § 55.1-1920, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign

an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with subsection B of § 55.1-1918. Such amendment shall describe or delineate any limited common elements formed out of the convertible land, showing or designating the unit to which each is assigned.

C. All convertible lands shall be deemed a part of the common elements except for such portions of such convertible lands as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, the declarant alone shall be liable for real estate taxes assessed against the convertible land and any improvements on such convertible land and all other expenses in connection with that real estate, and no other unit owner and no other portion of the condominium shall be subject to a claim for payment of those taxes or expenses, and, unless the declaration provides otherwise, any income or proceeds from the convertible land and any improvements on such convertible land shall inure to the declarant. No such conversion shall occur after 10 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

1974, c. 416, § 55-79.61; 1975, c. 415; 1986, c. 324; 1991, c. 497; 1993, c. 45; 2012, c. 520; 2019, c. 712.

§ 55.1-1925. Conversion of convertible spaces

A. The declarant may convert all or any portion of any convertible space into one or more units or common elements, including limited common elements, subject to any restrictions and limitations that the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B and subsection E of § 55.1-1920.

B. Simultaneously with the recording of plats and plans pursuant to subsection E of § 55.1-1920, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate any limited common elements formed out of the convertible space, showing or designating the unit to which each is assigned.

C. If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare and execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with subsection D of § 55.1-1933.

D. Any convertible space not converted in accordance with the provisions of this section, or any portion of such convertible space not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such convertible space, or portion of such convertible space, as though the same were a unit.

1974, c. 416, § 55-79.62; 1999, c. 560; 2019, c. 712.

§ 55.1-1926. Expansion of condominium

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to subsection C of § 55.1-1920, together with an amendment to the declaration, duly executed by the declarant, including all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legal description by metes and bounds of the land added to the condominium and shall reallocate undivided interests in the common elements in accordance with the provisions of subsection B of § 55.1-1918. Such amendment may create convertible or withdrawable lands or both within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to subdivision D 3 of § 55.1-1916 and subsection C of § 55.1-1924.

1974, c. 416, § 55-79.63; 1975, c. 415; 2019, c. 712.

§ 55.1-1927. Contraction of condominium

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to subdivision D 5 of § 55.1-1916, then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit.

1974, c. 416, § 55-79.64; 2019, c. 712.

§ 55.1-1928. Easement to facilitate conversion and expansion

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter and for the purpose of doing all things reasonably necessary and proper in connection with making such improvements.

1974, c. 416, § 55-79.65; 2019, c. 712.

§ 55.1-1929. Easement to facilitate sales

The declarant and his duly authorized agents, representatives, and employees may maintain sales offices or model units on the submitted land if and only if the condominium instruments provide for maintaining such sales offices or model units and specify the rights of the declarant with regard to the number, size, location, and relocation of such sales offices or model units. Any such sales office or model unit that is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard to such sales office or model unit unless it is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

1974, c. 416, § 55-79.66; 2019, c. 712.

§ 55.1-1930. Declarant's obligation to complete and restore

A. No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either shall be binding as to any portion of either lawfully withdrawn from the condominium or never added to the condominium, except to the extent that the condominium instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done on such land or with regard to such land, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the condominium or any portion of such condominium, this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

B. The declarant shall complete all improvements labeled "NOT YET COMPLETED" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation and shall, in the case of every improvement labeled "NOT YET BEGUN" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

C. To the extent that damage is inflicted on any part of the condominium by any person utilizing the easements reserved by the condominium instruments or created by §§ 55.1-1928 and 55.1-1929, the declarant together with any person causing the same shall be jointly and severally liable for the prompt repair of such damage and for the restoration of the same to a condition compatible with the remainder of the condominium.

1974, c. 416, § 55-79.67; 1975, c. 415; 2019, c. 712.

§ 55.1-1931. Alterations within units

A. Except to the extent prohibited, restricted, or limited by the condominium instruments, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen

the support of any portion of the condominium. However, no unit owner shall do anything that would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

B. If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures in such unit, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § 55.1-1932.

1974, c. 416, § 55-79.68; 2019, c. 712.

§ 55.1-1932. Relocation of boundaries between units

A. If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful that the condominium instruments may specify. The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

B. If the unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners of such units, and the amendment shall contain conveyancing between those unit owners. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

D. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate number of votes in the unit owners' association allocated to those units, an amendment to the bylaws shall reflect that reallocation and a proportionate reallocation of liability for common expenses as between those units.

E. Such plats and plans as may be necessary to show the altered boundaries between the units involved together with their other boundaries shall be prepared, and the units depicted on such plats and plans shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer, or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with this section have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the unit owners of the units involved of all reasonable costs for the preparation, acknowledgment, and recordation of such instruments. Such instruments are effective when executed by the unit owners of the units involved and recorded, and the recordation of such instruments is conclusive evidence that the relocation of boundaries so effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Any relocation of boundaries between adjoining units shall be governed by this section and not by § 55.1-1933. Section 55.1-1933 shall apply only to such subdivisions of units as are intended to result in the creation of two or more new units in place of the subdivided unit.

1974, c. 416, § 55-79.69; 1991, c. 497; 2019, c. 712.

§ 55.1-1933. Subdivision of units

A. If the condominium instruments expressly permit the subdivision of any units, then such units may be subdivided in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful that the condominium instruments may specify. No unit shall be subdivided unless the condominium instruments expressly permit it.

B. If the unit owner of any unit that may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall hereinafter be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common element assigned to the subdivided unit exclusively should be assigned to one or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in such written application.

D. An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit and shall reflect a proportionate allocation to the new units of the liability for common expenses formerly appertaining to the subdivided unit.

E. Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted on such plats and plans shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries of such units, if any, shall be identified on such plats and plans with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer, or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with this section have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the subdivider of all reasonable costs for the preparation, acknowledgment, and recordation of such instruments. Such instruments are effective when executed by the subdivider and recorded, and the recordation of such instruments is conclusive evidence that the subdivision so effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Notwithstanding the definition of "unit" found in § 55.1-1900 and the provisions of subsection D of § 55.1-1925, this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such convertible space, and any such unit shall be deemed a unit for the purposes of this section.

1974, c. 416, § 55-79.70; 1991, c. 497; 2019, c. 712.

§ 55.1-1934. Amendment of condominium instruments

A. If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and an amendment signed by the declarant is effective upon recordation. This section shall not be construed to nullify, limit, or otherwise affect the validity of enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. If any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the

condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than one year after the amendment is recorded.

D. Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment, or ratifications of such amendment, and the same is effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer as the condominium instruments may specify, that the requisite majority of the unit owners signed the amendment or ratifications of such amendment.

E. Except to the extent expressly permitted or expressly required by other provisions of this chapter or agreed to by 100 percent of the unit owners, no amendment to the condominium instruments shall change (i) the boundaries of any unit, (ii) the undivided interest in the common elements, (iii) the liability for common expenses, or (iv) the number of votes in the unit owners' association that appertains to any unit.

F. Notwithstanding any other provision of this section, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to correct a mathematical mistake, an inconsistency, or a scrivener's error or clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact, including recalculating the undivided interest in the common elements, the liability for common expenses or the number of votes in the unit owners' association appertaining to a unit, within five years after the recordation of the condominium instrument containing or creating such mistake, inconsistency, error, or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error, or ambiguity had not occurred. Regardless of the date of recordation of the condominium instruments, the principal officer of the unit owners' association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the executive board. All corrective amendments and supplements recorded prior to July 1, 1986, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

1974, c. 416, § 55-79.71; 1993, c. 667; 2019, c. 712.

§ 55.1-1935. Use of technology

A. Unless expressly prohibited by the condominium instruments, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using electronic means.

B. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use of electronic means.

C. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any condominium instrument or any provision of this chapter.

D. Voting, consent to, and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic means provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

E. Subject to other provisions of law, no action required or permitted by any condominium instrument or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive board.

F. Any meeting of the unit owners' association, the executive board, or any committee may be held entirely or partially by electronic means, provided that the executive board has adopted guidelines for the use of electronic means for such meetings. Such guidelines shall ensure that persons accessing such meetings are authorized to do so and that persons

entitled to participate in such meetings have an opportunity to do so. The executive board shall determine whether any such meeting may be held entirely or partially by electronic means.

G. If any person does not have the capability or desire to conduct business using electronic means, the unit owners' association shall make available a reasonable alternative, at its expense, for such person to conduct business with the unit owners' association without use of such electronic means.

H. This section shall not apply to any notice related to an enforcement action by the unit owners' association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

2010, c. 432, § 55-79.71:1; 2019, c. 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1936. Merger or consolidation of condominiums; procedure

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.

B. An agreement to merge or consolidate two or more condominiums pursuant to subsection A shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, provided that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

D. If the condominium instruments of a condominium to be merged or consolidated require a vote or consent of mortgagees in order to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before such merger or consolidation is effective. No merger or consolidation shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. A vote or consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1941.

2014, c. 659, § 55-79.71:2; 2019, c. 712.

§ 55.1-1937. Termination of condominium

A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. An instrument terminating a condominium signed by the declarant is effective upon recordation of such instrument. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. Except in the case of a taking of all the units by eminent domain, if any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium may be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in this subsection.

C. Agreement of the required majority of unit owners to termination of the condominium shall be evidenced by their execution of a termination agreement, or ratifications of such agreement, and such agreement is effective when a copy of the termination agreement is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer as the condominium instruments may specify, that the requisite majority of the unit owners signed the termination agreement or ratifications. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association appertain. Any unit owner acquiring a unit subsequent to approval of a termination agreement but prior to recordation of the termination agreement shall be deemed to have consented to the termination agreement. Upon approval of a termination agreement and until recordation of the termination agreement, a copy of the termination agreement shall be included with the resale certificate required by § 55.1-1990. The termination agreement shall specify a date after which the termination agreement is void if the termination agreement is not recorded. For the purposes of this section, an instrument terminating a condominium and any ratification of such instrument shall be deemed a condominium instrument subject to the provisions of § 55.1-1911.

D. A termination agreement may provide that all of the common elements and units of the condominium shall be sold or otherwise disposed of following termination. If, pursuant to the termination agreement, any property in the condominium is sold or disposed of following termination, the termination agreement shall set forth the minimum terms of the sale or disposition.

E. In the case of a master condominium that contains a unit that is a part of another condominium, a termination agreement for the master condominium shall not terminate the other condominium.

F. On behalf of the unit owners, the unit owners' association may contract for the disposition of property in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections B and C. If the termination agreement requires that any property in the condominium be sold or otherwise disposed of following termination, title to the property, upon termination, shall vest in the unit owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale or disposition. Until the termination has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of the unit owners as provided in subsection I. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the property, each unit owner or his successor in interest shall have an exclusive right to occupancy of the portion of the property that formerly constituted his unit. During the period that the unit owner or his successor in interest has the right to occupancy, each unit owner or his successor in interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium instruments.

G. If the property that constitutes the condominium is not sold or otherwise disposed of following termination, title to all the property in the condominium shall vest in the unit owners, upon termination, as tenants in common in proportion to the unit owners' respective interests as provided in subsection I. In such an event, any liens on a unit shall shift accordingly, and a lien may be enforced only against a unit owner's tenancy in common interest, but the lien shall not encumber the entire property formerly constituting the condominium. While the tenancy in common exists, each unit owner or his successor in interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of property, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lien holders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a lien on the units immediately before termination.

I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and H shall be as follows:

1. Except as provided in subdivision 3, the respective interests of the unit owners shall be as set forth in the termination agreement.

2. Except as provided in subdivision 3, if the respective interests of the unit owners are based on the respective fair market values of their units, limited common elements, and common element interests immediately before the termination, the fair market values shall be determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and become final unless disapproved within 30 days after distribution by unit owners of units to which one quarter of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and their common element interests.

3. If the method of determining the respective interests of the unit owners in the proceeds of sale or disposition is other than the fair market values, then the association shall provide each unit owner with a notice stating the result of that method for his unit and, no later than 30 days after transmission of that notice, if 10 percent of the unit owners dispute the interest to be distributed to their units, those unit owners may require the association to obtain an independent appraisal of the condominium units. If the fair market value of the units of the objecting unit owners is at least 10 percent more than the amount that the unit owners would have received using the method agreed upon by the membership, then the association shall adjust the respective interests of the unit owners so that each unit owner's share is based on the fair market value for each unit. If the fair market value is less than 10 percent more than the amount that the objecting unit owners would have received using the agreed-upon method, then the agreed-upon method shall be implemented and the objecting unit owners shall receive the distribution less their pro rata share of the cost of their appraisal.

4. If the method of determining the respective interests of the unit owners cannot be implemented because any unit or limited common element is destroyed, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

5. Unless the termination agreement provides otherwise, each unit owner shall satisfy and cause the release of any mortgage, deed of trust, lease, or other lien or encumbrance on his unit at the time required by the termination agreement.

J. Except as provided in subsection K, foreclosure of any mortgage, deed of trust, or other lien, or enforcement of a mortgage, deed of trust, or other lien or encumbrance against the entire condominium, shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

K. If a lien or encumbrance against a portion of the property that comprises the condominium has priority over the condominium instruments and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the property subject to the lien or encumbrance from the condominium.

1993, c. 667, § 55-79.72:1; 2019, c. 712; 2020, cc. 592, 817.

§ 55.1-1938. Rights of mortgagees

No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association.

1993, c. 667, § 55-79.72:2; 2019, c. 712.

§ 55.1-1939. Statement of unit owner rights

Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

1. 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 § 55.1-1945, including records of all financial transactions;

2. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's ownership interest, except to the extent that the condominium instruments provide otherwise;

3. The right to have notice of any meeting of the executive board, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § 55.1-1949;

4. The right to have (i) notice of any proceeding conducted by the executive board or other tribunal specified in the condominium instruments against the unit owner to enforce any rule or regulation of the unit owners' association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as provided in § 55.1-1959, and the right of due process in the conduct of that hearing; and

5. The right to serve on the executive board if duly elected and a member in good standing of the unit owners' association, except to the extent that the condominium instruments provide otherwise.

The rights enumerated in this section shall be enforceable by any unit owner pursuant to the provisions of § 55.1-1915.

2015, c. 286, § 55-79.72:3; 2019, c. 712.

Article 3. Management of Condominium

§ 55.1-1940. Bylaws to be recorded with declaration; contents; unit owners' association; executive board; amendment of bylaws

A. Bylaws providing for governance of the condominium by an association of all of the unit owners shall be recorded simultaneously with the declaration. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive board. If there is to be such a board, the bylaws shall specify the powers and responsibilities of the board and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive board shall be filled by a vote of a majority of the remaining members of the executive board at a meeting of the executive board, even though the members of the executive board present at such meeting may constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting of the unit owners' association at which time a successor shall be elected by a vote of the unit owners. The bylaws may delegate to such board, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive board may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection C of § 55.1-1915.

D. In any case where an amendment to the declaration is required by subsection B, C, or D of § 55.1-1918, the person required to execute such amendment shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § 55.1-1920 or shall abolish the votes appertaining to former units, as appropriate. The amendment to the bylaws shall also reallocate rights to future common surpluses, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the amendment.

1974, c. 416, § 55-79.73; 1978, c. 332; 1993, c. 667; 1998, c. 32; 2012, c. 758; 2019, c. 712; 2020, c. 592.

§ 55.1-1941. Amendment to condominium instruments; consent of mortgagee

A. If any provision in the condominium instruments requires the written consent of a mortgagee in order to amend the condominium instruments, the unit owners' association shall be deemed to have received the written consent of a

mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address supplied by such mortgagee in a written request to the unit owners' association to receive notice of proposed amendments to the condominium instruments and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise. If the mortgagee has not supplied an address to the unit owners' association, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise.

B. Any amendment adopted without the required consent of a mortgagee shall be voidable only by an institutional lender that was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the one-year statute of limitations set forth in subsection C of § 55.1-1934 beginning on the date of recordation of the amendment.

C. Subsection A shall not apply to amendments that alter the priority of the lien of the mortgagee or that materially impair or affect the unit as collateral or the right of the mortgagee to foreclose on a unit as collateral.

D. Where the condominium instruments are silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the condominium instruments does not specifically affect mortgagee rights.

1993, c. 1, § 55-79.73:1; 1998, c. 32; 2007, c. 675; 2019, c. 712; 2020, c. 817.

§ 55.1-1942. Reformation of declaration; judicial procedure

A. A unit owners' association may petition the circuit court in the county or city in which the condominium or the greater part of the condominium is located to reform the condominium instruments where the unit owners' association, acting through its executive board, has attempted to amend the condominium instruments regarding ownership of legal title of the common elements or real property using provisions outlined in the condominium instruments to resolve (i) ambiguities or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners or (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common elements or real property to:

1. Reform, in whole or in part, any provision of the condominium instruments; and

2. Correct mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose.

C. A petition filed by the unit owners' association with the court setting forth any inconsistency or error made in the condominium instruments, or the necessity for any change in such instruments, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that:

1. The unit owners' association has made three good faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant joins in the petition of the unit owners' association;

4. A copy of the petition is sent to all unit owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

D. Any mortgagee of a condominium unit in the condominium shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55.1-1941.

2014, c. 659, § 55-79.73:2; 2019, c. 712.

§ 55.1-1943. Control of condominium by declarant

A. The condominium instruments may authorize the declarant, or a managing agent or some other person selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association or its executive board, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive board. The declarant, managing agent, or other person selected by the declarant to so appoint and remove officers or the executive board or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive board shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or, if not so specified, within such period as defined in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § 55.1-1978 and described pursuant to subdivision A 4, B 2, or C 8 of § 55.1-1916.

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium; three years in the case of a condominium other than an expandable condominium, containing any convertible land; or two years in the case of any other condominium. Such time period shall begin upon settlement of the first unit to be sold in any portion of the condominium.

Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant.

Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § 55.1-1949 a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive board and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § 55.1-1955 and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest.

C. If entered into any time prior to the expiration of the period of declarant control, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract, or lease of

recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement entered into on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its executive board upon not less than 90 days' written notice to the other party given not later than 60 days after the expiration of the period of declarant control. Any such contract or agreement may be renewed for periods not in excess of two years; however, at the end of any two-year period the unit owners' association or its executive board may terminate any further renewals or extensions of such contract or agreement. The provisions of this subsection shall not apply to any lease referred to in § 55.1-1910 or subject to subsection E of § 55.1-1916.

D. If entered into at any time prior to the expiration of the period of declarant control, any contract, lease, or agreement, other than those subject to the provisions of subsection C, may be entered into by or on behalf of the unit owners' association, its executive board, or the unit owners as a group, if such contract, lease, or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

E. This section does not apply to any contract, incidental to the disposition of a condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments requiring that the unit owners be parties to such contracts.

F. If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter requires action by the unit owners' association, its executive board, or any officer.

G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the governing body of the locality in which the condominium is located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency designated by the local governing body shall advise the principal elected officer of the condominium unit owners' association of any outstanding violations of applicable building codes or local ordinances or other deficiencies of record.

H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver to the president of the unit owners' association or his designated agent (i) all unit owners' association books and records held by or controlled by the declarant, including minute books and all rules, regulations, and amendments to such rules and regulations that may have been promulgated; (ii) an accurate and complete statement of receipts and expenditures prepared using the accrual method of accounting from the date of the recording of the condominium instruments to the end of the regular accounting period immediately succeeding the first annual meeting of the unit owners, not to exceed 60 days from the date of the election; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans, if available; (iv) all association insurance policies that are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any; (vi) contracts in which the association is a contracting party, if any; (vii) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property; and (viii) an inventory and description of stormwater facilities located on the common elements or which otherwise serve the condominium and for which the unit owners' association has, or subsequently may have, maintenance, repair, or replacement responsibility, together with the requirements for maintenance thereof.

The requirement for delivery of stormwater facility information required by clause (viii) shall be deemed satisfied by delivery to the association of a final site plan or final construction drawing showing stormwater facilities as approved by a local government jurisdiction and applicable recorded easements, or agreements if any, containing requirements for the maintenance, repair, or replacement of the stormwater facilities.

If the unit owners' association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information required by clauses (i), (ii), (iv), and (vi).

I. This section shall be strictly construed to protect the rights of the unit owners.

1974, c. 416, § 55-79.74; 1975, c. 415; 1978, c. 332; 1980, c. 738; 1984, c. 601; 1985, c. 83; 1996, c. 977; 2008, cc. 851, 871; 2013, c. 599; 2019, cc. 712, 724.

§ 55.1-1944. Deposit of funds

All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the unit owners' association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual unit owners' association basis.

2007, cc. 696, 712, § 55-79.74:01; 2019, c. 712.

§ 55.1-1945. Books, minutes, and records; inspection

A. The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, 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. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;

2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

3. Pending or probable litigation. For purposes of this subdivision, "probable litigation" means those instances where there has been a specific threat of litigation from a person or the legal counsel of such person;

4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

5. Communications with legal counsel that relate to subdivisions 1 through 4 or that are protected by the attorney-client privilege or the attorney work product doctrine;

6. Disclosure of information in violation of law;

7. Meeting minutes or other confidential records of an executive session of the executive board held pursuant to subsection C of § 55.1-1949;

8. Documentation, correspondence or management or executive board reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or

9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, not to exceed the reasonable costs of materials and labor, incurred to provide such copies. Charges may be imposed only in accordance with a cost schedule adopted by the executive board in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

1980, c. 738, § 55-79.74:1; 1985, c. 75; 1989, c. 57; 1990, c. 662; 1992, c. 72; 1994, c. 463; 1999, c. 594; 2000, cc. 906, 919; 2001, c. 419; 2011, cc. 334, 361, 605; 2014, c. 207; 2018, c. 663; 2019, c. 712; 2020, c. 592.

§ 55.1-1946. Management office

Unless the condominium instruments expressly provide otherwise, the unit owners' association shall not be prohibited from maintaining a management office on common elements or in one or more units in the condominium.

1982, c. 545, § 55-79.74:2; 2019, c. 712.

§ 55.1-1947. Transfer of special declarant rights

A. For the purposes of this section, "affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person is controlled by a declarant if the declarant (a) is a general partner, officer, director, or employer of the person; (b) directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

B. No special declarant right may be transferred except by a document evidencing the transfer recorded in every county and city in which any portion of the condominium is located. The instrument shall not be effective unless executed by the transferee.

C. Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

1. The transferor shall not be relieved of any obligation or liability arising before the transfer and shall remain liable for warranty obligations imposed upon him by subsection B of § 55.1-1955. Lack of privity shall not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

2. If the successor to any special declarant right is an affiliate of a declarant, the transferor shall also be jointly and severally liable with the successor for any obligation or liability of the successor that relates to the condominium.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall also be liable for all obligations and liabilities relating to the retained special declarant rights and imposed on a declarant by this chapter or by the condominium instruments.

4. A transferor shall have no liability for any breach of a contractual or warranty obligation or for any other act or omission, arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

D. Except as otherwise provided by the mortgage or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, tax sale, judicial sale, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of any unit owned by a declarant or land subject to development rights:

1. A person acquiring title to all the land being foreclosed or sold shall, but only upon his request, succeed to all special declarant rights related to that land reserved by that declarant, or only to any rights reserved in the declaration pursuant to § 55.1-1929 and held by that declarant to maintain sales offices, management offices, model units, or signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

For the purposes of this subsection, "development rights" means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land, or convert convertible space.

E. Upon foreclosure, sale by a trustee under a deed of trust, tax sale, judicial sale, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of all units and other land in the condominium owned by a declarant, (i) that declarant ceases to have any special declarant rights and (ii) any period of declarant control reserved under subsection A of § 55.1-1943 shall terminate, unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

F. The liabilities and obligations of any person who succeed to any special declarant right shall be as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the condominium instruments.

2. A successor to any special declarant right, other than a successor described in subdivisions 3 and 4, who is not an affiliate of a declarant shall be subject to all obligations and liabilities imposed by this chapter or the condominium instruments on a declarant that relate to his exercise or nonexercise of special declarant rights, or on his transferor, except for (i) misrepresentations by any prior declarant, (ii) warranty obligations as provided in subsection B of § 55.1-1955 on improvements made by any previous declarant or made before the condominium was created, (iii) breach of any fiduciary obligation by any previous declarant or his appointees to the executive board, or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. Unless he is an affiliate of a declarant, a successor to only a right reserved in the declaration to maintain sales offices, management offices, model units, or signs shall not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except the liabilities and obligations arising under Article 4 (§ 55.1-1970 et seq.) as to disposition by that successor.

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection D may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right reserved by his transferor pursuant to subsection A of § 55.1-1943. Any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he shall not be subject to any liability or obligation as a declarant other than liability for his acts and omissions relating to the exercise of rights reserved under subsection A of § 55.1-1943.

G. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the condominium instruments.

1982, c. 545, § 55-79.74:3; 1991, c. 497; 1996, c. 977; 2006, c. 646; 2019, c. 712.

§ 55.1-1948. Declarants not succeeding to special declarant rights

A declarant who does not succeed to any special declarant rights shall be liable only to the extent of his actions for claims and obligations arising under this chapter or the condominium instruments.

1993, c. 667, § 55-79.74:4; 2019, c. 712.

§ 55.1-1949. Meetings of unit owners' association and executive board

A. 1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

2. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units, unless the unit owner has provided to such officer or his agent an address other than the address of the unit, or notice may be hand delivered by the officer or his agent, provided that the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

3. In lieu of delivering notice as specified in subdivision 2, such officer or his agent may send notice by electronic means if consented to by the unit owner to whom the notice is given, provided that the officer or his agent certifies in writing that notice was sent and, if such electronic mail was returned as undeliverable, notice was subsequently sent by United States mail.

B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

2. Notice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

A unit owner may make a request to be notified on a continual basis of any such meetings, which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or email in the case of meetings of the executive board or (ii) by email in the case of meetings of any subcommittee or other committee of the executive board or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the (i) executive board or any subcommittee or other committee of such board or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

3. Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board.

4. Any unit owner may record any portion of a meeting required to be open. The executive board or subcommittee or other committee of the executive board conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

5. Voting by secret or written ballot in an open meeting is a violation of this chapter except for the election of officers.

C. The executive board or any subcommittee or other committee of the executive board may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation, and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant to such condominium instruments for which a unit owner, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the executive board or subcommittee or other committee of the executive board, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section do not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period during each meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

1974, c. 416, § 55-79.75; 1978, c. 363; 1989, c. 58; 1990, c. 662; 1992, c. 72; 2000, c. 906; 2001, c. 715; 2003, cc. 404, 405, 442; 2005, c. 353; 2007, c. 675; 2013, c. 275; 2019, c. 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1950. Distribution of information by members

A. The executive board shall 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 board regarding any matter concerning the unit owners' association.

B. Except as otherwise provided in the condominium instruments, the executive board shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

2001, c. 715, § 55-79.75:1; 2003, c. 405; 2019, c. 712.

§ 55.1-1951. Display of the flag of the United States; necessary supporting structures; affirmative defense

A. In accordance with the federal Freedom to Display the American Flag Act of 2005 (P.L. 109-243), no unit owners' association shall prohibit or otherwise adopt or enforce any policy restricting a unit owner from displaying upon property to which the unit owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code (4 U.S.C. § 1 et seq.) or any rule or custom pertaining to the proper display of the flag. A unit owners' association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property, provided that such restrictions are necessary to protect a substantial interest of the unit owners' association.

B. The unit owners' association may restrict the display of such flags in the common elements.

C. In any action brought by the unit owners' association under § 55.1-1959 for a violation of a flag restriction, the unit owners' association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the unit owners' association.

D. In any action brought by the unit owners' association under § 55.1-1959, the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitation pertaining to the flag of the United States or any flagpole or similar structure necessary to display the flag of the United States was not contained in the public offering statement or resale certificate, as appropriate, required pursuant to § 55.1-1976 or 55.1-1991.

2007, cc. 854, 910, § 55-79.75:2; 2010, cc. 166, 453; 2019, c. 712.

§ 55.1-1951.1. Installation of solar energy collection devices

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No unit owners' association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the unit owners' association establishes such a prohibition. However, a unit owners' association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-1990 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the unit owners' association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The unit owners' association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the unit owners' association. A unit owners' association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

2006, c. 939, §§ 67-700, 67-701; 2008, c. 881; 2009, c. 866; 2013, c. 357; 2014, c. 525; 2020, cc. 272, 795; 2021, Sp. Sess. I, c. 387.

§ 55.1-1952. Meetings of unit owners' association and executive board; quorums

A. Unless the condominium instruments otherwise provide or as specified in subsection H of § 55.1-1953, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than one-third of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 10 percent.

B. Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive board if persons entitled to cast one-half of the votes in that body are present at the beginning of such meeting.

C. On petition of the unit owners' association or any unit owner entitled to vote, the circuit court of the county or city in which the condominium or the greater part of such condominium is located may order an annual meeting of the unit owners' association be held for the purpose of the election of members of the executive board, provided that:

1. No annual meeting as required by § 55.1-1949 has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments; and

2. The unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years, which attempts have proven unsuccessful due to the failure to obtain a quorum.

The court may set the quorum for the meeting and enter other orders necessary to convene the meeting.

A unit owner filing a petition under this subsection shall provide a copy of the petition to the executive board at least 10 business days prior to filing.

1974, c. 416, § 55-79.76; 2003, c. 413; 2015, cc. 214, 430; 2019, c. 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1953. Meetings of unit owners' association and executive board; voting by unit owners; proxies

A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55.1-1920 a number of votes in the unit owners' association proportionate to the undivided interest in the common elements appertaining to each such unit.

B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

C. Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. If more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. For purposes of this subsection, "person" is deemed to include any natural person having authority to execute deeds on behalf of any person, excluding natural persons, that is, either alone or in conjunction with another person, a unit owner.

D. The votes appertaining to any unit may be cast pursuant to a proxy duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such unit owners. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Except to the extent otherwise provided in the condominium instruments, any proxy is void if it is not dated, or if it purports to be revocable without the required notice. Any proxy shall be void if not signed by or on behalf of the unit owner. If the unit owner is more than one person, any such unit owner may object to the proxy at or prior to the meeting, whereupon the proxy shall be deemed revoked. Any proxy shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed.

E. Unless expressly prohibited by the condominium instruments, a unit owner may vote at a meeting of the unit owners' association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the executive board has adopted guidelines for such voting by electronic means. Unit owners voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

F. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

G. All votes appertaining to units owned by the unit owners' association shall be deemed present for quorum purposes at all duly called meetings of the unit owners' association and shall be deemed cast in the same proportions as the votes cast by unit owners other than the unit owners' association.

H. Except to the extent that the condominium instruments provide otherwise, the voting interest allocated to the unit or member that has been suspended by the unit owners' association or the executive board pursuant to the condominium instruments shall not be counted in the total number of voting interests used to determine the quorum for any meeting or vote under the condominium instruments.

1974, c. 416, § 55-79.77; 1980, c. 108; 1991, c. 497; 1993, c. 667; 1998, c. 32; 2003, c. 442; 2015, c. 214; 2019, cc. 367, 712; 2021, Sp. Sess. I, cc. 9, 494.

§ 55.1-1954. Officers

A. If the condominium instruments provide that any officer must be a unit owner, then any such officer who disposes of all of his units in fee shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy effective on or before the termination of his right of occupancy under such disposition.

B. If the condominium instruments provide that any officer must be a unit owner, then notwithstanding the provisions of subdivision 1 of § 55.1-1912, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person that is, either alone or in conjunction with another person, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection A were it a natural person holding such office.

1974, c. 416, § 55-79.78; 1991, c. 497; 2002, c. 520; 2019, c. 712.

§ 55.1-1955. Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements and (ii) to the individual unit owner in the case of any unit or any part of such unit, except to the extent that the need for repairs, renovation, restoration, or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. To the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the damage, shall be liable for the prompt repair of such damage.

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee against structural defects each of the units for two years from the date each is conveyed and all of the common elements for two years. For each unit, the declarant shall also warrant that the unit is fit for habitation in the case of a residential unit and constructed in a workmanlike manner so as to pass without objection in the trade. The two-year warranty as to each of the common elements begins whenever that common element has been completed or, if later, (i) as to any common element within any additional land or portion of the additional land, at the time the first unit in that additional land is conveyed; (ii) as to any common element within any convertible land or portion of the convertible land, at the time the first unit in the convertible land is conveyed; and (iii) as to any common element within any other portion of the condominium, at the time the first unit in that portion is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element that reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and that require repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. An action for breach of any warranty prescribed by this section shall begin within (i) five years after the date such warranty period began or (ii) one year after the formation of any warranty review committee pursuant to subsection B of § 55.1-1943, whichever occurs last. However, no such action shall be maintained against the declarant unless a written statement by the claimant, or his agent, attorney, or representative, of the nature of the alleged defect has been sent to the declarant by registered or certified mail at his last known address, as reflected in the records of the Common Interest Community Board, more than six months prior to the beginning of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time, not to exceed five months. Sending the notice required by this subsection shall toll the statute of limitations for beginning a breach of warranty action for a period not to exceed six months.

D. If the initial period of declarant control has been extended in accordance with subsection B of § 55.1-1943, the warranty review committee, referred to in this section as "the committee," shall have (i) subject to the provisions of subdivision 3, the irrevocable power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name of the unit owners' association any claims involving the declarant's warranty against structural defects with respect to all of the common elements and (ii) the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements pursuant to § 55.1-1964 if the committee determines that

the assessments levied by the unit owners' association are insufficient to enable the committee reasonably to perform its functions pursuant to this subsection. The committee or the declarant shall notify the governing body of the locality in which the condominium is located of the formation of the committee within 30 days of its formation. Within 30 days after such notice, the local governing body or an agency designated by the local governing body shall advise the chair of the committee of any outstanding violations of applicable building codes, local ordinances, or other deficiencies of record. Members of the committee shall be insured, indemnified, and subject to liability to the same extent as officers or directors under the condominium instruments or applicable law. The unit owners' association shall provide sufficient funds reasonably necessary for the committee to perform the functions set out in this subsection and to:

1. Engage an independent architect, engineer, legal counsel, and such other experts as the committee may reasonably determine;

2. Investigate whether there exists any breach of the warranty as to any of the common elements. The committee shall document its findings and the evidence that supports such findings. Such findings and evidence shall be confidential and shall not be disclosed to the declarant without the consent of the committee; and

3. Assert or settle in the name of the unit owners' association any claims involving the declarant's warranty on the common elements, provided that (i) the committee sends the declarant at least six months prior to the expiration of the statute of limitations a written statement pursuant to subsection C of the alleged nature of any defect in the common elements giving the declarant an opportunity to cure the alleged defect; (ii) the declarant fails to cure the alleged defect within a reasonable time; and (iii) the declarant control period or the statute of limitations has not expired.

E. Within 45 days after the formation of the committee, the declarant shall deliver to the chair of the committee (i) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (ii) all association insurance policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

1974, c. 416, § 55-79.79; 1975, c. 415; 1980, c. 386; 1982, c. 545; 1984, c. 347; 1987, c. 395; 2006, c. 646; 2008, cc. 851, 871; 2013, c. 599; 2019, c. 712.

§ 55.1-1956. Control of common elements

A. Except to the extent prohibited, restricted, or limited by the condominium instruments, the unit owners' association shall have the power to:

1. Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the association arising under § 55.1-1955;

2. Make or cause to be made additional improvements on and as a part of the common elements;

3. Grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit that would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval; and

4. Acquire, hold, convey, and encumber title to real property, including condominium units, whether or not the association is incorporated.

B. Except to the extent prohibited, restricted, or limited by the condominium instruments, the executive board of the unit owners' association, if any, and if not, then the unit owners' association itself, has the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, including the right, in the name of the unit owners' association, to (i) grant easements through the common elements and accept easements benefiting all or any portion of the condominium; (ii) assert, through litigation or otherwise, defend against, compromise, adjust, and settle any claims or actions related to common elements, other than claims against or actions involving the declarant during any period of declarant control reserved pursuant to subsection A of § 55.1-1943; and (iii) apply for any governmental approvals under state and local law.

C. This section shall not be construed to prohibit the grant by the condominium instruments of other powers and responsibilities to the unit owners' association or its executive board.

1974, c. 416, § 55-79.80; 1975, c. 415; 1981, c. 146; 1982, c. 195; 1991, c. 497; 1993, c. 667; 1996, c. 977; 2019, c. 712.

§ 55.1-1957. Common elements; notice of pesticide application

The unit owners' association shall post notice of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least 48 hours prior to the application.

1999, c. 65, § 55-79.80:01; 2019, c. 712.

§ 55.1-1958. Tort and contract liability; judgment lien

A. An action for tort alleging a wrong done (i) by any agent or employee of the declarant or of the unit owners' association or (ii) in connection with the condition of any portion of the condominium that the declarant or the association has the responsibility to maintain shall be brought against the declarant or the association, as appropriate. No unit owner shall be precluded from bringing such an action by virtue of his ownership of an undivided interest in the common elements or by reason of his membership in the association or his status as an officer.

B. Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by § 55.1-1928 or 55.1-1929.

C. An action arising from a contract made by or on behalf of the unit owners' association or its executive board or the unit owners as a group shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to subsection A of § 55.1-1943. No unit owner shall be precluded from bringing such an action by reason of his membership in the association or his status as an officer.

D. A judgment for money against the unit owners' association shall be a lien against any property owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to subsection D of § 55.1-1964, but not against any other property of any unit owner. A unit owner who pays a percentage of the total amount due under such judgment equal to such unit owner's liability for common expenses fixed pursuant to subsection D of § 55.1-1964 shall be entitled to a release of any such judgment lien, and the association shall not be entitled to assess the unit for payment of the remaining amount due. Such judgment shall be otherwise subject to the provisions of § 8.01-458.

1975, c. 415, § 55-79.80:1; 1991, c. 497; 1992, c. 72; 1996, c. 977; 2019, c. 712.

§ 55.1-1959. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules and regulations

A. Except as otherwise provided in this chapter, the executive board shall have the power to establish, adopt, and enforce rules and regulations with respect to use of the common elements and with respect to such other areas of responsibility assigned to the unit owners' association by the condominium instruments, except where expressly reserved by the condominium instruments to the unit owners. Rules and regulations may be adopted by resolution and shall be reasonably published or distributed to the unit owners. At a special meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments, a majority of the votes cast at such meeting may repeal or amend any rule or regulation adopted by the executive board. Rules and regulations may be enforced by any method authorized by this chapter.

B. The unit owners' association shall have the power, to the extent the condominium instruments or the condominium's rules and regulations expressly provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments that are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension does not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests, or other invitees are responsible.

C. Before any action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55.1-1949. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive board or such other tribunal as the condominium instruments or its adopted rules and regulations specify.

Notice of such hearing, including the actions that may be taken by the unit owners' association in accordance with this section, shall, at least 14 days in advance, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55.1-1949. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55.1-1949.

D. The amount of any charges assessed shall not exceed $50 for a single offense, or $10 per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § 55.1-1966. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

E. The unit owners' association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium instruments or the condominium's adopted rules and regulations.

F. After the date an action is filed in the general district or circuit court by (i) the unit owners' association, by and through its counsel, to collect the charges or obtain injunctive relief and correct the violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

If the court rules in favor of the unit owners' association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the unit owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

In any action filed in general district court pursuant to this section, the court may enter default judgment against the unit owner on the sworn affidavit of the unit owners' association.

G. This section shall not be construed to prohibit the grant by the condominium instruments of other powers and responsibilities to the unit owners' association or its executive board.

1993, c. 667, § 55-79.80:2; 1997, cc. 173, 417; 2000, cc. 846, 906; 2002, c. 509; 2011, cc. 372, 378; 2014, c. 784; 2019, c. 712; 2021, Sp. Sess. I, c. 131.

§ 55.1-1960. Limitation of occupancy of a unit

To the extent expressly provided in the condominium instruments, the unit owners' association may limit the number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable and shall comply with the provisions of applicable law, including the Virginia Fair Housing Law (§ 36-96.1 et seq.), the Uniform Statewide Building Code (§ 36-97 et seq.), and local ordinances.

1996, c. 888, § 55-79.80:3; 1998, c. 454; 2019, c. 712.

§ 55.1-1960.1. Limitation of smoking in condominium

Except to the extent that the condominium instruments provide otherwise, the executive board may establish reasonable rules that restrict smoking in the condominium, including rules that prohibit smoking in the common elements and within units. Rules adopted pursuant to this section may be enforced in accordance with § 55.1-1959.

2021, Sp. Sess. I, c. 131.

§ 55.1-1961. Use of for sale sign in connection with resale

Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a real estate sign that does not comply with the requirements of the Real Estate Board. A unit owners' association may, however, prohibit the placement of signs in the common elements and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed.

1974, c. 416, § 55-79.97; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. 172; 1997, c. 222; 1998, cc. 32, 454, 463; 1999, c. 263; 2001, c. 556; 2002, cc. 459, 509; 2005, c. 415; 2007, cc. 696, 712, 854, 910; 2008, cc. 851, 871; 2011, c. 334; 2013, cc. 357, 492; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 393, 406; 2018, c. 70; 2019, c. 712.

§ 55.1-1962. Designation of authorized representative

Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization that includes the designated representative's name, contact information, and license number and the unit owner's signature. Notwithstanding the foregoing, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

1974, c. 416, § 55-79.97; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. 172; 1997, c. 222; 1998, cc. 32, 454, 463; 1999, c. 263; 2001, c. 556; 2002, cc. 459, 509; 2005, c. 415; 2007, cc. 696, 712, 854, 910; 2008, cc. 851, 871; 2011, c. 334; 2013, cc. 357, 492; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 393, 406; 2018, c. 70; 2019, c. 712; 2022, cc. 65, 66.

§ 55.1-1962.1. Electric vehicle charging stations permitted

A. Except to the extent that the condominium instruments provide otherwise, no unit owners' association shall prohibit any unit owner from installing an electric vehicle charging station for the unit owner's personal use within the boundaries of a unit or limited common element parking space appurtenant to the unit owned by the unit owner.

B. Notwithstanding any other provision of this chapter or the condominium instruments, the unit owners' association may prohibit a unit owner from installing an electric vehicle charging station if installation of the electric vehicle charging station is not technically feasible or reasonably practicable due to safety risks, structural issues, or engineering conditions.

C. The unit owners' association may require as a condition of approving installation of an electric vehicle charging station that the unit owner:

1. Provide detailed plans and drawings for installation of an electric vehicle charging station prepared by a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station.

2. Comply with applicable building codes or recognized safety standards.

3. Comply with reasonable architectural standards adopted by the unit owners' association that govern the dimensions, placement, or external appearance of the electric vehicle charging station.

4. Pay the costs of installation, maintenance, operation, and use of the electric vehicle charging station.

5. Indemnify and hold the unit owners' association harmless from any claim made by a contractor or supplier pursuant to Title 43.

6. Pay the cost of removal of the electric vehicle charging station and restoration of the area if the unit owner decides there is no longer a need for the electric vehicle charging station.

7. Separately meter, at the unit owner's sole expense, the utilities associated with such electric vehicle charging station and pay the cost of electricity and other associated utilities.

8. Engage the services of a licensed electrician or engineer familiar with the installation and core requirements of an electric vehicle charging station to install the electric vehicle charging station.

9. Obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, and use of the electric vehicle charging station and provide a certificate of insurance naming the unit owners' association as an additional insured on the unit owner's insurance policy for any claim related to the installation, maintenance, operation, or use of the electric vehicle charging station within 14 days after receiving the unit owners' association's approval to install such charging station.

10. Reimburse the unit owners' association for any increase in common expenses specifically attributable to the electric vehicle charging station installation, including the actual cost of any increased insurance premium amount, within 14 days' notice from the unit owners' association.

D. The conditions imposed pursuant to this section on unit owners for installation of an electric vehicle charging station shall run with title to the unit to which the limited common element parking space is appurtenant.

E. Any unit owner installing an electric vehicle charging station in a unit or on a limited common element parking space appurtenant to the unit owned by the unit owner shall indemnify and hold the unit owners' association harmless from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of the installation, maintenance, operation, or use of such electric charging station. A unit owners' association may require the unit owner to obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, or use of the electric vehicle charging station and require the unit owners' association to be included as a named insured on such policy.

2020, c. 1012.

§ 55.1-1963. Insurance

A. The condominium instruments may require the unit owners' association, or the executive board or managing agent on behalf of such association, to obtain:

1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements;

2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive board, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium; and

3. Such other policies as may be required by the condominium instruments, including workers' compensation insurance, liability insurance on motor vehicles owned by the unit owners' association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

B. Any unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the unit owners' association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the unit owners' association, or committed by any common interest community manager or employees of the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $1 million or the amount of reserve balances

of the unit owners' association plus one-fourth of the aggregate annual assessment of such unit owners' association. The minimum coverage amount shall be $10,000. The executive board or common interest community manager may obtain such bond or insurance on behalf of the unit owners' association.

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of such obtainment and of any subsequent changes in or termination of the policy shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § 55.1-1949.

1974, c. 416, § 55-79.81; 2000, c. 906; 2003, c. 360; 2004, c. 281; 2007, cc. 696, 712; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1964. Liability for common expenses; late fees

A. Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

B. To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against any condominium unit involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases. The executive board may impose reasonable user fees.

C. To the extent that the condominium instruments expressly so provide, (i) any common expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the unit owners shall be assessed equally against the condominium units involved and (ii) any common expenses paid or incurred in providing metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § 55.1-1953, those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

E. Except to the extent otherwise provided in the condominium instruments, if the executive board determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive board may levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive board shall give written notice to the unit owners stating the amount of, the reasons for, and the due date for payment of any additional assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

All unit owners shall be obligated to pay the additional assessment unless the unit owners by a majority of votes cast, in person or by proxy, at a meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments within 60 days of the delivery or mailing of the notice required by this subsection, rescind or reduce the additional assessment. No director or officer of the unit owners' association shall be liable for failure to perform his fiduciary duty if an additional assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the unit owners' association in accordance with this subsection. The unit owners' association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary

duty due to the assessment for the necessary funds rescinded by the unit owners' association in accordance with this subsection.

F. Neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner.

G. All condominium instruments for condominiums created prior to January 1, 1981, are hereby validated notwithstanding noncompliance with the first sentence of subsection D if they provide instead that the amount of all common expenses not specially assessed pursuant to subsection A, B, or C shall be assessed against the condominium units in proportion to their respective undivided interests in the common elements.

H. Except to the extent that the condominium instruments or the association's rules or regulations provide otherwise, an executive board may impose a late fee, not to exceed the penalty provided for in § 58.1-3915, for any assessment or installment that is not paid within 60 days of the due date for payment of such assessment or installment.

1974, c. 416, § 55-79.83; 1977, c. 428; 1981, c. 180; 1984, cc. 27, 84, 601; 1992, c. 72; 1993, c. 667; 2003, c. 421; 2013, c. 256; 2014, c. 239; 2019, c. 712.

§ 55.1-1965. Annual budget; reserves for capital components

A. Except to the extent provided in the condominium instruments, the executive board shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments, the executive board shall:

1. Conduct a study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1900;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1900;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-79.83:1; 2019, cc. 33, 44, 712.

§ 55.1-1966. Lien for assessments

A. The unit owners' association shall have a lien on each condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of such lien for assessments and

securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. In order to perfect the lien given by this section, the unit owners' association shall file a memorandum verified by the oath of the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, before the expiration of 90 days from the time the first such assessment became due and payable. The memorandum shall be filed in the clerk's office of the circuit court in the county or city in which such condominium is situated. The memorandum shall contain the following:

1. A description of the condominium unit in accordance with the provisions of § 55.1-1909.

2. The name or names of the persons constituting the unit owners of that condominium unit.

3. The amount of unpaid assessments currently due or past due together with the date when each fell due.

4. The date of issuance of the memorandum.

The clerk in whose office such memorandum is filed shall record and index the memorandum as provided in subsection B, in the names of the persons identified in such memorandum as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment enforcing such lien.

D. No action to enforce any lien perfected under subsection C shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any action in which such petition may be properly filed shall be regarded as the institution of an action under this section. Nothing in this subsection shall extend the time within which any such lien may be perfected.

E. The judgment in an action brought pursuant to this section shall include reimbursement for costs and attorney fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, such lien shall be released in accordance with the provisions of § 55.1-339. Any lien that is not so released shall subject the lien creditor to the penalty set forth in subdivision B 1 of § 55.1-339. For the purposes of that section, the principal officer of the unit owners' association, or such other officer as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55.1-1915.

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of such condominium unit, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a fee not exceeding $10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

I. At any time after perfecting the lien pursuant to this section, the unit owners' association may sell the unit at public sale, subject to prior liens. For purposes of this section, the unit owners' association shall have the power both to sell and

convey the unit and shall be deemed the unit owner's statutory agent for the purpose of transferring title to the unit. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The unit owners' association shall give notice to the unit owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the unit owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the unit. The notice shall further inform the unit owner of the right to bring a court action in the circuit court of the county or city where the condominium is located to assert the nonexistence of a debt or any other defense of the unit owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the unit owners' association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the condominium is located. The clerk in whose office such appointment is filed shall record and index the appointment as provided in subsection C, in the names of the persons identified therein as well as in the name of the unit owners' association. The unit owners' association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the unit owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the unit. Those conditions are that the unit owner (a) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all expenses and costs incurred in perfecting and enforcing the lien, including advertising costs and reasonable attorney fees.

4. In addition to the advertisement required by subdivision 5, the unit owners' association shall give written notice of the time, date, and place of any proposed sale in execution of the lien, and shall include the name, address, and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the condominium unit to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the condominium unit secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the locality in which the condominium unit to be sold, or any portion of such unit, is located pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the condominium unit or some portion of such unit is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the condominium unit to be sold, which description need not be as extensive as that contained in the deed of trust but shall identify the condominium unit by street address, if any, or, if none, shall give the general location of the condominium unit with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the unit owners' association. The advertisement shall set forth the name, address, and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b, the unit owners' association may give such other further and different advertisement as the association finds appropriate.

6. In the event of postponement of a sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the condominium unit voidable by the court.

8. In the event of a sale, the unit owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell, or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision 10 of this subsection and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the unit owners' association or its agent or attorney.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the condominium unit is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in connection with that sale.

c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorney fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns, provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the unit owner's equity, without actual notice of such encumbrance prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with special warranty of title. The trustee shall not be required to take possession of the condominium unit prior to the sale or to deliver possession of the unit to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to § 64.2-1309 and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55.1-1945 upon the written request of the prior unit owner, current unit owner, or any holder of a recorded lien against the unit at the time of the sale. The unit owners' association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a unit is made pursuant to this subsection and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is filed in the Court of Appeals or granted by the Supreme Court and an order is entered requiring such sale to be set aside.

1974, c. 416, § 55-79.84; 1975, c. 415; 1991, c. 497; 1992, c. 72; 1997, cc. 760, 766; 2000, c. 906; 2004, cc. 778, 779, 786; 2019, c. 712; 2021, Sp. Sess. I, c. 489.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 55.1-1967. Notice of sale under deed of trust

In accordance with the provisions of § 15.2-979, the unit owners' association shall be given notice whenever a condominium unit becomes subject to a sale under a deed of trust. Upon receipt of such notice, the executive board, on behalf of the unit owners' association, shall exercise whatever due diligence it deems necessary with respect to the unit subject to a sale under a deed of trust to protect the interests of the unit owners' association.

2015, cc. 93, 410, § 55-79.84:01; 2019, c. 712.

§ 55.1-1968. Bond to be posted by declarant

A. The declarant of a condominium containing units that are required by this chapter to be registered with the Common Interest Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to $1,000 per unit, except that such sum shall not be less than $10,000, nor more than $100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than 10 percent of the units in the condominium or, if the declarant owns less than 10 percent of the units in the condominium, until the declarant is current in the payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided that such declarant is current in the payment of assessments.

B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth or by such other surety as is satisfactory to the Board, and such bond shall be conditioned upon the payment of all assessments levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

The Board may promulgate reasonable regulations that govern the return of bonds submitted in accordance with this section.

1977, c. 428, § 55-79.84:1; 1981, c. 480; 1984, c. 601; 1985, c. 107; 1988, c. 15; 1993, cc. 667, 900; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1969. Restraints on alienation

If the condominium instruments create any rights of first refusal or other restraints on free alienability of the condominium units, such rights and restraints are void unless the condominium instruments make provision for promptly furnishing to any unit owner or purchaser requesting such rights and restraints a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a fee not exceeding $25 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

1974, c. 416, § 55-79.85; 2019, c. 712.

Article 4. Administration of Chapter; Sale, Etc., of Condominium Units

§ 55.1-1970. Common Interest Community Board

This chapter shall be administered by the Common Interest Community Board.

1974, c. 416, § 55-79.86; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1971. General powers and duties of the Common Interest Community Board

A. The Common Interest Community Board shall prescribe reasonable regulations, which shall be adopted, amended, or repealed in compliance with law applicable to the administrative procedure of agencies of government. The regulations shall include provisions for advertising standards to assure full and fair disclosure, provisions for operating procedures, and other regulations as are necessary and proper to accomplish the purpose of this chapter.

B. The Common Interest Community Board by regulation or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to condominiums prior to its distribution.

C. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or Common Interest Community Board regulation or order, the Common Interest Community Board, with or without prior administrative proceedings, may bring an action in the circuit court of the county or city in which any portion of the condominium is located to enjoin the acts or practices and to enforce compliance with this chapter or any Common Interest Community Board regulation or order. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The Common Interest Community Board is not required to post a bond in any court proceedings or prove that no other adequate remedy at law exists.

D. With respect to any lawful process served upon the Common Interest Community Board pursuant to the appointment made in accordance with subdivision A 1 of § 55.1-1975, the Common Interest Community Board shall forthwith cause the same to be sent by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in such application or the most recent annual report.

E. The Common Interest Community Board may intervene in any action involving the declarant. In any action by or against a declarant involving a condominium, the declarant shall promptly furnish the Common Interest Community Board notice of the action and copies of all pleadings.

F. The Common Interest Community Board may:

1. Accept registrations filed in other states or with the federal government;

2. Contract with similar agencies in the Commonwealth or other jurisdictions to perform investigative functions; and

3. Accept grants in aid from any governmental source.

G. The Common Interest Community Board shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, regulations, and common administrative practices.

1974, c. 416, § 55-79.98; 1981, c. 480; 2011, c. 605; 2019, c. 712.

§ 55.1-1972. Exemptions from certain provisions of article

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:

1. Dispositions pursuant to court order;

2. Dispositions by any government or government agency;

3. Offers by the declarant on nonbinding reservation agreements;

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; or

5. A disposition of a unit by a sale at an auction where a current public offering statement or resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of §§ 55.1-1974 through 55.1-1983 shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

1974, c. 416, § 55-79.87; 1975, c. 415; 1984, c. 427; 1993, c. 667; 2007, c. 266; 2012, c. 325; 2015, c. 277; 2019, c. 712.

§ 55.1-1973. Rental of units

A. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall:

1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § 55.1-1904;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of $50 during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55.1-1904;

4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit owners' association;

5. Charge any deposit from the unit owner or the tenant of the unit owner;

6. Have the authority to evict a tenant of any unit owner or to require any unit owner to execute a power of attorney authorizing the unit owners' association to so evict; or

7. Refuse to recognize a person designated by the unit owner as the unit owner's authorized representative under the provisions of § 55.1-1962. Notwithstanding any other provision of this subdivision, the requirements of § 55.1-1953 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

B. The unit owners' association may require the unit owner to provide the unit owners' association with the names and contact information of the tenants and authorized occupants under such lease and of any authorized agent of the unit owner and vehicle information for such tenants or authorized occupants. The unit owners' association may require the unit owner to provide the unit owners' association with the tenant's acknowledgment of and consent to any rules and regulations of the unit owners' association.

C. The provisions of this section shall not apply to units owned by the unit owners' association.

2015, c. 277, § 55-79.87:1; 2016, c. 471; 2019, c. 712; 2022, cc. 65, 66.

§ 55.1-1974. Limitations on dispositions of units

Unless exempt by § 55.1-1972:

1. No declarant may offer or dispose of any interest in a condominium unit located in the Commonwealth, nor offer or dispose of in the Commonwealth any interest in a condominium unit located outside of the Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

2. No declarant may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within five calendar days from the contract date of the disposition or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice of such cancellation hand-delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be set forth on the first page of the purchase contract in boldface print of not less than 12-point type.

4. The prospective purchaser may cancel a nonbinding reservation agreement by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest in such unit. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this section, nor shall any such provision be a part of any ancillary agreement.

1974, c. 416, § 55-79.88; 1975, c. 415; 1988, c. 15; 2014, c. 215; 2019, c. 712; 2020, c. 592.

§ 55.1-1975. Application for registration; fee

A. The application for registration of the condominium shall be filed as prescribed by the Common Interest Community Board's regulations and shall contain the following documents and information:

1. An irrevocable appointment of the Common Interest Community Board to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative if nonresidents of the Commonwealth;

2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order or judgment entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name and address; the form, date, and jurisdiction of organization; and the address of each of its offices in the Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions and the extent and nature of his interest in the applicant or the condominium, as of a specified date within 30 days of the filing of the application;

5. A statement, in a form acceptable to the Common Interest Community Board, of the condition of the title to the condominium project, including encumbrances, as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the Common Interest Community Board;

6. Copies of the instruments that will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements that a purchaser will be required to agree to or sign;

7. Copies of any management agreements, employment contracts, or other contracts or agreements affecting the use, maintenance, or access of all or a part of the condominium;

8. A statement of the zoning and other governmental regulations affecting the use of the condominium, including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments that affect the condominium;

9. A narrative description of the promotional plan for the disposition of the units in the condominium;

10. Plats and plans of the condominium that comply with the provisions of § 55.1-1920 other than the certification requirements, and that show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands, except that the Common Interest Community Board may establish by regulation or order requirements in lieu of the provisions of § 55.1-1920 for plats and plans of a condominium located outside the Commonwealth;

11. The proposed public offering statement;

12. Any bonds required to be posted pursuant to the provisions of this chapter;

13. A current financial statement or other documentation to demonstrate the declarant's financial ability to complete all proposed improvements on the condominium; and

14. Any other information that the Common Interest Community Board's regulations require for the protection of purchasers.

B. If the declarant registers additional units to be offered for disposition in the same condominium, he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

C. The declarant shall immediately report any material changes in the information contained in an application for registration.

D. Each application shall be accompanied by a fee in an amount established by the Common Interest Community Board pursuant to § 54.1-113. All fees shall be remitted by the Common Interest Community Board to the State Treasurer and shall be credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

1974, c. 416, § 55-79.89; 1975, c. 415; 1977, c. 428; 1988, c. 16; 2008, cc. 851, 871; 2011, c. 605; 2019, c. 712.

§ 55.1-1976. Public offering statement; condominium securities

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units being offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the Common Interest Community Board shall be in a form prescribed by its regulations and shall include the following:

1. The name and principal address of the declarant and the condominium;

2. A general narrative description of the condominium stating the total number of units in the offering, the total number of units planned to be sold and rented, and the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control; a projected budget for at least the first year of the condominium's operation, including projected common expense assessments for each unit; and provisions for reserves for capital expenditures and restraints on alienation;

4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;

6. The significant terms of any encumbrances, easements, liens, and matters of title affecting the condominium;

7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;

8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection B of § 55.1-1955;

9. A statement that, pursuant to subdivision 2 of § 55.1-1974, the purchaser may cancel the disposition within five calendar days of delivery of the current public offering statement or within five calendar days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium that are planned but not yet begun or begun but not yet completed. Such statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;

11. If the units in the condominium are being subjected to a time-share instrument pursuant to § 55.1-2208, the information required to be disclosed by § 55.1-2217;

12. A statement listing the facilities or amenities that are defined as common elements or limited common elements in the condominium instruments that are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities that are not included as part of any assessment and the amount of such fees or charges, if any, a purchaser may be required to pay;

13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

14. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display the flag of the United States, including reasonable restrictions as to the size, place, and manner of placement or display of such flag; and

15. Additional information required by the Common Interest Community Board to assure full and fair disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purposes before registration of the condominium project and shall be used afterwards only if it is used in its entirety. No person may advertise or represent that the Common Interest Community Board approves or recommends the condominium or disposition of any unit in the condominium. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the Common Interest Community Board requires it.

C. The Common Interest Community Board may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the Common Interest Community Board and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

D. If an interest in a condominium is currently registered with the U.S. Securities and Exchange Commission, a declarant satisfies all requirements relating to the preparation of a public offering statement in this chapter if he delivers to the purchaser and files with the Common Interest Community Board a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).

1974, c. 416, § 55-79.90; 1977, c. 428; 1986, c. 324; 1996, cc. 281, 888; 1999, c. 560; 2006, c. 646; 2007, cc. 854, 910; 2011, c. 605; 2014, c. 215; 2019, c. 712.

§ 55.1-1977. Inquiry and examination

Upon receipt of an application for registration, the Common Interest Community Board shall conduct an examination of the material submitted to determine that:

1. The declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;

2. There is reasonable assurance that all proposed improvements will be completed as represented;

3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the Common Interest Community Board in its regulations and afford full and fair disclosure;

4. The declarant has not, or if a corporation its officers and principals have not, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in the Commonwealth, United States, or any other state or foreign country within the past 10 years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions;

5. The public offering statement requirements of this chapter have been satisfied; and

6. All other requirements of this chapter and the Common Interest Community Board's regulations have been satisfied.

1974, c. 416, § 55-79.91; 1988, c. 15; 2019, c. 712.

§ 55.1-1978. Notice of filing and registration

A. Upon receipt of the application for registration, the Common Interest Community Board shall issue a notice of filing to the applicant within five business days. In the case of receipt of an application for a condominium that is a conversion

condominium, the Common Interest Community Board shall also issue within five business days a notice of filing to the chief administrative officer of the county or city in which the proposed condominium is located, and the notice shall include the name and address of the applicant and the name and address or location of the proposed condominium. Within 60 days from the date of the notice of filing, the Common Interest Community Board shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within 60 days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the Common Interest Community Board affirmatively determines, upon inquiry and examination, that the requirements of this chapter and the Common Interest Community Board's regulations have been met, it shall enter an order registering the condominium and shall designate the form of the public offering statement.

C. If the Common Interest Community Board determines upon inquiry and examination that any of the requirements of this chapter and the Common Interest Community Board's regulations have not been met, the Common Interest Community Board shall notify the applicant that the application for registration must be corrected in the particulars specified within 20 days. If the requirements are not met within the time allowed, the Common Interest Community Board shall enter an order rejecting the registration, and such order shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days after issuance of the order. During this 20-day period, the applicant may petition for reconsideration and shall be entitled to a hearing to correct the particulars specified in the Common Interest Community Board's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, is given to the applicant.

1974, c. 416, § 55-79.92; 1985, c. 107; 1988, c. 15; 2006, c. 726; 2019, c. 712.

§ 55.1-1979. Annual report by declarant

The declarant shall file a report in the form prescribed by the regulations of the Common Interest Community Board within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

1974, c. 416, § 55-79.93; 1975, c. 415; 1988, c. 15; 2012, cc. 481, 797; 2019, c. 712.

§ 55.1-1980. Annual report by unit owners' association

The unit owners' association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The filing of the annual report required by this section shall begin upon the termination of the declarant control period pursuant to § 55.1-1943. The annual report shall be accompanied by a fee in an amount established by the Common Interest Community Board, which shall be paid into the state treasury and credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

1993, c. 958, § 55-79.93:1; 2008, cc. 851, 871; 2009, c. 557; 2012, cc. 481, 797; 2019, cc. 391, 712.

§ 55.1-1981. Termination of registration

A. In the event that all of the units in the condominium have been disposed of and that all periods for conversion or expansion have expired, the Common Interest Community Board shall issue an order terminating the registration of the condominium.

B. Notwithstanding any other provision of this chapter, the Common Interest Community Board may administratively terminate the registration of a condominium if:

1. The declarant has not filed an annual report in accordance with § 55.1-1979 for three or more consecutive years; or

2. The declarant's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

2012, cc. 481, 797, § 55-79.93:2; 2019, c. 712.

§ 55.1-1982. Conversion condominiums; special provisions

A. For the purposes of this section:

"Affordable rent" means a monthly rent that does not exceed the greater of 30 percent of the annual gross income of the tenant household or 30 percent of the imputed income limit applicable to such unit size, as published by the Virginia Housing Development Authority for compliance with the Low Income Housing Tax Credit program.

"Certified nonprofit housing corporation" means a nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that has been certified by a locality as actively engaged in producing or preserving affordable housing as determined by criteria established by the locality.

"Disabled" means a person suffering from a severe, chronic physical or mental impairment that results in substantial functional imitations.

"Elderly" means a person not less than 62 years of age.

B. Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of § 55.1-1976 the following:

1. A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee;

2. Information on the actual expenditures made on all repairs, maintenance, operation, or upkeep of the subject building within the last three years, set forth in a tabular format with the proposed budget of the condominium and cumulatively broken down on a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws. If such building has not been occupied for a period of three years, then the information shall be set forth for the maximum period such building has been occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect;

4. A statement of the declarant as to the present condition of all structural components and major utility installations in the condominium, including the approximate dates of construction, installation, and major repairs and the expected useful life of each such item, together with the estimated cost of replacing each such item;

5. If any building included or that may be included in the condominium was substantially completed prior to July 1, 1978, a statement that each such building has been inspected for asbestos in accordance with standards in effect at the time of inspection, or that an asbestos inspection will be conducted, and whether asbestos requiring response actions has been found and, if found, that response actions have been or will be completed in accordance with applicable standards prior to the conveyance of any unit in such building. Any asbestos management program or response action undertaken by the building owner shall comply with the standards promulgated pursuant to § 2.2-1164.

C. In the case of a conversion condominium, the declarant shall give, at the time specified in subsection D, formal notice to each of the tenants of the building that the declarant has submitted or intends to submit to the provisions of this chapter. This notice shall advise each tenant of (i) the offering price of the unit he occupies; (ii) the projected common expense assessments against that unit for at least the first year of the condominium's operation; (iii) any relocation services or assistance, public or private, of which the declarant is aware; (iv) any measures taken or to be taken by the declarant to reduce the incidence of tenant dislocation; and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. During the first 60 days after such notice is mailed or hand delivered, each of the tenants shall have the exclusive right to purchase the unit he occupies, but only if such unit is to be retained in the conversion condominium without substantial alteration in its physical layout. If the conversion condominium is subject to local ordinances that have been adopted pursuant to subsections G and H, any tenant who is disabled or elderly may assign the exclusive right to purchase his unit to a governmental agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent, following the provisions of subsection G. The acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not (a) exceed the greater of one unit or five percent of the total number of units in the condominium or (b) impede the condominium conversion process. In determining which, if any, units shall be acquired pursuant to this subsection, preference shall be given to elderly or disabled tenants.

The notice required in this subsection shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the conversion to condominium. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55.1-1410, except that, despite the provisions of § 55.1-1410, a tenancy from month-to-month may only be terminated upon 120 days' notice when such termination is in regard to the creation of a conversion condominium. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the declarant, in order to then terminate the tenancy, such declarant shall give the tenant a further notice as provided in § 55.1-1410. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided by subsection A of § 55.1-1229 and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations, or improvements, provided that (i) the making of the same does not constitute an actual or constructive eviction of the tenant and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. The declarant shall also provide general notice to the tenants of the condominium or proposed condominium at the time of application to the Common Interest Community Board in addition to the formal notice required by this subsection.

D. The declarant of a conversion condominium shall, in addition to the requirements of § 55.1-1975, include with the application for registration a copy of the formal notice set forth in subsection C and a certified statement that such notice, fully complying with the provisions of subsection C, shall be at the time of the registration of such condominium mailed or delivered to each of the tenants in the building for which registration is sought. The price and projected common expense assessments for each unit need not be filed with the Common Interest Community Board until such notice is mailed to the tenants.

E. Notwithstanding the provisions of § 55.1-1901, in the case of any conversion condominium created under the provisions of the Horizontal Property Act (§ 55.1-2000 et seq.) for which a final report has not been issued by the Common Interest Community Board pursuant to former § 55-79.21 prior to June 1, 1975, the provisions of subsections B and C shall apply and the declarant shall be required to furnish evidence of full compliance with subsections B and C prior to the issuance by the Common Interest Community Board of a final report for such conversion condominium.

F. Any locality may require by ordinance that the declarant of a conversion condominium file with that governing body all information that is required by the Common Interest Community Board pursuant to § 55.1-1975 and a copy of the formal notice required by subsection C. Such information shall be filed with that governing body when the application for registration is filed with the Common Interest Community Board, and such copy of the formal notice shall be filed with that governing body. There shall be no fees for such filings.

G. The governing body of any locality may enact an ordinance requiring that elderly or disabled tenants occupying as their residence, at the time of issuance of the general notice required by subsection C, apartments or units in a conversion condominium be offered leases or extensions of leases on the apartments or units they then occupied, or on other apartments or units of at least equal size and overall quality. The terms and conditions of such leases or extensions shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion condominium and such lease shall include or incorporate by reference the bylaws or rules and regulations, if any, of the association. No such ordinance shall require that such leases or extensions be offered on more than 20 percent of the apartments or units in such conversion condominium, nor shall any such ordinance require that such leases or extensions extend beyond three years from the date of such notice. Such leases or extensions shall not be required, however, in the case of any apartments or units that will in the course of the conversion be substantially altered in the physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

H. The governing body of any county utilizing the optional urban county executive form of government (§ 15.2-800 et seq.) or the optional county manager plan of government (§ 15.2-702 et seq.), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential condominium converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount that the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Transportation.

1974, c. 416, § 55-79.94; 1975, c. 415; 1980, cc. 727, 738; 1981, cc. 455, 503; 1982, cc. 273, 475, 663; 1983, c. 310; 1984, cc. 321, 601; 1985, c. 69; 1987, c. 412; 1988, c. 723; 1989, c. 398; 1991, c. 497; 1993, c. 634; 2007, cc. 602, 665; 2019, c. 712.

§ 55.1-1983. Escrow of deposits

A. Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose that is federally insured and located in the Commonwealth, except where such deposits are being held by a real estate broker or attorney licensed under the laws of the Commonwealth, in which case such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

B. In lieu of escrowing deposits as provided in subsection A, the declarant of a condominium consisting of more than 50 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth below; or

2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth below.

The surety bond or letter of credit shall be maintained until (i) the granting of a deed to the unit, (ii) the purchaser's default under a purchase contract for the unit entitling the declarant to retain the deposit, or (iii) the refund of the deposit to the purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The declarant shall file the bond with the Common Interest Community Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds $10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. $75,000 or less, the blanket bond shall be $75,000;

2. More than $75,000 but less than $200,000, the blanket bond shall be $200,000;

3. $200,000 or more but less than $500,000, the blanket bond shall be $500,000;

4. $500,000 or more but less than $1 million, the blanket bond shall be $1 million; and

5. $1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for use and benefit of every person protected under this chapter. The declarant shall file the letter of credit with the Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds $10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. $75,000 or less, the blanket letter of credit shall be $75,000;

2. More than $75,000 but less than $200,000, the blanket letter of credit shall be $200,000;

3. $200,000 or more but less than $500,000, the blanket letter of credit shall be $500,000;

4. $500,000 or more but less than $1 million, the blanket letter of credit shall be $1 million; and

5. $1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a declarant maintains in any calendar year, the total amount of deposits considered held by the declarant shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

1974, c. 416, § 55-79.95; 1977, c. 91; 2007, c. 445; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-1984. Declarant to deliver declaration to purchaser

The declarant shall within 10 days of recordation of the condominium instruments as provided for in §§ 55.1-1907 and 55.1-1911 forward to each purchaser at his last known address by first-class mail, return receipt requested, an exact copy of the recorded declaration and bylaws.

1974, c. 416, § 55-79.96; 2019, c. 712.

§ 55.1-1985. Investigations and proceedings

A. Whenever the Common Interest Community Board receives a written complaint that appears to state a valid claim, the Common Interest Community Board shall make necessary public or private investigations in accordance with law within or outside of the Commonwealth to determine whether any declarant or its agents, employees, or other representatives have violated or are about to violate this chapter or any Common Interest Community Board regulation or order, or to aid in the enforcement of this chapter or in the prescribing of Common Interest Community Board regulations and forms. The Common Interest Community Board may also in like manner and with like authority investigate written complaints against persons other than the declarant or its agents, employees, or other representatives.

B. For the purpose of any investigation or proceeding under this chapter, the Common Interest Community Board or any officer designated by regulation may administer oaths or affirmations and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected by such failure, the Common Interest Community Board may apply to the Circuit Court of the County of Henrico for an order compelling compliance.

1974, c. 416, § 55-79.99; 1993, c. 198; 2011, c. 605; 2019, c. 712.

§ 55.1-1986. Cease and desist orders

A. The Common Interest Community Board may issue an order requiring a person to cease and desist from any of the unlawful practices enumerated in subdivisions 1 through 5 and to take such affirmative action as in the judgment of the Common Interest Community Board will carry out the purposes of this chapter if the Common Interest Community Board determines after notice and hearing that such person has:

1. Violated any provision of this chapter;

2. Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

3. Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the Common Interest Community Board;

4. Disposed of any units that have not been registered with the Common Interest Community Board; or

5. Violated any lawful order or regulation of the Common Interest Community Board.

B. If the Common Interest Community Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary order to cease and desist or to take such affirmative action as may be deemed appropriate by the Common Interest Community Board. Prior to issuing the

temporary order, the Common Interest Community Board shall give notice of the proposal to issue a temporary order to the person. Every temporary order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether it becomes permanent.

1974, c. 416, § 55-79.100; 1975, c. 415; 2019, cc. 467, 712.

§ 55.1-1987. Revocation of registration

A. A registration may be revoked by the Common Interest Community Board after notice and hearing upon a written finding of fact in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that the declarant has:

1. Failed to comply with the terms of a cease and desist order;

2. Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

3. Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

4. Failed faithfully to perform any stipulation or agreement made with the Common Interest Community Board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

5. Made intentional misrepresentations or concealed material facts in an application for registration.

B. If the Common Interest Community Board finds after notice and a hearing that the developer has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

1974, c. 416, § 55-79.101; 2019, c. 712.

§ 55.1-1988. Judicial review

Proceedings for judicial review shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1974, c. 416, § 55-79.102; 1996, c. 573; 2019, c. 712.

§ 55.1-1989. Penalties

Any person who willfully violates any provision of § 55.1-1972, 55.1-1974, 55.1-1975, 55.1-1976, 55.1-1979, 55.1-1982, or 55.1-1983 or any regulation adopted under or order issued pursuant to § 55.1-1971, or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact is guilty of a misdemeanor and may be fined not less than $1,000 or double the amount of gain from the transaction, whichever is the larger, but not more than $50,000, or he may be imprisoned for not more than six months, or both, for each offense.

1974, c. 416, § 55-79.103; 2019, c. 712.

Article 5. Disclosure Requirements; Authorized Fees

§ 55.1-1990. Resale by purchaser; contract disclosure; right of cancellation

A. For purposes of this article, unless the context requires a different meaning:

"Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this article.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § 55.1-1991.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Ratified real estate contract" includes any addendum to such contract.

"Receives," "received," or "receiving" the resale certificate means that the purchaser or purchaser's authorized agent has received the resale certificate by one of the methods specified in this article.

"Resale certificate update" means an update of the financial information referenced in subdivisions A 2 through 9 and 12 of § 55.1-1991. The update shall include a copy of the original resale certificate.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

B. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and subsection A of § 55.1-1972, the unit owner shall disclose in the contract that (i) the unit is located within a development that is subject to the Condominium Act; (ii) the Condominium Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days, or up to seven days if extended by the ratified real estate contract, after receiving the resale certificate or being notified that the resale certificate will not be available; (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55.1-1992, as appropriate; and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55.1-1980, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C of § 55.1-1991, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

C. If the contract does not contain the disclosure required by subsection B, the purchaser's sole remedy is to cancel the contract prior to settlement.

D. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55.1-1992, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, or up to seven days if extended by the ratified real estate contract, if on or before the date that the purchaser signs the contract, the purchaser receives the resale certificate, is notified that the resale certificate will not be available, or receives a resale certificate that does not contain the information required by this subsection to be included in the resale certificate; (ii) within three days, or up to seven days if extended by the ratified real estate contract, after receiving the resale certificate if the resale certificate, notice that the resale certificate will not be available, or a resale certificate that does not contain the information required by this subsection to be included in the resale certificate is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt is obtained; or (iii) within six days, or up to 10 days if extended by the ratified real estate contract, after the postmark date if the resale certificate, notice that the resale certificate will not be available, or a resale certificate that does not contain the information required by this subsection to be included in the resale certificate is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the resale certificate will not be available and the resale certificate is not delivered to the purchaser.

Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing in the form of a certificate of service prepared by the sender confirming such mailing;

3. Electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.

1974, c. 416, § 55-79.97; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. 172; 1997, c. 222; 1998, cc. 32, 454, 463; 1999, c. 263; 2001, c. 556; 2002, cc. 459, 509; 2005, c. 415; 2007, cc. 696, 712, 854, 910; 2008, cc. 851, 871; 2011, c. 334; 2013, cc. 357, 492; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 393, 406; 2018, c. 70; 2019, cc. 364, 513, 712; 2020, cc. 121, 605.

§ 55.1-1991. Contents of resale certificate; delivery

A. A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55.1-1966, which need not be notarized, and, if applicable, an appropriate statement pursuant to § 55.1-1969;

2. A statement of any expenditure of funds approved by the unit owners' association or the executive board that requires an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;

3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the condominium unit and the use of the common elements, and the status of the account;

4. A statement of whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;

5. The current reserve study report or a summary of such report and a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the executive board;

6. A copy of the unit owners' association's current budget or a summary of such budget prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due of any outstanding loans of the unit owners' association;

7. A statement of the nature and status of any pending actions or unpaid judgments to which the unit owners' association is a party that either could or would have a material impact on the unit owners' association or the unit owners or that relates to the unit being purchased;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including the fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, are or are not in violation of the condominium instruments;

10. A copy of the current bylaws, rules and regulations, and architectural guidelines adopted by the unit owners' association and the amendments to any such documents;

11. A statement of whether any portion of the condominium is located within a development subject to the Property Owners' Association Act (§ 55.1-1800 et seq.);

12. A copy of the notice given to the unit owner by the unit owners' association of any current or pending rule or architectural violation;

13. A copy of any approved minutes of the executive board and unit owners' association meetings for the six calendar months preceding the request for the resale certificate;

14. Certification that the unit owners' association has filed with the Common Interest Community Board the annual report required by § 55.1-1980, the filing number assigned by the Common Interest Community Board, and the expiration date of such filing;

15. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

16. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display the flag of the United States, including reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;

17. A statement setting forth any restriction, limitation, or prohibition on the right of a unit owner to install or use solar energy collection devices on the unit owner's property;

18. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies; and

19. A copy of the fully completed form developed by the Common Interest Community Board pursuant to § 54.1-2350.

B. Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

C. The resale certificate shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. Within 14 days after receipt of a written request and instructions by a seller or the seller's authorized agent, the association, the association's managing agent, or any third party preparing a resale certificate on behalf of a unit owners' association shall deliver the resale certificate as directed in the written request. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or the seller's authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or the seller's authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or the seller's authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The resale certificate shall not be delivered in hard copy if the requester has requested delivery of such resale certificate electronically. If the resale certificate is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § 55.1-1992. If the seller or the seller's authorized agent asks that the resale certificate be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the unit owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § 55.1-1992. Regardless of whether the resale certificate is delivered in paper form or electronically, the preparer of the resale certificate shall provide such resale certificate directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

E. Subject to the provisions of § 55.1-1972, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55.1-2000 et seq.).

F. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the resale certificate may be made by the unit owner or the seller's authorized agent.

G. If the unit is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last resale certificate or disclosure packet.

1974, c. 416, § 55-79.97; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. 172; 1997, c. 222; 1998, cc. 32, 454, 463; 1999, c. 263; 2001, c. 556; 2002, cc. 459, 509; 2005, c. 415; 2007, cc. 696, 712, 854, 910; 2008, cc. 851, 871; 2011, c. 334; 2013, cc. 357, 492; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 393, 406; 2018, c. 70; 2019, c. 712; 2022, cc. 65, 66.

§ 55.1-1992. Fees for resale certificate

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, for the preparation and issuance of the resale certificate required by §§ 55.1-1990 and 55.1-1991, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

B. A reasonable fee may be charged by the preparer of the resale certificate as follows:

1. For the inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed $100;

2. For preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed $150 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of $125, for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. Only one fee shall be charged for the preparation and delivery of the resale certificate;

3. At the option of the seller or the seller's authorized agent, with the consent of the unit owners' association or the common interest community manager, for expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed $50;

4. At the option of the seller or the seller's authorized agent, for an additional hard copy of the resale certificate, a fee not to exceed $25 per hard copy;

5. At the option of the seller or the seller's authorized agent, for hand delivery or overnight delivery of the resale certificate, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service; and

6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee not to exceed $50.

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55.1-1964, if not paid at settlement or within 60 days of the delivery of the resale certificate, whichever occurs first.

For purposes of this section, an expedite fee shall be charged only if the inspection and preparation of delivery of the resale certificate are completed within five business days of the request for a resale certificate.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. No additional fee shall be charged for access to the unit owners' association's or common interest community manager's website. The unit owners' association or its common interest community

manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or the seller's authorized agent will know such fees at the time of requesting the resale certificate.

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requester, payable at settlement. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55.1-1964. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent or the purchaser or the purchaser's authorized agent, may request a resale certificate update. The requester shall specify whether the resale certificate update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the resale certificate update or financial update may be charged by the preparer, not to exceed $50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit, as authorized in the declaration, for a fee not to exceed $100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' association or common interest community manager may require the requester to request the specified update electronically. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the unit owners' association. If the requester asks that the specified update be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or the seller's authorized agent.

K. When a resale certificate has been delivered as required by § 55.1-1991, the unit owners' association shall, as to the purchaser, be bound by the statements set forth in the certificate as to the status of the assessment account and the status

of the unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § 55.1-1991, failure to provide the resale certificate substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $1,000. The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the resale certificate within 14 days against any (i) unit owners' association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

2008, cc. 851, 871, § 55-79.97:1; 2011, cc. 334, 577, 585; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 393, 406; 2019, c. 712.

§ 55.1-1993. Properties subject to more than one declaration

If the unit is subject to more than one declaration, the unit owners' association or its common interest community manager may charge the fee authorized by § 55.1-1992 for each of the applicable associations, provided, however, that no association shall charge an inspection fee unless the association has architectural control over the unit.

2008, cc. 851, 871, § 55-79.97:2; 2019, c. 712.

§ 55.1-1994. Requests by settlement agents

A. The settlement agent may request a financial update from the preparer of the resale certificate. The preparer of the resale certificate shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions; however, a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the unit owners' association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the resale certificate with (i) the complete record name of the seller, (ii) the address of the subject unit, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

2008, cc. 851, 871, § 55-79.97:3; 2019, c. 712.

§ 55.1-1995. Exceptions to disclosure requirements

A. The resale certificate required by this article need not be provided in the case of:

1. A disposition of a unit by gift;

2. A disposition of a unit pursuant to court order if the court so directs;

3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or

4. A disposition of a unit by a sale at auction when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.

B. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.

1974, c. 416, § 55-79.97; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. 172; 1997, c. 222; 1998, cc. 32, 454, 463; 1999, c. 263; 2001, c. 556; 2002, cc. 459, 509; 2005, c. 415; 2007, cc. 696, 712, 854, 910; 2008, cc. 851, 871; 2011, c. 334; 2013, cc. 357, 492; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 393, 406; 2018, c. 70; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

7/21/2022

Code of Virginia
Title 55.1. Property and Conveyances
Subtitle IV. Common Interest Communities

Chapter 21. Virginia Real Estate Cooperative Act

Article 1. General Provisions

§ 55.1-2100. Definitions

As used in this chapter or in the declaration and bylaws, unless provided otherwise or unless the context requires a different meaning:

"Affiliate of a declarant" means any person that controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (a) is a general partner, officer, director, or employer of the person; (b) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this definition are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55.1-2132.

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

"Common elements" means all portions of a cooperative other than the units of such cooperative.

"Common expenses" means any expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55.1-2118.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this chapter, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55.1-2118 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert that (i) as part of a common promotional plan, offers to dispose of its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or

(iii) applies for registration of a cooperative under Article 5 (§ 55.1-2173 et seq.).

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of subdivision 2 or 4 of § 55.1-2113 for the exclusive use of at least one unit but fewer than all of the units.

"Master association" means an organization described in § 55.1-2130, whether or not it is also an association described in § 55.1-2132.

"Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person that owns a cooperative interest, other than as security for an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55.1-2118 until that cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, that, by means of a voluntary transfer, acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes (i) parcels with or without upper or lower boundaries and (ii) spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, that secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 55.1-2155; (ii) exercise any development right pursuant to § 55.1-2120; (iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate that may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § 55.1-2130; or (vii) appoint or remove any officer of the association, any master association, or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion of such estate or interest.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

1982, c. 277, § 55-426; 2005, c. 436; 2019, c. 712.

§ 55.1-2101. Applicability

A. This chapter applies to all cooperatives created within the Commonwealth after July 1, 1982. Unless the declaration provides that the entire chapter is applicable, such a cooperative is subject only to §§ 55.1-2104 and 55.1-2105 if the cooperative contains only units restricted to nonresidential use or contains no more than three units and is not subject to any development rights.

B. Except as provided in subsection C, §§ 55.1-2100, 55.1-2104, 55.1-2105, 55.1-2109, 55.1-2114, and 55.1-2131, subdivisions A 1 through 6 and 11 through 17 of § 55.1-2133, and §§ 55.1-2143, 55.1-2148, 55.1-2151, 55.1-2161, 55.1-2169, and 55.1-2170 apply to all cooperatives created in the Commonwealth before July 1, 1982. Those sections apply only with respect to events and circumstances occurring after July 1, 1982, and do not invalidate existing provisions of the cooperative documents of those cooperatives. With regard to any cooperative created before July 1, 1982, § 55.1-2104 applies only to real estate acquired by that cooperative's association on or after that date. For the purposes of this section, a cooperative was created before July 1, 1982, if the cooperative was conveyed to the association before that date.

C. If a cooperative created within the Commonwealth before July 1, 1982, contains no more than three units and is not subject to any development rights, it is subject only to §§ 55.1-2104 and 55.1-2105, unless the declaration is amended to make any or all of the sections enumerated in subsection B apply to that cooperative.

D. This chapter does not apply to cooperatives or cooperative interests located outside the Commonwealth, but the public offering statement provisions as given in §§ 55.1-2153 through 55.1-2160 apply to all contracts for the disposition of cooperative interests signed in the Commonwealth by any party, unless exempt under subsection B of § 55.1-2153. The Common Interest Community Board regulations provisions under Article 5 (§ 55.1-2173 et seq.) apply to any such offering in the Commonwealth.

E. This chapter does not apply to any cooperatives that receive federal funding pursuant to the public housing or Section 8 program under the United States Housing Act of 1937, as amended.

F. This chapter does not apply to any cooperative that, when acquired by an association, is subject to a mortgage or deed of trust securing an indebtedness owed to any government or governmental authority to which the association has contractual obligations in addition to those set forth in such mortgage or deed of trust.

1982, c. 277, § 55-425; 1983, c. 312; 1986, cc. 368, 557; 2019, c. 712.

§ 55.1-2102. Variation by agreement

Except as expressly provided in this chapter, provisions of this chapter shall not be varied by agreement, and rights conferred by this chapter shall not be waived. A declarant shall not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

1982, c. 277, § 55-427; 2019, c. 712.

§ 55.1-2103. Property classification of cooperative interests; taxation

A. A cooperative interest is real estate for all purposes. Unless waived by a proprietary lessee, a cooperative interest is subject to the provisions of Title 34 (§ 34-1 et seq.), regarding the homestead exemption.

B. Any portion of the common elements for which the declarant has reserved any development right shall be separately taxed and assessed against the declarant, and the declarant alone is liable for the payment of those taxes.

C. When the highest and best use of any parcel improved by a multi-unit cooperative apartment complex is achieved by sale of the cooperative apartment units as individual units, the fair market value of the parcel shall be determined by aggregating the fair market value of all taxable real estate that is part of the parcel, including each cooperative apartment unit and common elements. The fair market value of each such cooperative apartment unit shall be established by determining its fair market value for sale as an individual unit, determined in the same manner, mutatis mutandis, as the fair market value of condominium units. Tax bills shall be issued for each individual cooperative apartment unit.

No assessment of any parcel improved by a multi-unit cooperative apartment complex, whether the assessment was made before or after the adoption of this subsection, shall be held to be invalid because of the use of the method described in this subsection to determine the assessment.

D. Any duly authorized real estate assessor, board of assessors, or department of real estate assessments may require that all declarants, associations, master associations, and proprietary lessees' associations in the county or city subject to local taxation furnish to such assessor, board, or department on or before a time specified a statement listing all transfers of the cooperative apartment units over a specified period of time and a statement listing all owners and proprietary lessees of the cooperative apartment units as of a specified date. Each such statement shall be certified as to its accuracy by the declarant, association, master association, or proprietary lessees' association for which the statement is furnished or by a duly authorized agent of such declarant or association. Any statement required by this subsection shall be kept confidential in accordance with the provisions of § 58.1-3.

E. Subsections C and D apply to all cooperatives created in the Commonwealth, whether created before, on, or after July 1, 1982. However, subsections C and D do not apply to any multi-unit cooperative apartment complex the cooperative apartment units of which have been continually in use as such since December 31, 1967.

F. Any residential cooperative association the members of which are owners of cooperative interests in a cooperative under this chapter shall not be deemed to be a business for any state and local purposes, including liability for payment of sales, meals, hotel, motel, or gross receipts taxes and business licenses, to the extent that such residential cooperative association collects payments from residents of such cooperative.

G. Any tangible personal property owned by a residential cooperative association that would be considered household goods and personal effects if owned and used by an individual or by a family or household incident to maintaining an abode shall be considered household goods and personal effects owned and used by an individual or by a family or household incident to maintaining an abode for the purposes of § 58.1-3504 and any local ordinance authorized pursuant to § 58.1-3504.

1982, c. 277, § 55-428; 1988, c. 412; 2002, c. 34; 2003, c. 351; 2019, c. 712.

§ 55.1-2104. Applicability of local ordinances, regulations, and building codes; local authority

A. No zoning or other land use ordinance shall prohibit cooperatives as such by reason of their form of ownership. No cooperative shall be treated differently by any zoning or other land use ordinance that would permit a physically identical project or development under a different form of ownership.

B. Subdivision and site plan ordinances in any locality shall apply to any cooperative in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership. Nevertheless, the declarant need not apply for or obtain subdivision approval to record cooperative instruments against a portion of the land that may be submitted to the cooperative if the site plan approval for the land being submitted to the cooperative has first been obtained.

C. During development of a cooperative containing additional land or withdrawable land, phase lines created by the cooperative instruments shall not be considered property lines for purposes of subdivision. If the cooperative may no longer be expanded by the addition of additional land, the owner of the land not part of the cooperative shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the cooperative, the cooperative and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided that such land is subject to an approved site plan.

D. Localities may provide by ordinance that proposed cooperatives comprising conversion buildings and the use of such conversion buildings that do not conform to the zoning, land use, and site plan regulations of the respective county or city in which the property is located shall secure a special use permit, a special exception, or variance, as applicable, prior to such property's becoming a cooperative. The local authority shall grant a request for such a special use permit, special exception, or variance filed on or after July 1, 1982, if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. The local authority shall not unreasonably delay action on any such request. In the event of an approved conversion, a locality, sanitary district, or other political subdivision may impose such charges and fees as are lawfully imposed by such locality, sanitary district, or other political subdivision as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the locality, sanitary district, or political subdivision as a result of the conversion.

E. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.), or any local ordinances regulating the design and construction of roads, sewer and water lines, stormwater management facilities, or other public infrastructure, that is not expressly applicable to cooperatives by reason of their form of ownership to a cooperative in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

1982, c. 277, § 55-429; 2004, c. 242; 2019, c. 712.

§ 55.1-2105. Eminent domain

A. If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the proprietary lessee with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award for such unit shall include compensation to the proprietary lessee for the value of his cooperative interest. Upon acquisition, unless the order otherwise provides, that cooperative interest's allocated interests are automatically reallocated to the remaining cooperative interests in proportion to the respective allocated interests of those cooperative interests before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

B. Except as provided in subsection A, if part of a unit is acquired by eminent domain, the award for such unit shall compensate the proprietary lessee for the reduction in value of his cooperative interest. Unless the order provides otherwise, upon acquisition (i) that cooperative interest's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (ii) the portion of the allocated interests divested from the cooperative interest of which the partially acquired unit is a part is automatically reallocated to that cooperative interest and the remaining units in proportion to the respective allocated interests of those cooperative interests before the taking, with the cooperative interest of which the partially acquired unit is a part participating in the reallocation on the basis of its reduced allocated interests.

C. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be equally divided among the proprietary lessees of the units to which that limited common element was allocated at the time of acquisition.

D. The court order shall be recorded in every county or city in which any portion of the cooperative is located.

1982, c. 277, § 55-430; 2019, c. 712.

§ 55.1-2106. General principles of law applicable

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performances, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

1982, c. 277, § 55-431; 2019, c. 712.

§ 55.1-2107. Construction against implicit repeal

This chapter, being a general act intended as a unified coverage of its subject matter, shall not be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

1982, c. 277, § 55-432; 2019, c. 712.

§ 55.1-2108. Uniformity of application and construction

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to cooperatives in the Commonwealth.

1982, c. 277, § 55-433; 2019, c. 712.

§ 55.1-2109. Unconscionable agreement or term of contract

A. The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may (i) refuse to enforce the contract, (ii) enforce the remainder of the contract without the unconscionable clause, or (iii) limit the application of any unconscionable clause in order to avoid an unconscionable result.

B. Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

1. The commercial setting of the negotiations;

2. Whether a party has knowingly taken advantage of the inability of the other party to reasonably protect his interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

3. The effect and purpose of the contract or clause; and

4. If a sale, any gross disparity at the time of contracting between the amount charged for the cooperative interest and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions; however, a disparity between the contract price and the value of the cooperative interest measured by the price at which similar cooperative interests were readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

1982, c. 277, § 55-434; 2019, c. 712.

§ 55.1-2110. Obligation of good faith

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

1982, c. 277, § 55-435; 2019, c. 712.

§ 55.1-2111. Remedies to be liberally administered

A. The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in a position as good as its position had the other party fully performed. However, consequential, special, or punitive

damages may not be awarded except as specifically provided in this chapter or by other rule of law.

B. Any right or obligation declared by this chapter is enforceable by judicial proceeding.

1982, c. 277, § 55-436; 2019, c. 712.

Article 2. Creation, Alteration, and Termination of Cooperatives

§ 55.1-2112. Creation of cooperative ownership

A cooperative may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed and by conveying to the association the real estate subject to that declaration. The declaration shall be recorded in every county or city in which any portion of the cooperative is located, indexed in the grantee's index in the name of the cooperative and the association, and indexed in the grantor's index in the name of each person executing the declaration.

1982, c. 277, § 55-438; 2019, c. 712.

§ 55.1-2113. Unit boundaries

Except as otherwise provided by the declaration:

1. If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces of such walls, floors, or ceilings are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside of the designated boundaries of a unit, any portion of such fixture serving only that unit is a limited common element allocated solely to that unit, and any portion of such fixture serving more than one unit or any portion of the common elements is a part of the common elements.

3. Subject to the provisions of subdivision 2, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

4. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, or patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

1982, c. 277, § 55-439; 2019, c. 712.

§ 55.1-2114. Construction and validity of declaration and bylaws

A. All provisions of the declaration and bylaws are severable.

B. The rule against perpetuities shall not be applied to defeat any provision of the declaration, bylaws, or rules and regulations adopted pursuant to subdivision A 1 of § 55.1-2133.

C. In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent that the declaration is inconsistent with this chapter.

D. Title to a cooperative interest is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

1982, c. 277, § 55-440; 2019, c. 712.

§ 55.1-2115. Description of units

A description of a unit that sets forth the name of the cooperative, the recording data for the declaration, the county or city in which the cooperative is located, and the identifying number of the unit is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit that were created by the declaration or bylaws.

1982, c. 277, § 55-441; 2019, c. 712.

§ 55.1-2116. Contents of declaration

A. The declaration shall contain:

1. The name of the cooperative, which shall include the word "cooperative" or be followed by the words "a cooperative," and the association;

2. The name of every county or city in which any part of the cooperative is situated;

3. A legally sufficient description of the real estate included in the cooperative;

4. A statement of the maximum number of units that the declarant reserves the right to create;

5. A description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

6. A description of any limited common elements, other than those specified in subdivisions 2 and 4 of § 55.1-2113;

7. A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in subdivisions 2 and 4 of § 55.1-2113, together with a statement that they may be so allocated;

8. A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights are required to be exercised;

9. If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right is required to be exercised in all or in any other portion of the remainder of that real estate;

10. Any other conditions or limitations under which the rights described in subdivision 8 may be exercised or will lapse;

11. An allocation to each cooperative interest of the allocated interests in the manner described in § 55.1-2118;

12. Any restrictions on (i) use and occupancy of the units, (ii) alienation of the cooperative interests, and (iii) the amount for which a cooperative interest may be sold or the amount that may be received by a proprietary lessee upon sale of, condemnation of, or casualty loss to the unit or the cooperative or termination of the cooperative;

13. The recording data for recorded easements and licenses appurtenant to, or included in, the cooperative or to which any portion of the cooperative is or may become subject by virtue of a reservation in the declaration; and

14. All matters required by §§ 55.1-2117, 55.1-2118, 55.1-2119, 55.1-2125, and 55.1-2126 and subsection D of § 55.1-2134.

B. The declaration may contain any other matters the declarant deems appropriate.

1982, c. 277, § 55-442; 2019, c. 712.

§ 55.1-2117. Leasehold cooperatives

A. The expiration or termination of any lease that may terminate the cooperative or reduce its size, or a memorandum of such lease, shall be recorded. The declaration shall state:

1. The recording data for the lease or a statement of where the complete lease may be inspected;

2. The date on which the lease is scheduled to expire;

3. A legally sufficient description of the real estate subject to the lease;

4. Any right of the proprietary lessees to redeem the reversion and how those rights may be exercised, or a statement that they do not have those rights;

5. Any right of the proprietary lessees to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

6. Any rights of the proprietary lessees to renew the lease and the conditions, if any, of any renewal, or a statement that they do not have those rights.

B. Acquisition of the leasehold interest of any proprietary lessee by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all proprietary lessees subject to that reversion or remainder are acquired.

C. If the expiration or termination of a lease decreases the number of units in a cooperative, the allocated interests shall be reallocated in accordance with subsection A of § 55.1-2118 as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

1982, c. 277, § 55-443; 2019, c. 712.

§ 55.1-2118. Allocation of ownership interests, votes, and common expense liabilities

A. The declaration shall allocate an ownership interest in the association a fraction or percentage of the common expenses of the association and a portion of the votes in the association, or to each cooperative interest in the cooperative, and state the formulas used to establish those allocations. Those allocations shall not discriminate in favor of cooperative interests owned by the declarant or an affiliate of the declarant.

B. If units may be added to or withdrawn from the cooperative, the declaration shall state the formulas to be used to reallocate the allocated interests among all cooperative interests included in the cooperative after the addition or withdrawal.

C. The declaration may provide (i) that different allocations of votes shall be made to the cooperative interests on particular matters specified in the declaration, (ii) for cumulative voting only for the purpose of electing members of the executive board, and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. No declarant shall utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor shall cooperative interests constitute a class because they are owned by a declarant.

D. Except for minor variations due to rounding, the sum of the common expense liabilities allocated at any time to all the cooperative interests must equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

E. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of the ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

1982, c. 277, § 55-444; 2019, c. 712.

§ 55.1-2119. Limited common elements

A. Except for the limited common elements described in subdivisions 2 and 4 of § 55.1-2113, the declaration shall specify to which of the units each limited common element is allocated. That allocation may not be altered without the consent of the proprietary lessees whose units are affected.

B. Unless the declaration provides otherwise, a limited common element may be reallocated by an amendment to the declaration executed by the proprietary lessees between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy to the association, which shall record it. The amendment shall be recorded in the names of the parties and the cooperative.

C. A common element not previously allocated as a limited common element shall not be so allocated except pursuant to provisions in the declaration made in accordance with subdivision A 7 of § 55.1-2116. The allocations shall be made by amendments to the declaration.

1982, c. 277, § 55-445; 2019, c. 712.

§ 55.1-2120. Exercise of development rights

A. To exercise any development right reserved under subdivision A 8 of § 55.1-2116, the declarant shall prepare, execute, and record an amendment to the declaration as specified in § 55.1-2127. The amendment to the declaration must assign an identifying number to each new unit created and, except in the case of subdivision or conversion of units described in subsection B, reallocate the allocated interests among all cooperative interests. The amendment must describe any common elements and any limited common elements created by such amendment and, in the case of limited common elements, designate to which of the units each is allocated to the extent required by § 55.1-2119.

B. Development rights may be reserved within any real estate added to the cooperative if the amendment adding that real estate includes all matters required by § 55.1-2116 or 55.1-2117, as appropriate. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to subdivision A 8 of § 55.1-2116.

C. Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

1. If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interest of which that unit is a part among the other cooperative interests as if that unit had been taken by eminent domain.

2. If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the cooperative interest of which that unit is a part among the cooperative interests created by the subdivision in any reasonable manner prescribed by the declarant.

D. If the declaration provides, pursuant to subdivision A 8 of § 55.1-2116, that all of or a portion of the real estate is subject to the development right of withdrawal:

1. If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a cooperative interest has been conveyed to a purchaser; and

2. If a portion or portions are subject to withdrawal, no portion may be withdrawn after a cooperative interest in that portion has been conveyed to a purchaser.

1982, c. 277, § 55-446; 2019, c. 712.

§ 55.1-2121. Alterations of units

Subject to the provisions of the declaration and other provisions of law, a proprietary lessee:

1. May make any improvements or alterations to his unit that do not impair the structural integrity or the electrical or mechanical systems of any portion of the cooperative;

2. Shall not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the cooperative, other than the interior of the unit, without permission of the association;

3. After acquiring a cooperative interest of which an adjoining unit or an adjoining part of an adjoining unit is a part, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or electrical or mechanical systems of any portion of the cooperative. Removal of partitions or creation of apertures under this subdivision is not an alteration of boundaries.

1982, c. 277, § 55-447; 2019, c. 712.

§ 55.1-2122. Relocation of boundaries between adjoining units

A. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the proprietary lessees of those units. If the proprietary lessees of the adjoining units have specified a reallocation between their cooperative interests of their allocated interests, the application shall state the proposed reallocations. Unless the executive board determines within 30 days that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those proprietary lessees, contains words of conveyance between them, and upon recordation is indexed in the name of the grantor and the grantee.

B. The association shall prepare and record amendments to the declaration, including any plans necessary to show or describe the altered boundaries between adjoining units and their sizes and identifying numbers. All costs for such preparation and recordation shall be borne by the proprietary lessees involved.

1982, c. 277, § 55-448; 2019, c. 712.

§ 55.1-2123. Subdivision of units

A. If the declaration expressly so permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a proprietary lessee to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration subdividing that unit. All costs for such preparation, execution, and recordation shall be borne by the proprietary lessees involved.

B. The amendment to the declaration must (i) be executed by the proprietary lessee of the unit to be subdivided, (ii) assign an identifying number to each unit created, and (iii) reallocate the allocated interests formerly allocated to the cooperative interest of which the subdivided unit is a part to the new cooperative interests in any reasonable manner prescribed by the proprietary lessee of the cooperative interest of which the subdivided unit is a part.

1982, c. 277, § 55-449; 2019, c. 712.

§ 55.1-2124. Easement for encroachments

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a proprietary lessee of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any representation in the public offering statement.

1982, c. 277, § 55-450; 2019, c. 712.

§ 55.1-2125. Use for sales purposes

A declarant may maintain sales offices, management offices, and models in units or on common elements in the cooperative only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation of such offices or models. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to have an ownership interest in the association, he ceases to have any rights with regard to such offices or models, unless it is removed promptly from the cooperative in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant

may maintain signs on the common elements advertising the cooperative. The provisions of this section are subject to the provisions of other state law and to local ordinances.

1982, c. 277, § 55-451; 2019, c. 712.

§ 55.1-2126. Easement rights

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

1982, c. 277, § 55-452; 2019, c. 712.

§ 55.1-2127. Amendment of declaration

A. Except in cases of amendments that may be executed by a declarant under § 55.1-2120, the association under § 55.1-2105, subsection C of § 55.1-2117, subsection C of § 55.1-2119, subsection A of § 55.1-2122, or § 55.1-2123, or certain proprietary lessees under subsection B of § 55.1-2119, subsection A of § 55.1-2122, subsection B of § 55.1-2123, or subsection B of § 55.1-2128 and except as limited by subsection D, the declaration may be amended only by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds of the votes in the association are allocated, or a larger percentage if the declaration so specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

B. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

C. Every amendment to the declaration must be recorded in every county or city in which any portion of the cooperative is located and is effective only upon recordation. An amendment shall be indexed in the grantee's index in the name of the cooperative and the association and in the grantor's index in the name of the parties executing the amendment.

D. The declaration may be amended to extend the time limit within which special declarant rights imposed by the declaration pursuant to subdivision A 8 of § 55.1-2116 may be exercised only by vote or agreement of proprietary lessees of cooperative interests to which at least twothirds of the votes in the association are allocated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies. Except to the extent expressly permitted or required by this subsection or other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a cooperative interest, or the uses to which any unit is restricted, in the absence of unanimous consent of the proprietary lessees.

E. If the time limit specified in the declaration for the creation of cooperative interests or the exercise of special declarant rights has expired, with the approval of the persons entitled to cast at least two-thirds of the votes in the association, other than any votes allocated to cooperative interests owned by the declarant, or any larger percentage as the declaration specifies, the declaration may be amended to (i) revive and reinstate any or all of the expired rights to create additional cooperative interests and any or all of the expired special declarant rights and (ii) vest in any person, including the original declarant, any or all of the powers, rights, privileges, and authority to which a declarant is entitled under this chapter regarding the exercise of the revived and reinstated rights with respect to any parcel of real estate that is a common element or any additional real estate that such amendment permits to be added to the cooperative. In no event, however, shall any such amendment extend or renew a period of declarant control of the association or provide a new period of declarant control.

F. Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of such designation, by the president of the association.

1982, c. 277, § 55-453; 2008, c. 628; 2009, c. 221; 2019, c. 712.

§ 55.1-2128. Termination of cooperative ownership

A. Except in the case of a taking of all the units by eminent domain, or in the case of foreclosure of a security interest against the entire cooperative that has priority over the declaration, cooperative ownership may be terminated only by agreement of proprietary lessees of cooperative interests to which at least four-fifths of the votes in the association are allocated or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the cooperative are restricted exclusively to nonresidential uses.

B. An agreement to terminate must be evidenced by the execution of a termination agreement or ratification of such agreement in the same manner as a deed by the requisite number of proprietary lessees. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all such ratifications must be recorded in every county or city in which a portion of the cooperative is situated and is effective only upon recordation.

C. The association, on behalf of the proprietary lessees, may contract for the sale of real estate in the cooperative, but the contract is not binding until approved pursuant to subsections A and B. After such approval, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded, and the proceeds of such sale are distributed, the association continues in existence with all powers it had before termination. Except to the extent that any provisions in the declaration limit the amount that may be received by a proprietary lessee upon termination, as set forth in subdivision A 12 of § 55.1-2116, proceeds of the sale must be distributed to holders of liens against the association and against the cooperative interests and to proprietary lessees, all as their interests may appear, in accordance with subsections D and E. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each proprietary lessee and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of such occupancy, each proprietary lessee and his successors in interest remain liable for all assessments and other obligations imposed on proprietary lessees by this chapter or the declaration.

D. Following termination of the cooperative, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for proprietary lessees and holders of liens against the association and the cooperative interests, as their interests may appear. The declaration may provide that all creditors of the association have priority over any interests of proprietary lessees and creditors of proprietary lessees. Where the declaration provides such a priority, following termination, creditors of the association holding liens on the cooperative that were recorded or docketed before termination may enforce their liens in the same manner as any lienholder, and all other creditors of the association are to be treated as if they had perfected liens against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have such priority:

1. The lien of each creditor of the association that was perfected against the association before termination becomes a lien against each cooperative interest upon termination as of the date the lien was perfected;

2. All other creditors of the association are to be treated as if they had perfected liens against the cooperative interests immediately before termination;

3. The amounts of the liens of the association's creditors described in subdivisions 1 and 2 against each of the cooperative interests must be proportionate to the ratio that that cooperative interest's common expense liability bears to the common expense liability of all the cooperative interests;

4. The lien of each creditor of each proprietary lessee that was perfected before termination continues as a lien against that proprietary lessee's cooperative interest as of the date the lien was perfected; and

5. The assets of the association shall be distributed to all proprietary lessees and all lienholders against their cooperative interests as their interests may appear in the order described in subdivisions 1 through 4, and creditors of the association are not entitled to payment from any proprietary lessee in excess of the amount of the creditor's lien against that proprietary lessee's cooperative interest.

E. The respective interests of proprietary lessees referred to in subsections C and D are as follows:

1. Except as provided in subdivision 2, the respective interests of proprietary lessees are the fair market values of their cooperative interests immediately before the termination, as determined by one or more independent appraisers selected by the association. Appraisers selected shall hold a designation awarded by a major, nationwide testing or certifying

professional appraisal society or association. The decision of the independent appraisers shall be distributed to the proprietary lessees and becomes final unless disapproved within 30 days after distribution by proprietary lessees of cooperative interests to which 25 percent of the votes in the association are allocated. The proportion of any proprietary lessee's interest to that of all proprietary lessees is determined by dividing the fair market value of that proprietary lessee's cooperative interest by the total fair market values of all the cooperative interests.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or limited common element before destruction cannot be made, the interests of all proprietary lessees are their respective ownership interests in the association immediately before the termination.

1982, c. 277, § 55-454; 1983, c. 96; 2019, c. 712.

§ 55.1-2129. Rights of secured lenders

The declaration may require that all or a specified number or percentage of the lenders holding security interests encumbering the cooperative interests approve specified actions of the proprietary lessees or the association as a condition to the effectiveness of those actions, but no requirement for approval shall operate to (i) deny or delegate control over the general administrative affairs of the association by the proprietary lessees or the executive board; (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding; or (iii) receive and distribute any insurance proceeds except pursuant to § 55.1-2145.

1982, c. 277, § 55-455; 2019, c. 712.

§ 55.1-2130. Master associations

A. If the declaration provides that any of the powers described in § 55.1-2134 are to be exercised by or may be delegated to a for-profit or nonprofit corporation or unincorporated association that exercises those or other powers on behalf of one or more cooperatives or for the benefit of the proprietary lessees of one or more cooperatives, all provisions of this chapter applicable to associations apply to any such corporation or unincorporated association, except as modified by this section.

B. Unless a master association is acting in the capacity of an association described in § 55.1-2132, it may exercise the powers set forth in subdivision A 2 of § 55.1-2133 only to the extent expressly permitted in the declarations of the cooperatives that are part of the master association or expressly described in the delegations of power from those cooperatives to the master association.

C. If the declaration of any cooperative provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to the delegated powers.

D. The rights and responsibilities of proprietary lessees with respect to the association set forth in §§ 55.1-2134, 55.1-2140, 55.1-2141, 55.1-2142, and 55.1-2144 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise proprietary lessees within the meaning of this chapter.

E. Notwithstanding the provisions of subsection F of § 55.1-2134, with respect to the election of the executive board of an association by all proprietary lessees after the period of declarant control ends, and even if a master association is also an association as described in § 55.1-2132, the certificate of incorporation or other instrument creating the master association and the declaration of each cooperative, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

1. All proprietary lessees of all cooperatives subject to the master association may elect all members of that executive board.

2. All members of the executive boards of all cooperatives subject to the master association may elect all members of that executive board.

3. All proprietary lessees of each cooperative subject to the master association may elect specified members of that executive board.

4. All proprietary lessees of the executive board of each cooperative subject to the master association may elect specified members of that executive board.

1982, c. 277, § 55-456; 2019, c. 712.

§ 55.1-2131. Merger or consolidation of cooperatives

A. Any two or more cooperatives, by agreement of the proprietary lessees as provided in subsection B, may be merged or consolidated into a single cooperative. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant cooperative is, for all purposes, the legal successor of all of the preexisting cooperatives. The operations and activities of all associations of the preexisting cooperatives shall be merged or consolidated into a single association, which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

B. An agreement of two or more cooperatives to merge or consolidate pursuant to subsection A must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting cooperatives following approval by proprietary lessees of cooperative interests to which are allocated the percentage of votes in each cooperative required to terminate that cooperative. Any such agreement must be recorded in every county or city in which a portion of the cooperative is located and is not effective until recorded.

C. Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the cooperative interests of the resultant cooperative either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interest of the new cooperative that are allocated to all of the cooperative interests comprising each of the preexisting cooperatives and providing that the portion of the percentages allocated to each cooperative interest formerly comprising a part of the preexisting cooperative must be equal to the percentages of allocated interests allocated to that cooperative interest by the declaration of the preexisting cooperative.

1982, c. 277, § 55-457; 2019, c. 712.

Article 3. Management of Cooperatives

§ 55.1-2132. Organization of the association

An association must be organized no later than the date the first cooperative interest in the cooperative is conveyed. The membership of the association at all times shall consist exclusively of all the proprietary lessees or, following termination of the cooperative, of all former proprietary lessees entitled to distributions of proceeds under § 55.1-2128 or their heirs, successors, or assigns. The association shall be organized as a stock or nonstock corporation, trust, trustee, unincorporated association, or partnership.

1982, c. 277, § 55-458; 2019, c. 712.

§ 55.1-2133. Powers of the association

A. Except as provided in subsection B, and subject to the provisions of the declaration, the association, even if unincorporated, may:

1. Adopt and amend bylaws and rules and regulations;

2. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from proprietary lessees;

3. Hire and discharge managing agents and other employees, agents, and independent contractors;

4. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more proprietary lessees on matters affecting the cooperative;

5. Make contracts and incur liabilities;

6. Regulate the use, maintenance, repair, replacement, and modification of common elements;

7. Cause additional improvements to be made as a part of the common elements;

8. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but part of the cooperative may be conveyed, or all or part of the cooperative may be subjected to, a security interest only pursuant to § 55.1-2144;

9. Grant easements, leases, licenses, and concessions through or over the common elements;

10. Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subdivisions 2 and 4 of § 55.1-2113, and for services provided to proprietary lessees;

11. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy fines not to exceed $50 for each instance for violations of the declaration, bylaws, and rules and regulations of the association;

12. Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by § 55.1-2161, or statements of unpaid assessments;

13. Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

14. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

15. Exercise any other powers conferred by the declaration or bylaws;

16. Exercise all other powers that may be exercised in the Commonwealth by legal entities of the same type as the association; and

17. Exercise any other powers necessary and proper for the governance and operation of the association.

B. The declaration shall not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

1982, c. 277, § 55-459; 2019, c. 712.

§ 55.1-2133.1. Installation of solar energy collection devices

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the association establishes such a prohibition. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-2161 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners

and is licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the association. An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

2006, c. 939, §§ 67-700, 67-701; 2008, c. 881; 2009, c. 866; 2013, c. 357; 2014, c. 525; 2020, cc. 272, 795; 2021, Sp. Sess. I, c. 387.

§ 55.1-2134. Executive board members and officers

A. Except as provided in the declaration, the bylaws, subsection B, or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise (i) the care required of fiduciaries of the proprietary lessees if appointed by the declarant and (ii) ordinary and reasonable care if elected by the proprietary lessees.

B. The executive board may not act on behalf of the association to amend the declaration; to terminate the cooperative; to elect members of the executive board, except as provided in the declaration pursuant to subsection F; or to determine the qualifications, powers, and duties or terms of office of executive board members. The executive board may fill vacancies in its membership for the unexpired portion of any term.

C. Within 30 days after adoption of any proposed budget for the cooperative, the executive board shall provide a summary of the budget to all the proprietary lessees and shall set a date for a meeting of the proprietary lessees to consider ratification of the budget. Such meeting shall be held not less than 14 nor more than 30 days after mailing of the summary. The meeting place, date, and time shall be provided with the budget summary. Unless at that meeting a majority of all the proprietary lessees or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the proprietary lessees shall be continued until such time as the proprietary lessees ratify a subsequent budget proposed by the executive board.

D. Subject to subsection E, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of (i) 60 days after conveyance of 75 percent of the cooperative interests that may be created to proprietary lessees other than a declarant, (ii) two years after all declarants have ceased to offer cooperative interests for sale in the ordinary course of business, or (iii) two years after any development right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

E. No later than 60 days after conveyance of 25 percent of the cooperative interests that may be created to proprietary lessees other than a declarant, at least one member and at least 25 percent of the members of the executive board must be elected by proprietary lessees other than the declarant. No later than 60 days after conveyance of 50 percent of the cooperative interests that may be created to proprietary lessees other than a declarant, at least one-third of the members of the executive board must be elected by proprietary lessees other than the declarant.

F. Unless the declaration provides for the selection of one or more independent members of the executive board, no later than the termination of any period of declarant control the proprietary lessees shall elect an executive board of at least three members, at least a majority of whom must be proprietary lessees. To the extent that the declaration so provides, the members of the executive board appointed by the declarant may continue to serve out their terms, and the declarant may continue to appoint a minority of the members of the executive board until all of the development rights reserved by the declarant have been exercised or have expired. In addition, the declaration may provide for the selection of one or more independent members of the executive board, who are neither proprietary lessees nor affiliated directly or

indirectly in any way with the declarant, by a vote of two-thirds of the members of the executive board. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

G. Notwithstanding any provision of the declaration or bylaws to the contrary, the proprietary lessees, by a two-thirds vote of all persons entitled to vote at any meeting of the proprietary lessees at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

1982, c. 277, § 55-460; 2004, c. 242; 2019, c. 712.

§ 55.1-2135. Transfer of special declarant rights

A. No special declarant rights created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in every county or city in which any portion of the cooperative is located. The instrument is not effective unless executed by the transferee.

B. Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

1. A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this chapter. Lack of privity does not deprive any proprietary lessee of standing to maintain an action to enforce any obligation of the transferor.

2. If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the cooperative.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

4. A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

C. Unless otherwise provided in a security agreement, in case of foreclosure of a security agreement, tax sale, judicial sale, sale by a trustee under a security agreement or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of any cooperative interests owned by a declarant or of real estate in a cooperative subject to development rights:

1. A person acquiring all the cooperative interests or real estate being foreclosed or sold shall succeed, but only upon his request, to all special declarant rights related to that property held by that declarant or only to any rights reserved in the declaration pursuant to § 55.1-2125 and held by that declarant to maintain models, sales offices, and signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

D. Upon foreclosure, tax sale, judicial sale, sale by a trustee under a security agreement, or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of all cooperative interests or real estate in a cooperative owned by a declarant:

1. The declarant ceases to have any special declarant rights, and

2. The period of declarant control as provided in subsection D of § 55.1-2134 terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.

2. A successor to any special declarant right, other than a successor described in subdivision 3 or 4, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

a. On a declarant that relate to his exercise or non-exercise of special declarant rights; or

b. On his transferor, other than:

(1) Misrepresentations by any previous declarant;

(2) Warranty obligations on improvements made by any previous declarant or made before the cooperative was created;

(3) Breach of any fiduciary obligation by any previous declarant or his appointees to the executive board; or

(4) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. A successor to only a right reserved in the declaration to maintain models, sales offices, and signs pursuant to § 55.1-2125, if he is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a current public offering statement, any liability arising as a result of providing a public offering statement, and obligations under Article 5 (§ 55.1-2173 et seq.).

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title to cooperative interests or real estate subject to development rights under subsection C may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. After declaring such an intention in a recorded instrument, until transferring all special declarant rights to any person acquiring title to any cooperative interest or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his transferor to control the executive board in accordance with the provisions of subsection D of § 55.1-2134 for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under subsection D of § 55.1-2134.

F. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

1982, c. 277, § 55-461; 2019, c. 712.

§ 55.1-2136. Termination of contracts and leases of declarant

If entered into before the executive board elected by the proprietary lessees pursuant to subsection F of § 55.1-2134 takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the proprietary lessees at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the executive board elected by the proprietary lessees pursuant to subsection F of § 55.1-2134 takes office after giving at least 90 days' notice to the other party. However, a management contract that is not unconscionable between an association directly or indirectly providing assisted living or nursing services to proprietary lessees and a declarant or an affiliate of a declarant may not be terminated while a member of the executive board appointed by the declarant continues to serve unless such termination is approved by a vote of a majority of the members of the executive board and a majority vote of the proprietary lessees, other than the declarant.

This section does not apply to any proprietary lease or any lease the termination of which would terminate the cooperative or reduce its size, unless the real estate subject to that lease was included in the cooperative for the purpose of avoiding the right of the association to terminate a lease under this section. This section does not apply to any contract, incidental to the disposition of a cooperative interest, to provide to a proprietary lessee for the duration of such proprietary lessee's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging, and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the declaration, bylaws, or proprietary leases requiring that the proprietary lessees be parties to such contracts.

1982, c. 277, § 55-462; 1985, c. 83; 2004, c. 242; 2019, c. 712.

§ 55.1-2137. Bylaws

A. The bylaws of the association shall provide for:

1. The number of members of the executive board and the titles of the officers of the association;

2. Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

3. The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

4. Which, if any, of its powers and responsibilities the executive board or officers may delegate to other persons or to a managing agent;

5. Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

6. The method of amending the bylaws.

B. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate, including a provision for the arbitration of disputes or other means of alternative dispute resolution in accordance with subsection B of § 55.1-2169.

1982, c. 277, § 55-463; 1993, c. 849; 2019, c. 712.

§ 55.1-2138. Upkeep of cooperative

A. Except to the extent otherwise provided by the declaration, by subsection B, or by subsection G of § 55.1-2145, the association is responsible for maintenance, repair, and replacement of the common elements, and each proprietary lessee is responsible for maintenance, repair, and replacement of his unit. Each proprietary lessee shall afford to the association and the other proprietary lessees, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the proprietary lessee responsible for the damage, or the association if it is responsible, is liable for the prompt repair and all costs associated with such repair.

B. In addition to the liability that a declarant as a proprietary lessee has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other proprietary lessee and no other portion of the cooperative is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

1982, c. 277, § 55-464; 2019, c. 712.

§ 55.1-2139. Common elements; notice of pesticide application

Associations shall post notification of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least 48 hours prior to the application.

1999, c. 65, § 55-464.1; 2019, c. 712.

§ 55.1-2139.1. Electric vehicle charging stations permitted

A. Except to the extent that the declaration provides otherwise, no association shall prohibit any proprietary lessee from installing an electric vehicle charging station for the proprietary lessee's personal use within the boundaries of a unit or limited common element parking space appurtenant to the unit owned by the proprietary lessee.

B. Notwithstanding any other provision of this chapter or the declaration, the association may prohibit a proprietary lessee from installing an electric vehicle charging station if installation of the electric vehicle charging station is not

technically feasible or practicable due to safety risks, structural issues, or engineering conditions.

C. The association may require as a condition of approving installation of an electric vehicle charging station that the proprietary lessee:

1. Provide detailed plans and drawings for installation of an electric vehicle charging station prepared by a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station.

2. Comply with applicable building codes or recognized safety standards.

3. Comply with reasonable architectural standards adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station.

4. Pay the costs of installation, maintenance, operation, and use of the electric vehicle charging station.

5. Indemnify and hold the association harmless from any claim made by a contractor or supplier pursuant to Title 43.

6. Pay the cost of removal of the electric vehicle charging station if the proprietary lessee decides there is no longer a need for the electric vehicle charging station.

7. Separately meter, at the proprietary lessee's sole expense, the utilities associated with such electric vehicle charging station and pay the cost of electricity and other associated utilities.

8. Engage the services of a licensed electrician or engineer familiar with the installation and core requirements of an electric vehicle charging station to install the electric vehicle charging station.

9. Obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, and use of the electric vehicle charging station and provide a certificate of insurance naming the association as an additional insured on the proprietary lessee's insurance policy for any claim related to the installation, maintenance, operation, or use of the electric vehicle charging station within 14 days after receiving the association's approval to install such charging station.

10. Reimburse the association for any increase in common expenses specifically attributable to the electric vehicle charging station installation, including the actual cost of any increased insurance premium amount, within 14 days' notice from the association.

D. The conditions imposed pursuant to this section on a proprietary lessee for installation of an electric vehicle charging station shall run with title to the unit to which the limited common element parking space is appurtenant.

E. Any proprietary lessee installing an electric vehicle charging station in a unit or on a limited common element parking space appurtenant to the unit owned by the proprietary lessee shall indemnify and hold the association harmless from all liability, including reasonable attorney fees incurred by the association resulting from a claim, arising out of the installation, maintenance, operation, or use of such electric charging station. An association may require the proprietary lessee to obtain and maintain insurance covering claims and defenses of claims related to the installation, maintenance, operation, or use of the electric vehicle charging station and require the association to be included as a named insured on such policy.

2020, c. 1012.

§ 55.1-2140. Meetings

A meeting of the association must be held at least once each year. Special meetings of the association may be called by (i) the president, (ii) a majority of the executive board, or (iii) 20 percent, or any lower percentage if so specified in the bylaws, of the proprietary lessees. No less than 10 or more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the proprietary lessee. The notice of

any meeting shall state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

1982, c. 277, § 55-465; 2019, c. 712.

§ 55.1-2141. Quorums

A. Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast 20 percent of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

B. Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast 50 percent of the votes on that board are present at the beginning of the meeting.

1982, c. 277, § 55-466; 2019, c. 712.

§ 55.1-2142. Voting; proxies

A. If only one of the multiple proprietary lessees of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to the cooperative interest of which that unit is a part. If more than one of the multiple proprietary lessees are present, the votes allocated to that cooperative interest may be cast only in accordance with the agreement of a majority in interest of the multiple proprietary lessees, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple proprietary lessees casts the votes allocated to that cooperative interest without protest being made promptly to the person presiding over the meeting by any of the other proprietary lessees of the cooperative interest.

B. Votes allocated to a cooperative interest may be cast pursuant to a proxy duly executed by a proprietary lessee. If there is more than one proprietary lessee of a unit, each proprietary lessee of the unit may vote or register protest to the casting of votes by the other proprietary lessees of the unit through a duly executed proxy. A proprietary lessee may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless a shorter term is specified.

C. If the declaration requires that votes on specified matters affecting the cooperative be cast by lessees other than proprietary lessees of leased units: (i) the provisions of subsections A and B apply to lessees as if they were proprietary lessees; (ii) proprietary lessees who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were proprietary lessees. Proprietary lessees must also be given notice, in the manner provided in § 55.1-2140, of all meetings at which such lessees may be entitled to vote.

D. All votes allocated to a cooperative interest owned by the association shall be deemed present for quorum purposes at all duly called meetings of the association and shall be deemed cast in the same proportions as the votes cast by proprietary lessees, other than the association.

1982, c. 277, § 55-467; 2004, c. 242; 2019, c. 712.

§ 55.1-2143. Tort and contract liability

Neither the association nor any proprietary lessee except the declarant is liable for that declarant's torts in connection with any part of the cooperative that that declarant has the responsibility to maintain. Otherwise, an action alleging wrongdoing by the association shall be brought against the association and not against any proprietary lessee. If such wrongdoing occurred during any period of declarant control, and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any proprietary lessee (i) for all tort losses not covered by insurance suffered by the association or that proprietary lessee and (ii) for all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates.

A proprietary lessee is not precluded from bringing an action contemplated by this section because he is a proprietary lessee or a member or officer of the association. Liens resulting from judgments against the association are governed by § 55.1-2151.

1982, c. 277, § 55-468; 2019, c. 712.

§ 55.1-2144. Conveyance or encumbrance of the cooperative

A. Part of the cooperative may be conveyed, and all or part of the cooperative may be subjected to a security interest, by the association if persons entitled to cast at least 80 percent of the votes in the association, including a simple majority of the votes allocated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies, agree to that action. If fewer than all the units or limited common elements are to be conveyed or subjected to a security interest, then all the proprietary lessees of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

B. An agreement to convey a part of the cooperative or subject it to a security interest must be evidenced by the execution of an agreement, or ratifications of such an agreement, in the same manner as a deed, by the requisite number of proprietary lessees. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and such ratifications must be recorded in every county or city in which a portion of the cooperative is situated and is effective only upon recordation.

C. The association, on behalf of the proprietary lessees, may contract to convey a part of the cooperative or subject it to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections A and B. After such approval, the association has all powers necessary and appropriate to effect the conveyance or encumbrance including the power to execute deeds or other instruments.

D. Any purported conveyance, encumbrance, or other voluntary transfer of the cooperative, unless made pursuant to this section or pursuant to subsection C of § 55.1-2128, is void.

E. A conveyance or encumbrance of the cooperative pursuant to this section does not deprive any unit of its rights of access and support.

1982, c. 277, § 55-469; 2019, c. 712.

§ 55.1-2145. Insurance

A. Commencing not later than the time of the first conveyance of a cooperative interest to a person other than a declarant, the association shall maintain to the extent reasonably available:

1. Property insurance on the common elements and units insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

2. Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and units.

B. If the insurance described in subsection A is not reasonably available, the association shall notify all proprietary lessees by hand delivery or by United States mail, sent prepaid. The declaration may require the association to carry any other insurance, and the association may carry any other insurance it deems appropriate to protect the association or the proprietary lessees.

C. Insurance policies carried pursuant to subsection A must provide that:

1. Each proprietary lessee is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

2. The insurer waives its right to subrogation under the policy against any proprietary lessee or member of his household;

3. No act or omission by any proprietary lessee, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

4. If, at the time of a loss under the policy, there is other insurance in the name of a proprietary lessee covering the same risk covered by the policy, the association's policy provides primary insurance.

D. Any loss covered by the property policy under subdivision A 1 must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, proprietary lessees, and lien holders as their interests may appear. Subject to the provisions of subsection G, the proceeds must be disbursed first for the repair or restoration of the damaged property. The association, proprietary lessees, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the cooperative is terminated.

E. An insurance policy issued to the association does not prevent a proprietary lessee from obtaining insurance for his own benefit.

F. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any proprietary lessee or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each proprietary lessee, and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known address.

G. Any portion of the cooperative for which insurance is required under this section that is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the cooperative is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) 80 percent of the proprietary lessees, including every proprietary lessee of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire cooperative is not repaired or replaced, (a) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the cooperative and (b) except to the extent that other persons will be distributees, the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the proprietary lessees of those units and the proprietary lessees of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the proprietary lessees or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the cooperative interests. If the proprietary lessees vote not to rebuild any unit, the allocated interests of the cooperative interest of which that unit is a part are automatically reallocated upon the vote as if the unit had been condemned under subsection A of § 55.1-2105, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, § 55.1-2128 governs the distribution of insurance proceeds if the cooperative is terminated.

H. The provisions of this section may be varied or waived in the case of a cooperative whose units are all restricted to nonresidential use.

1982, c. 277, § 55-470; 2019, c. 712.

§ 55.1-2146. Assessments for common expenses

A. Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

B. Except for assessments under subsections C, D, E, and F, all common expenses shall be assessed against all the cooperative interests in accordance with the allocations set forth in the declaration pursuant to subsection A of § 55.1-2118.

Any past-due common expense assessment or installment bears interest at the rate established by the association not exceeding 18 percent per year.

C. To the extent required by the declaration:

1. Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed equally against the cooperative interests for the units to which that limited common element is assigned, or in any other proportion that the declaration provides;

2. Any common expense or portion benefiting fewer than all of the units must be assessed exclusively against the cooperative interests for the units benefited; and

3. The costs of insurance must be assessed in proportion to risk, and the costs of utilities must be assessed in proportion to usage.

D. Assessments to pay a judgment against the association may be made only against the cooperative interests in the cooperative at the time the judgment was entered, in proportion to their common expense liabilities.

E. If any common expense is caused by the negligence or other misconduct of any proprietary lessee, or of his family members, tenants, or other invitees, the association may assess that expense exclusively against his cooperative interest.

F. Notwithstanding any other provision in this section, in any cooperative where permanent residency is, in general, restricted to individuals age 55 and over, and the primary purpose of the association is to provide services and amenities to the residents of the cooperative that are consistent with the services and amenities typically provided to residents of full service senior housing communities in the United States, the declaration may provide, or may be amended to provide by vote or agreement of proprietary lessees of cooperative interests to which at least two-thirds of the votes in the association are allocated, or any larger percentage if so specified in the declaration, that:

1. Common expenses may be assessed against all cooperative interests in accordance with the standards in general use from time to time among full-service senior housing communities in the United States for the purpose of fairly and equitably establishing the fees and charges imposed on their residents to pay for all common expenses of such senior housing communities, including the expenses of providing services and amenities, such standards to be determined by the executive board of the association, acting reasonably;

2. Common expenses may be assessed against any cooperative interest that has been created pursuant to the declaration but as to which construction of the unit appurtenant to such cooperative interest has not been completed, provided that nothing contained in this subdivision shall relieve the declarant of its obligations under subsection B of § 55.1-2138; and

3. Common expenses may be assessed against any cooperative interest as to which the unit appurtenant to such cooperative interest has been completed until the unit is initially permanently occupied, provided, however, that all such cooperative interests shall pay all direct expenses of the association related to such cooperative interests and any common expenses that directly benefit such cooperative interest, in each case, determined in accordance with the provisions set forth in the declaration or the association's bylaws, provided, however, that if neither the declaration nor the bylaws contain such provisions, then such expenses shall be paid in accordance with the allocations set forth in the declaration pursuant to subsection A of § 55.1-2118.

G. If common expense liabilities are reallocated, common expense assessments and any installment not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

1982, c. 277, § 55-471; 2008, c. 627; 2019, c. 712.

§ 55.1-2147. Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-2100;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-2100;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2005, c. 436, § 55-471.1; 2019, cc. 33, 44, 712.

§ 55.1-2148. Remedies for nonpayment of assessments

A. The association has a lien on a cooperative interest for any assessment levied against that cooperative interest or fines imposed against its owner from the time the assessment or fines become due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions A 11 and 12 of § 55.1-2133 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due. Upon nonpayment of the assessment, the proprietary lessee may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section. The association's lien may be foreclosed (i) by judicial sale in like manner as a mortgage on real estate or (ii) by power of sale as provided in subsection I.

B. A lien under this section is prior to all other liens and encumbrances on a cooperative interest except (i) liens and encumbrances on the cooperative that the association creates, assumes, or takes subject to; (ii) any first security interest encumbering only the cooperative interest of a proprietary lessee and perfected before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the cooperative or the cooperative interest. The lien is also prior to the security interests described in clause (ii) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection A of § 55.1-2133 that would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. The lien under this section is not subject to homestead or other exemptions.

C. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

D. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation or filing of any claim of lien for assessment under this section is required.

E. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

F. This section does not prohibit actions to recover sums for which subsection A creates a lien or prohibit an association from taking a transfer in lieu of foreclosure.

G. A judgment in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

H. Upon written request, the association shall furnish to a proprietary lessee a statement setting forth the amount of unpaid assessments against his cooperative interest. The statement shall be in recordable form. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every proprietary lessee.

I. The association, upon nonpayment of assessments and compliance with this subsection, may sell the cooperative interest. Sale may be at a public sale or by private negotiation and at any time and place, but every aspect of the sale, including the method, advertising, time, place, and terms, must be reasonable. The association shall give to the proprietary lessee and any sublessees of the proprietary lessee reasonable written notice of the time and place of any public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the cooperative interest that would be cut off by the sale, but only if the interest was on record seven weeks before the date specified in the notice as the date of any public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until five weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

J. The proceeds of a sale under subsection I shall be applied in the following order:

1. The reasonable expenses of sale;

2. The reasonable expenses of securing possession before sale; holding, maintaining, and preparing the cooperative interest for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the proprietary lessee, reasonable attorney fees and other legal expenses incurred by the association;

3. Satisfaction in the order of priority of any prior claims of record;

4. Satisfaction of the association's lien;

5. Satisfaction in the order of priority of any subordinate claim of record; and

6. Remittance of any excess to the proprietary lessee. Unless otherwise agreed, the proprietary lessee is liable for any deficiency.

K. If a cooperative interest is sold under subsection I, a good faith purchaser for value acquires the proprietary lessee's interest in the cooperative interest free of the association's debt that gave rise to the lien under which the sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section. The person conducting the sale under subsection I shall execute a conveyance to the purchaser sufficient to convey the cooperative interest that states that the conveyance is executed by him, after a foreclosure by power of sale of the association's lien and that he has power to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by subsection I are sufficient proof of the facts recited and of his authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

L. At any time before the association has disposed of the cooperative interest or entered into a contract for its disposition under the power of sale, the proprietary lessee or the holder of any subordinate security interest may cure the proprietary

lessee's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney fees of the creditor.

1982, c. 277, § 55-472; 1990, c. 831; 2019, c. 712.

§ 55.1-2149. Other liens affecting the cooperative

A. Regardless of whether his cooperative interest is subject to the claims of the association's creditors, no property of a proprietary lessee other than his cooperative interest is subject to those claims.

B. If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each proprietary lessee of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

1982, c. 277, § 55-473; 2019, c. 712.

§ 55.1-2150. Limitation of assumption of debt and encumbrances

Unless approved by persons entitled to cast at least 80 percent of the votes in the association, including a simple majority of the votes allocated to cooperative interests not owned by a declarant or any larger percentage the declaration specifies, (i) the association shall not assume or take subject to any debt, inclusive of any principal and interest accrued thereon, incurred in the original acquisition, development, or construction of or the conversion of the cooperative in excess of the amounts disclosed in the public offering statement pursuant to § 55.1-2155 or 55.1-2156, nor shall the cooperative or any proprietary lessee's interest be encumbered by a security interest for any greater amount incurred for such purposes, and (ii) the declarant shall not amend the public offering statement to change the amounts disclosed after conveyance of the first unit to a proprietary lessee. However, the amounts disclosed shall not be subject to adjustment such that the association or the proprietary lessees are subjected to the construction or market risks of the declarant.

2004, c. 242, § 55-473.1; 2019, c. 712.

§ 55.1-2151. Association records

The association shall keep financial records sufficiently detailed to enable the association to comply with § 55.1-2161. All financial and other records shall be made reasonably available for examination by any proprietary lessee and his authorized agents.

1982, c. 277, § 55-474; 2019, c. 712.

§ 55.1-2152. Association as trustee

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

1982, c. 277, § 55-475; 2019, c. 712.

Article 4. Protection of Cooperative Purchasers

§ 55.1-2153. Applicability; waiver

A. This article applies to all cooperative interests subject to this chapter, except as provided in subsection B or as modified or waived by agreement of purchasers of cooperative interests in a cooperative in which all units are restricted to nonresidential use.

B. Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

1. A gratuitous disposition of a cooperative interest;

2. A disposition pursuant to court order;

3. A disposition by a government or governmental agency;

4. A disposition by foreclosure or transfer in lieu of foreclosure;

5. A disposition to a person in the business of selling cooperative interests who intends to offer those cooperative interests to purchasers; or

6. A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

1982, c. 277, § 55-476; 2019, c. 712.

§ 55.1-2154. Liability for public offering statement; requirements

A. Except as provided in subsection B, a declarant, prior to the offering of any cooperative interest to the public, shall prepare a public offering statement conforming to the requirements of §§ 55.1-2155, 55.1-2156, 55.1-2157, and 55.1-2158.

B. A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a person in the business of selling cooperative interests who intends to offer cooperative interests in the cooperative for his own account. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection A.

C. Any declarant or other person in the business of selling cooperative interests who offers a cooperative interest for his own account to a purchaser shall deliver a public offering statement in the manner prescribed in subsection A of § 55.1-2160. The person who prepared all or a part of the public offering statement is liable under §§ 55.1-2160, 55.1-2169, 55.1-2178, and 55.1-2179 for any false or misleading statement set forth in such public offering statement or for any omission of material fact from such public offering statement with respect to that portion of the public offering statement that he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth in such public offering statement or for any omission of material fact from such public offering statement unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

D. If a unit is part of a cooperative and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of the Commonwealth, a single public offering statement, conforming to the requirements of §§ 55.1-2155, 55.1-2156, 55.1-2157, and 55.1-2158 as those requirements relate to each regime in which the unit is located and to any other requirements imposed under the laws of the Commonwealth, may be prepared and delivered in lieu of providing two or more public offering statements.

1982, c. 277, § 55-477; 2019, c. 712.

§ 55.1-2155. Public offering statement; general provisions

A. Except as provided in subsection B, a public offering statement shall contain or fully and accurately disclose:

1. The name and principal address of the declarant and of the cooperative;

2. A general description of the cooperative, including to the extent possible the types, number, declarant's schedule of commencement, and completion of construction of buildings and amenities that the declarant anticipates including in the cooperative;

3. The number of units in the cooperative;

4. Copies and a brief narrative description of the significant features of the declaration and any other recorded covenants, conditions, restrictions, and reservations affecting the cooperative; the bylaws and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing; and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under § 55.1-2136;

5. Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget shall include:

a. A description of provisions made in the budget for reserves for repairs and replacement;

b. A statement of any other reserves;

c. The projected common expense assessment by category of expenditures for the association;

d. The projected monthly common expense assessment for each type of unit; and

e. The projected debt, inclusive of principal and any accrued interest, loan fees, and other similar charges, assumed or to be assumed by the association and an estimate of the payments necessary to service such debt.

6. Any services not reflected in the budget that the declarant provides, or expenses that he pays and that he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

7. Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

8. A description of any liens, defects, or encumbrances on or affecting the title to the cooperative;

9. A description of any financing offered or arranged by the declarant;

10. The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement of such warranties or on damages;

11. A statement that:

a. Within 10 days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a cooperative interest from a declarant; and

b. If a declarant fails to provide a public offering statement to a purchaser before conveying a cooperative interest, that purchaser may recover from the declarant 10 percent of the sales price of the cooperative interest, plus 10 percent of the share, proportionate to his common expense liability, of the indebtedness of the association secured by mortgages or deeds of trust encumbering the cooperative;

12. A statement of any unsatisfied judgments or pending actions against the association and the status of any pending actions material to the cooperative of which a declarant has actual knowledge;

13. A statement that any deposit made in connection with the purchase of a cooperative interest will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to § 55.1-2160, together with the name and address of the escrow agent;

14. Any restrictions on (i) use and occupancy of the units; (ii) alienation of the cooperative interests; (iii) the amount for which a cooperative interest may be sold; or (iv) the amount that may be received by a proprietary lessee upon sale, condemnation, or casualty loss to the unit or the cooperative or termination of the cooperative;

15. A description of the insurance coverage provided for the benefit of proprietary lessees;

16. Any current or expected fees or charges to be paid by proprietary lessees for the use of the common elements and other facilities related to the cooperative;

17. The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to § 55.1-2171;

18. A brief narrative description of any zoning and other land use requirements affecting the cooperative;

19. A specified or maximum amount, if any, of acquisition, development, or construction debt, inclusive of principal and any accrued interest, loan fees, and other similar charges, assumed or to be assumed by the association and whether there will be a security interest encumbering the cooperative to secure repayment;

20. All unusual and material circumstances, features, and characteristics of the cooperative and the units;

21. Whether the proprietary lessees will be entitled, for federal, state, and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative; and

22. A statement as to the effect on every proprietary lessee if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

B. If a cooperative composed of not more than three units is not subject to any development rights, and no power is reserved to a declarant to make the cooperative part of a larger cooperative, a group of cooperatives, or other real estate, a public offering statement may include the information otherwise required by subdivisions A 9 and 10 and 15 through 19 and the narrative descriptions of documents required by subdivision A 4.

C. A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

D. The declarant shall provide a copy of the public offering statement and all amendments to the association, and the association shall maintain them in its records.

1982, c. 277, § 55-478; 2004, c. 242; 2005, c. 436; 2019, c. 712.

§ 55.1-2156. Public offering statement; cooperatives subject to development rights

If the declaration provides that a cooperative is subject to any development rights, the public offering statement shall disclose, in addition to the information required by § 55.1-2155:

1. The maximum number of units and the maximum number of units per acre that may be created;

2. A statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;

3. If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas and the maximum percentage of the floor areas of all units that may be created therein that are not restricted exclusively to residential use;

4. A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

5. A statement of the maximum extent to which each cooperative interest's allocated interests may be changed by the exercise of any development right described in subdivision 4;

6. A statement of the extent to which any buildings may be erected or other improvements that may be made pursuant to any development right in any part of the cooperative will be compatible with existing buildings and improvements in the cooperative in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

7. General descriptions of all other improvements that may be made, and limited common elements that may be created within any part of the cooperative pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

8. A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the cooperative pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

9. A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the cooperative, a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

10. A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the cooperative, a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

11. A statement that all restrictions in the declaration affecting use and occupancy of units and alienation of cooperative interests will apply to any units and cooperative interests created pursuant to any development right reserved by the declarant, a statement of any differentiations that may be made as to those units and cooperative interests, or a statement that no assurances are made in that regard;

12. A specified or maximum amount, if any, of acquisition, development, or construction debt, inclusive of principal and any accrued interest, loan fees, and other similar charges, assumed or to be assumed by the association for each phase of the development and whether there will be a security interest encumbering the cooperative to secure repayment. If no such amount can be specified, a statement that no amount may be assumed unless approved by persons entitled to cast at least 80 percent of the votes in the association, including a simple majority of the votes allocated to cooperative interests not owned by a declarant, or any larger percentage the declaration specifies; and

13. A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

1982, c. 277, § 55-479; 2004, c. 242; 2019, c. 712.

§ 55.1-2157. Public offering statement; time-shares

If the declaration provides that ownership of cooperative interests or occupancy of any units is or may be in time-shares, the public offering statement shall disclose, in addition to the information required by § 55.1-2155:

1. The number and identity of units in which time-shares may be created;

2. The total number of time-shares that may be created;

3. The minimum duration of any time-shares that may be created; and

4. The extent to which the creation of time-shares will or may affect the enforceability of the association's lien for assessments provided in § 55.1-2149.

1982, c. 277, § 55-480; 2019, c. 712.

§ 55.1-2158. Public offering statement; cooperatives containing conversion building

A. In addition to the information required by § 55.1-2155, the public offering statement of a cooperative containing any conversion building shall contain:

1. A statement by the declarant, based on a report prepared by an independent, registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

2. A statement by the declarant of the expected useful life of each item reported on in subdivision 1, or a statement that no representations are made in that regard; and

3. A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

B. This section applies only to buildings containing units that may be occupied for residential use.

1982, c. 277, § 55-481; 2019, c. 712.

§ 55.1-2159. Public offering statement; cooperative securities

If an interest in a cooperative is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. A cooperative interest is not a security under the provisions of the Securities Act, §§ 13.1-501 through 13.1-527.3.

1982, c. 277, § 55-482; 2019, c. 712.

§ 55.1-2160. Purchaser's right to cancel

A. A person required to deliver a public offering statement pursuant to subsection C of § 55.1-2154 shall provide a purchaser with a copy of the public offering statement and all amendments to the public offering statement before conveyance of that cooperative interest and not later than the date of any contract of sale. The purchaser may cancel the contract within 10 days after signing the contract.

B. If a purchaser elects to cancel a contract pursuant to subsection A, he may do so by hand delivering notice of such cancellation to the offeror or by mailing notice of such cancellation by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

C. If a person required to deliver a public offering statement pursuant to subsection C of § 55.1-2154 fails to provide to a purchaser to whom a cooperative interest is conveyed that public offering statement and all amendments as required by subsection A, the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to 10 percent of the sales price of the cooperative interest, plus 10 percent of the share, proportionate to his common expense liability, of the indebtedness of the association secured by mortgages or deeds of trust encumbering the cooperative. Execution of a purchase agreement for a cooperative interest that makes reference to the public offering statement and in which the purchaser acknowledges receipt of the public offering statement shall be sufficient proof that the declarant has fully satisfied this requirement.

1982, c. 277, § 55-483; 2019, c. 712.

§ 55.1-2161. Resales of cooperative interests

A. Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under subsection B of § 55.1-2153, a proprietary lessee shall furnish to a purchaser before execution of any contract for sale of a cooperative interest, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules and regulations of the association, and a certificate containing:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the cooperative interest;

2. A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling proprietary lessee;

3. A statement of any other fees payable by proprietary lessees;

4. A statement of any capital expenditures anticipated by the association for the current and next two succeeding fiscal years;

5. The current reserve study report or a summary of such report and a statement of the status and amount of any reserve or replacement fund and of any portions of those reserves designated by the association for any specified projects;

6. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association, including the amount of any debt owed by the association or to be assumed by the association, inclusive of principal and any accrued interest, loan fees, and other similar charges;

7. The current operating budget of the association;

8. A statement of any unsatisfied judgments against the association and the status of any pending actions in which the association is a defendant;

9. A statement describing any insurance coverage provided for the benefit of proprietary lessees;

10. A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned to such unit violate any provision of the declaration;

11. A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned to such unit, or any other portion of the cooperative;

12. A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal of such leasehold;

13. Except where no public offering statement was prepared, a statement that the public offering statement and any amendments to the public offering statement are records of the association available for inspection by the purchaser;

14. An accountant's statement, if any was prepared, as to the deductibility for federal income taxes purposes by the proprietary lessee of real estate taxes and interest paid by the association;

15. A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation, or loss to the unit or the cooperative on termination of the cooperative; and

16. Certification, if applicable, that the proprietary lessees' association has filed with the Common Interest Community Board the annual report required by § 55.1-2182; such certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing.

B. The association, within 10 days after a request by a proprietary lessee, shall furnish a certificate containing the information necessary to enable the proprietary lessee to comply with this section. A proprietary lessee providing a certificate pursuant to subsection A is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

C. A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A proprietary lessee is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until five days after the certificate is provided or until conveyance, whichever occurs first.

1982, c. 277, § 55-484; 1997, c. 222; 1998, c. 463; 2004, c. 242; 2005, c. 436; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-2162. Escrow of deposits

A. Any deposit made in connection with the purchase or reservation of a cooperative interest from a person required to deliver a public offering statement pursuant to subsection C of § 55.1-2154 shall be placed in escrow and held either in the Commonwealth or in the state in which the unit that is a part of that cooperative interest is located in an account designated solely for that purpose by a title insurance company, attorney, or real estate broker licensed under the laws of the Commonwealth, an independent bonded escrow company, or an institution whose accounts are insured by a

governmental agency or instrumentality until (i) delivered to the declarant at closing, (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the cooperative interest, or (iii) refunded to the purchaser.

B. Any deposit made in connection with the purchase of a cooperative interest from a person not required to deliver a public offering statement shall be placed in escrow in the same manner as prescribed in subsection A. Upon receipt of the certificate called for in § 55.1-2161, should the purchaser elect to void the contract, the seller may deduct the actual charges by the association for preparation of the certificate. Otherwise, the deposit shall be promptly returned to the purchaser.

1982, c. 277, § 55-485; 2019, c. 712.

§ 55.1-2163. Release of liens

A. In the case of a sale of a cooperative interest where delivery of a public offering statement is required pursuant to subsection C of § 55.1-2154, a seller shall, before conveying a cooperative interest, record or furnish to the purchaser releases of all liens affecting the unit that is a part of that cooperative interest and any limited common element assigned to such unit, except liens solely against the unit and any limited common element assigned to such unit, that the purchaser expressly agrees to take subject to or assume. Releases of liens shall be made pursuant to §§ 55.1-339 through 55.1-345. This subsection does not apply to any real estate that a declarant has the right to withdraw.

B. Before conveying real estate to the association, the declarant shall have that real estate released from (i) all liens the foreclosure of which would deprive proprietary lessees of any right of access to or easement of support of their units and (ii) all other liens on such real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

1982, c. 277, § 55-486; 2004, c. 242; 2019, c. 712.

§ 55.1-2164. Conversion buildings

A. For the purposes of this section:

"Disabled" means suffering from a severe, chronic physical or mental impairment that results in substantial functional limitations.

"Elderly" means not less than 62 years of age.

B. A declarant of a cooperative containing conversion buildings shall give each of the tenants of a conversion building formal notice of the conversion at the time the cooperative is registered by the Common Interest Community Board. This notice shall advise each tenant of (i) the offering price of the cooperative interests for the unit he occupies; (ii) the projected common expense assessments against that cooperative interest for at least the first year of the cooperative's operation; (iii) any relocation services, public or private, of which the declarant is aware; (iv) any measure taken or to be taken by the declarant to reduce the incidence of tenant dislocation; and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided in this section and in subsection A of § 55.1-1229 except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations, or improvements, provided that (a) the making of the same does not constitute an actual or constructive eviction of the tenant and (b) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. Failure to give notice as required by this section is a defense to an action for possession. The declarant shall also provide general notice to the tenants of the cooperative or proposed cooperative at the time of application to the Common Interest Community Board, in addition to the formal notice required by this subsection.

C. For 60 days after delivery or mailing of the formal notice described in subsection B, the person required to give the notice shall offer to convey the cooperative interest for each unit or proposed unit occupied for residential use to the tenant who leases the unit associated with that cooperative interest. A specific statement of the purchase price and the

amount of any initial or special cooperative fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee shall be given to the tenant. If a tenant fails to purchase the cooperative interest during that 60-day period, the offeror shall not offer to dispose of an interest in that cooperative interest during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any cooperative interest in a conversion building if the unit that is part of that cooperative interest will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

D. If a seller, in violation of subsection C, conveys a cooperative interest to a purchaser for value who has no knowledge of the violation, that conveyance extinguishes any right a tenant may have under subsection C to purchase that cooperative interest if the deed states that the seller has complied with subsection C but does not affect the right of a tenant to recover damages from the seller for a violation of subsection C.

E. If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of §§ 55.1-1202 and 55.1-1225, the notice also constitutes a notice to vacate as specified by §§ 55.1-1410, 55.1-1202, and 55.1-1225. The details of the relocation plan, if any is provided by the declarant for assisting tenants in relocating, shall also be provided to the tenant.

F. Any locality may require by ordinance that the declarant of a conversion cooperative file with that governing body all information required by the Common Interest Community Board pursuant to § 55.1-2176 and a copy of the formal notice required by subsection B. Such information shall be filed with that governing body when the application for registration is filed with the Common Interest Community Board, and such copy of the formal notice shall be filed with that governing body whenever it is sent to tenants. No fee shall be imposed for such filings with a governing body.

G. The governing body of any county utilizing the urban county executive form of optional government (§§ 15.2-800 through 15.2-858) or the county manager plan of optional government (§§ 15.2-702 through 15.2-749), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential cooperative containing conversion buildings converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount that the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Highways and Transportation.

H. Any locality may require by ordinance that elderly or disabled tenants, occupying as their residence up to 20 percent of the apartments or units in a cooperative containing conversion buildings at the time of issuance of the general notice required by subsection B, be offered leases or extensions of leases on the apartments or units they occupy or on other apartments or units of at least equal size and overall quality for up to three years beyond the date of such notice.

The terms and conditions of such leases or extensions of leases shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion building.

Such leases or extensions shall not be required, however, in the case of any apartments or units that will, in the course of the conversion, be substantially altered in physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

I. Nothing in this section permits termination of a lease by a declarant in violation of its terms.

1982, c. 277, § 55-487; 1983, c. 310; 1984, c. 321; 1985, c. 69; 1993, c. 634; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-2165. Express warranties of quality

A. Express warranties made by any seller to a purchaser of a cooperative interest, if relied upon by the purchaser, are created as follows:

1. Any affirmation of fact or promise that relates to the unit, its use, or rights appurtenant to such unit, area improvements to the cooperative that would directly benefit the unit, or the right to use or have the benefit of facilities

not located in the cooperative creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

2. Any model or description of the physical characteristics of the cooperative, including plans and specifications of or for improvements, creates an express warranty that the cooperative will conform to the model or description;

3. Any description of the quantity or extent of the real estate comprising the cooperative, including plats or surveys, creates an express warranty that the cooperative will conform to the description, subject to customary tolerances; and

4. A provision that a buyer of a cooperative interest may put a unit that is part of that cooperative interest only to a specified use is an express warranty that the specified use is lawful.

B. Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty is necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

C. Any conveyance of a cooperative interest transfers to the purchaser all express warranties of quality made by previous sellers.

1982, c. 277, § 55-488; 2019, c. 712.

§ 55.1-2166. Implied warranties of quality

A. A declarant and any person in the business of selling cooperative interests for his own account warrant that a unit will be in at least as good condition at the earlier of the time of the conveyance of a cooperative interest or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

B. A declarant and any person in the business of selling cooperative interests for his own account impliedly warrant that a unit and the common elements in the cooperative are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him or made by any person before the creation of the cooperative will be:

1. Free from defective materials; and

2. Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

C. In addition, a declarant and any person in the business of selling cooperative interests for his own account warrant to a purchaser of a cooperative interest for a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

D. Warranties imposed by this section may be excluded or modified as specified in § 55.1-2167.

E. For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

F. Any conveyance of a cooperative interest transfers to the purchaser all of the declarant's implied warranties of quality.

1982, c. 277, § 55-489; 2019, c. 712.

§ 55.1-2167. Exclusion or modification of implied warranties of quality

A. Except as limited by subsection B with respect to a purchaser of a cooperative interest for a unit that may be used for residential use, implied warranties of quality (i) may be excluded or modified by agreement of the parties and (ii) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the buyer's attention to the exclusion of warranties.

B. With respect to a purchaser of a cooperative interest for a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, nor shall any disclaimer of implied warranties of quality be

effective as to defects in materials or construction as to any unit, brought to the attention of the declarant within two years from the date of the first conveyance of the cooperative interest associated with such unit, or as to any such defect in the common elements brought to the attention within two years (i) after that common element has been completed or, if later, (ii) after the first cooperative interest has been conveyed in the cooperative. The first conveyance of a cooperative interest associated with a unit situated in real estate subject to development rights shall be treated as the first conveyance of a cooperative interest in the cooperative for the purposes of the preceding sentence as to any such defects in the common elements within that real estate. A declarant, and any person in the business of selling cooperative interests for his own account, may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into became a part of the basis of the bargain.

1982, c. 277, § 55-490; 2019, c. 712.

§ 55.1-2168. Statute of limitations for warranties

A. A judicial proceeding for breach of any obligation arising under § 55.1-2165 or 55.1-2166 must be commenced within six years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser of the cooperative interest for that unit.

B. Subject to subsection C, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

1. As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed, or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

2. As to each common element, at the time the common element is completed or, if later, (i) as to a common element that may be added to the cooperative or portion of the cooperative, at the time the first cooperative interest for a unit in such cooperative interest is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the cooperative, at the first time a cooperative interest in the cooperative is conveyed to a bona fide purchaser.

C. If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the cooperative, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

1982, c. 277, § 55-491; 2019, c. 712.

§ 55.1-2169. Effect of violation on rights of action; attorney fees; arbitration of disputes

A. If a declarant or any other person subject to this chapter fails to comply with any provision of this chapter or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this chapter. The court, in an appropriate case, may award reasonable attorney fees.

B. A declaration may provide for the arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be held in the county or city in which the development is located or as mutually agreed by the parties.

1982, c. 277, § 55-492; 1993, c. 849; 2019, c. 712.

§ 55.1-2170. Labeling of promotional material

No promotional material may be displayed or delivered to prospective purchasers that describes or portrays improvements that are not in existence, unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or "NEED NOT BE BUILT."

1982, c. 277, § 55-493; 2019, c. 712.

§ 55.1-2171. Declarant's obligation to complete and restore

A. The declarant shall complete all improvements depicted on any site plan or other graphic representation included in the public offering statement or in any promotional material distributed by or for the declarant unless that improvement is labeled "NEED NOT BE BUILT."

B. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the cooperative, of any portion of the cooperative affected by the exercise of rights reserved pursuant to or created by §§ 55.1-2120, 55.1-2121, 55.1-2122, 55.1-2123, 55.1-2125, and 55.1-2126.

1982, c. 277, § 55-494; 2019, c. 712.

§ 55.1-2172. Substantial completion of units

In the case of a sale of a cooperative interest where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that cooperative interest may be conveyed, except pursuant to subsection B of § 55.1-2176, until the declaration is recorded and the unit that is a part of that cooperative interest is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent, registered architect, surveyor, or engineer or by issuance of a certificate of occupancy authorized by law.

1982, c. 277, § 55-495; 2019, c. 712.

Article 5. Administration and Registration of Cooperatives

§ 55.1-2173. Common Interest Community Board

This chapter shall be administered by the Common Interest Community Board.

1982, c. 277, § 55-496; 2008, cc. 851, 871; 2019, c. 712.

§ 55.1-2174. General powers and duties of the Common Interest Community Board

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

B. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter or any of the Common Interest Community Board's regulations or orders, the Common Interest Community Board without prior administrative proceedings may bring an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The Common Interest Community Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Common Interest Community Board may intervene in any action involving the powers or responsibilities of a declarant in connection with any cooperative for which an application for registration is on file.

D. The Common Interest Community Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

E. The Common Interest Community Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices and may develop information that may be useful in the discharge of the agency's duties.

F. In issuing any cease and desist order or order rejecting or revoking registration of a cooperative, the Common Interest Community Board shall state the basis for the adverse determination and the underlying facts.

G. The Common Interest Community Board, in its sound discretion, may require bonding, escrow of portions of sales proceeds, or other safeguards it may prescribe by its regulations to guarantee completion of all improvements labeled "MUST BE BUILT" pursuant to § 55.1-2171.

1982, c. 277, § 55-502; 2019, c. 712.

§ 55.1-2175. Registration required

A declarant shall not offer or dispose of a cooperative interest intended for residential use unless the cooperative and the cooperative interest are registered with the Common Interest Community Board. A cooperative consisting of no more than three units that is not subject to development rights is exempt from the requirements of this section.

1982, c. 277, § 55-497; 2019, c. 712.

§ 55.1-2176. Application for registration; approval of uncompleted unit

A. An application for registration must contain the information and be accompanied by any reasonable fees required by the Common Interest Community Board's regulations. A declarant promptly shall file amendments to report any factual or expected material change in any document or information contained in his application.

B. If a declarant files with the Common Interest Community Board a declaration or proposed declaration, or an amendment or proposed amendment to a declaration, creating units for which he proposes to convey cooperative interests before the units are substantially completed in the manner required by § 55.1-2172, the declarant shall also file with the Common Interest Community Board:

1. A verified statement showing all costs involved in completing the buildings containing those units;

2. A verified estimate of the time of completion of construction of the buildings containing those units;

3. Satisfactory evidence of sufficient funds to cover all costs to complete the buildings containing those units;

4. A copy of the executed construction contract and any other contracts for the completion of the buildings containing those units;

5. A 100 percent payment and performance bond covering the entire cost of construction of the buildings containing those units;

6. Plans for the units;

7. If purchasers' funds are to be utilized for the construction of the cooperative, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business within the state that provides:

a. That disbursements of purchasers' funds may be made from time to time to pay for construction of the cooperative, architectural, and engineering costs, finance and legal fees, and other costs for the completion of the cooperative in proportion to the value of the work completed by the contractor as certified by an independent, registered architect or engineer, on bills submitted and approved by the lender of construction funds or the escrow agent;

b. That disbursement of the balance of purchasers' funds remaining after completion of the cooperative shall be made only when the escrow agent or lender receives satisfactory evidence that the period for filing mechanic's and materialman's liens has expired, or that the right to claim those liens has been waived, or that adequate provision has been made for satisfaction of any claimed mechanic's or materialman's lien; and

c. Any other restriction relative to the retention and disbursement of purchasers' funds required by the Common Interest Community Board; and

8. Any other materials or information the agency may require by its regulations.

The Common Interest Community Board shall not register the units described in the declaration or the amendment unless the Common Interest Community Board determines, on the basis of the material submitted by the declarant and any

other information available to the Common Interest Community Board, that there is a reasonable basis to expect that the cooperative interests to be conveyed will be completed by the declarant following conveyance.

1982, c. 277, § 55-498; 2019, c. 712.

§ 55.1-2177. Receipt of application; order or registration

A. The Common Interest Community Board shall acknowledge receipt of an application for registration within five business days after receiving it. Within 60 days after receiving the application, the Common Interest Community Board shall determine whether:

1. The application and the proposed public offering statement satisfy the requirements of this chapter and the Common Interest Community Board's regulations;

2. The declaration and bylaws comply with this chapter; and

3. It is likely that the improvements the declarant has undertaken to make can be completed as represented.

B. If the Common Interest Community Board makes a favorable determination, it shall issue promptly an order registering the cooperative. Otherwise, unless the declarant has consented in writing to a delay, the Common Interest Community Board shall issue promptly an order rejecting registration.

1982, c. 277, § 55-499; 2019, c. 712.

§ 55.1-2178. Cease and desist order

If the Common Interest Community Board determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a cooperative or that any person has otherwise violated any provision of this chapter or the Common Interest Community Board's regulations or orders, the Common Interest Community Board may issue an order to cease and desist from that conduct or to take such affirmative action as may be appropriate to the Common Interest Community Board.

1982, c. 277, § 55-500; 2019, cc. 467, 712.

§ 55.1-2179. Revocation of registration

A. The Common Interest Community Board, after providing notice stating the deficiency complained of and holding a hearing, may issue an order revoking the registration of a cooperative upon determination that a declarant or any officer or principal of a declarant has:

1. Failed to comply with a cease and desist order issued by the Common Interest Community Board affecting that cooperative;

2. Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of cooperative interests in that cooperative;

3. Failed to perform any stipulation or agreement made to induce the Common Interest Community Board to issue an order relating to that cooperative;

4. Intentionally misrepresented or failed to disclose a material fact in the application for registration; or

5. Failed to meet any of the conditions described in §§ 55.1-2176 and 55.1-2177 necessary to qualify for registration.

B. Without the consent of the Common Interest Community Board, a declarant shall not convey, cause to be conveyed, or contract for the conveyance of any cooperative interest while an order revoking the registration of the cooperative is in effect.

C. In appropriate cases, the Common Interest Community Board may issue a cease and desist order in lieu of an order of revocation.

1982, c. 277, § 55-501; 2019, c. 712.

§ 55.1-2180. Investigative powers of the Common Interest Community Board

A. The Common Interest Community Board may initiate public or private investigations within or outside the Commonwealth to determine whether any representation in any document or information filed with the Common Interest Community Board is false or misleading or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice.

B. In the course of any investigation or hearing, the Common Interest Community Board may subpoena witnesses and documents, administer oaths and affirmations, and adduce evidence. If a person fails to comply with a subpoena or to answer questions propounded during the investigation or hearing, the Common Interest Community Board may apply to the appropriate court for a contempt order or for injunctive or other appropriate relief to secure compliance.

1982, c. 277, § 55-503; 2019, c. 712.

§ 55.1-2181. Annual report and amendments

A. A declarant, within 30 days after the anniversary date of the order of registration, shall file annually a report to bring up to date the material contained in the application for registration and the public offering statement. This provision does not relieve the declarant of the obligation to file amendments pursuant to subsection B.

B. A declarant shall file promptly amendments to the public offering statement with the Common Interest Community Board.

C. If an annual report reveals that a declarant owns or controls cooperative interests representing less than 25 percent of the voting power in the association and that a declarant has no power to increase the number of units in the cooperative or to cause a merger or confederation of the cooperative with other cooperatives, the Common Interest Community Board shall issue an order relieving the declarant of any further obligation to file annual reports. After such order is issued, so long as the declarant is offering any cooperative interests for sale, the Common Interest Community Board has jurisdiction over the declarant's activities but has no other authority to regulate the cooperative.

1982, c. 277, § 55-504; 2019, c. 712.

§ 55.1-2182. Annual report by associations

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the Common Interest Community Board. The filing of the annual report required by this section shall commence upon the termination of any declarant control period reserved pursuant to § 55.1-2134. The annual report shall be accompanied by a fee in an amount established by the Common Interest Community Board, which shall be paid into the state treasury and credited to the Common Interest Community Management Information Fund established pursuant to § 54.1-2354.2.

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the Common Interest Community Board.

1993, c. 958, § 55-504.1; 2008, cc. 851, 871; 2009, c. 557; 2012, cc. 481, 797; 2019, cc. 391, 712.

§ 55.1-2183. Common Interest Community Board regulation of public offering statement

A. The Common Interest Community Board at any time may require a declarant to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purpose before registration and shall be used afterwards only if it is used in its entirety. No person shall advertise or represent that the Common Interest Community Board has approved or recommended the cooperative, the disclosure statement, or any of the documents contained in the application for registration.

C. In the case of a cooperative situated wholly outside of the Commonwealth, no application for registration or proposed public offering statement filed with the Common Interest Community Board that has been approved by an agency in the

state where the cooperative is located and substantially complies with the requirements of this chapter shall be rejected by the Common Interest Community Board on the grounds of noncompliance with any different or additional requirements imposed by this chapter or by the Common Interest Community Board's regulations. However, the Common Interest Community Board may require additional documents or information in particular cases to assure adequate and accurate disclosure to prospective purchasers.

1982, c. 277, § 55-505; 2019, c. 712.

§ 55.1-2184. Penalties

Any person who willfully violates § 55.1-2155, 55.1-2158, 55.1-2159, 55.1-2162, 55.1-2164, 55.1-2176, or 55.1-2181 or any regulation adopted under, or order issued pursuant to, § 55.1-2174, or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact, is guilty of a misdemeanor and may be (i) fined not less than $1,000 or double the amount of gain from the transaction, whichever is larger, but not more than $50,000 or (ii) imprisoned for not more than six months, or both, for each offense.

1982, c. 277, § 55-506; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

7/21/2022

Virginia Administrative Code
Title 18. Professional And Occupational Licensing
Agency 48. Common Interest Community Board
Chapter 30. Condominium Regulations

Part I. General

18VAC48-30-10. Purpose.

This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by the Virginia Condominium Act (§ 55.1-1900 et seq. of the Code of Virginia) as the act pertains to the registration of condominiums.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-20. Definitions.

A. Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

B. Section 55.1-1900 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Common elements"
"Common expenses"
"Condominium"
"Condominium instruments"
"Condominium unit"
"Conversion condominium"
"Convertible land"
"Convertible space"
"Declarant"
"Dispose" or "disposition"
"Executive board"
"Expandable condominium"
"Identifying number"
"Land"
"Leasehold condominium"
"Limited common element"
"Nonbinding reservation agreement"
"Offer"
"Person"
"Purchaser"
"Special declarant rights"
"Unit"
"Unit owner"

C. The following words, terms, and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Annual report" means a completed, board-prescribed form and required documentation submitted in compliance with § 55.1-1979 of the Code of Virginia.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation in compliance with § 55.1-1975 of the Code of Virginia.

"Class of physical assets" means two or more physical assets that are substantially alike in function, manufacture, date of construction or installation, and history of use and maintenance.

"Department" means the Department of Professional and Occupational Regulation.

"Expected useful life" means the estimated number of years from the date on which such estimate is made until the date when, because of the effects of time, weather, stress, or wear, a physical asset will become incapable of performing its intended function and will have to be replaced.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia.

"Full and fair disclosure" means the degree of disclosure necessary to ensure reasonably complete and materially accurate representation of the condominium in order to protect the interests of purchasers.

"Limited common expense" means any common expense against one or more, but less than all, of the units.

"Major utility installation" means a utility installation or portion thereof that is a common element or serves more than one unit.

"Material change" means a change in any information or document disclosed in the application for registration, including the public offering statement or an attachment thereto, that renders inaccurate, incomplete, or misleading any information or document in such a way as to affect substantially a purchaser's rights or obligations or the nature of a unit or appurtenant limited common element or the amenities of the project available for the purchaser's use as described in the public offering statement.

"Offering" means the continuing act of the declarant in making condominium units owned by the declarant within a particular condominium available for acquisition by purchasers or, where appropriate, to the aggregate of the condominium units thus made available.

"Offering literature" means any written promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity mailed or delivered directly to a specific prospective purchaser, except that information printed in a publication shall not be deemed offering literature solely by virtue of the fact that the publication is mailed or delivered directly to a prospective purchaser.

"Personal communication" means a communication directed to a particular prospective purchaser that has not been and is not intended to be directed to any other prospective purchaser.

"Physical asset" means either a structural component or a major utility installation.

"Present condition" means condition as of the date of the inspection by means of which condition is determined.

"Registration file" means the application for registration, supporting materials, annual reports, and amendments that constitute all information submitted and reviewed pertaining to a particular condominium registration. A document that has not been accepted for filing by the board is not part of the registration file.

"Regular common expense" means a common expense apportioned among and assessed to all of the condominium units pursuant to subsection D of § 55.1-1964 of the Code of Virginia or similar law or condominium instrument provision.

"Replacement cost" means the expenditure that would be necessary to replace a physical asset with an identical or substantially equivalent physical asset as of the date on which replacement cost is determined and includes all costs of (i) removing the physical asset to be replaced, (ii) obtaining its replacement, and (iii) erecting or installing the replacement.

"Structural component" means a component constituting any portion of the structure of a unit or common element.

"Structural defect" shall have the meaning given in subsection B of § 55.1-1955 of the Code of Virginia.

"Substituted public offering statement" means a document originally prepared in compliance with the laws of another jurisdiction and modified in accordance with the provisions of this chapter to fulfill the disclosure requirements

established for public offering statements by subsection A of § 55.1-1976 of the Code of Virginia and, if applicable, subsection B of § 55.1-1982 of the Code of Virginia.

"Virginia Condominium Act" means Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-30. Explanation of terms.

Each reference in this chapter to a "declarant," "purchaser," and "unit owner" or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to natural persons and organizations. The term "declarant" shall refer to any successors to the persons referred to in § 55.1-1900 of the Code of Virginia who come to stand in the same relation to the condominium as their predecessors in that they assumed rights reserved for the benefit of a declarant that (i) offers to dispose of his interest in a condominium unit not previously disposed of, (ii) reserves or succeeds to any special declarant right, or (iii) applies for registration of the condominium.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-40. Condominiums located outside of Virginia.

A. In any case involving a condominium located outside of Virginia in which the laws or practices of the jurisdiction in which such condominium is located prevent compliance with a provision of this chapter, the board shall prescribe, by order, a substitute provision to be applicable in such case that is as nearly equivalent to the original provision as is reasonable under the circumstances.

B. The words "declaration," "bylaws," "plats," and "plans," when used in this chapter with reference to a condominium located outside of Virginia, shall refer to documents, portions of documents, or combinations thereof, by whatever name denominated, that have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.

C. The words "recording" or "recordation," when used with reference to condominium instruments of a condominium located outside of Virginia, shall refer to a procedure that, in the jurisdiction in which such condominium is located, causes the condominium instruments to become legally effective.

D. This chapter shall apply to a contract for the disposition of a condominium unit located outside of Virginia only to the extent permissible under the provisions of subsection B of § 55.1-1901 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-50. Exemptions from registration.

A. The exemption from registration of condominiums in which all units are restricted to nonresidential use provided in subsection B of § 55.1-1972 of the Code of Virginia shall not be deemed to apply to any condominium as to which there

is a substantial possibility that a unit therein other than a unit owned by the declarant or the unit owners' association will be used as permanent or temporary living quarters or as a site upon which vehicular or other portable living quarters will be placed and occupied. Residential use for the purposes of this chapter includes transient occupancy.

B. Nothing in this chapter shall apply in the case of a condominium exempted from registration by § 55.1-1972 of the Code of Virginia or condominiums located outside of Virginia as provided in subsection B of § 55.1-1901 of the Code of Virginia for which no contracts are to be signed in Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-60. Preregistration offers prohibited.

No condominium marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits, or encourages a prospective purchaser to execute a contract of sale of the condominium unit or lease of a leasehold condominium unit or perform some other act that would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

Part II. Marketing

18VAC48-30-70. Condominium marketing activities.

Condominium marketing activities shall include every contact for the purpose of promoting disposition of a condominium unit. Such contacts may be personal, by telephone, by mail, by electronic means including, but not limited to, social media, or by advertisement. A promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity may be oral, written, or graphic.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-80. Offering literature.

A. Offering literature mailed or delivered prior to the registration of the condominium that is the subject of the offering literature shall bear a conspicuous legend containing the substance of the following language:

"The condominium has not been registered by the Common Interest Community Board. A condominium unit may be reserved on a nonbinding reservation agreement, but no contract of sale or lease may be entered into prior to registration."

B. Offering literature or marketing activities violative of the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia) and subsection C of § 55.1-1914 of the Code of Virginia is prohibited.

C. Offering literature shall indicate that the property being offered is under the condominium form of ownership. The requirement of this subsection is satisfied by including the full name of the condominium in all offering literature.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

Part III. Application for Registration

18VAC48-30-90. Application procedures.

A declarant seeking registration of a condominium pursuant to Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia shall submit an application on the appropriate form provided by the board, along with the appropriate fee specified in 18VAC48-30-100.

By submitting the application to the board, the declarant certifies that the declarant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board do not indicate approval or acceptance of the application by the board.

The board may make further inquiries and investigations to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained in this section and on the application. Applications will not be considered complete until all required documents are received by the board.

Applications that are not approved within 12 months after receipt of the application in the board's office will be purged and a new application and fee must be submitted in order to be reconsidered for registration.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-100. Fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the board or its agent will determine whether the fee is timely. Checks or money orders shall be made payable to the Treasurer of Virginia.

1. Each application for registration of a condominium shall be accompanied by a fee in an amount equal to $35 per unit, except that the fee shall not be less than $1,750 or more than $3,500.

2. Each phase filing application shall be accompanied by a fee in an amount equal to $35 per unit, except that the fee for each phase filing shall not be less than $875 or more than $3,500.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-110. Review of application for registration.

A. Upon receipt of an application for registration, the board shall issue the notice of filing required by subsection A of § 55.1-1978 of the Code of Virginia.

B. Upon the review of the application for registration, if the requirements of §§ 55.1-1975 and 55.1-1977 of the Code of Virginia have not been met, the board shall notify the applicant as required by subsection C of § 55.1-1978 of the Code of Virginia.

C. A request for an extension of the 60-day application review period described in § 55.1-1978 of the Code of Virginia shall be in writing and shall be delivered to the board prior to the expiration of the period being extended. The request shall be for an extension of definite duration. The board may grant in writing a request for an extension of the application review period, and it may limit the extension to a period not longer than is reasonably necessary to permit correction of the application. An additional extension of the application review period may be obtained, subject to the conditions applicable to the initial request. A request for an extension of the application review period shall be deemed a consent to delay within the meaning of subsection A of § 55.1-1978 of the Code of Virginia.

D. If the requirements for registration are not met within the application review period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting the registration as required by subsection C of § 55.1-1978 of the Code of Virginia.

E. An applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia at any time between receipt of a notification pursuant to subsection B of this section and the effective date of the order of rejection entered pursuant to subsection D of this section. A request for such proceeding shall be deemed a consent to delay within the meaning of subsection A of § 55.1-1978 of the Code of Virginia.

F. The board shall receive and act upon corrections to the application for registration at any time prior to the effective date of an order rejecting the registration. If the board determines after review of the corrections that the requirements for registration have not been met, the board may proceed with an informal conference in accordance with § 2.2-4019 of the Code of Virginia to allow reconsideration of whether the requirements for registration are met. If the board does not opt to proceed with an informal conference, the applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia to reconsider whether the requirements for registration are met. If the board does not proceed with an informal conference and no request for an informal conference is received from the applicant, an amended order of rejection stating the factual basis for the rejection shall be issued. A new 20-day period for the order of rejection to become effective shall commence.

G. At such time as the board affirmatively determines that the requirements of §§ 55.1-1975 and 55.1-1977 of the Code of Virginia have been met, the board shall enter an order registering the condominium and shall designate the form, content, and effective date of the public offering statement, substituted public offering statement, or prospectus to be used.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-120. Prerequisites for registration.

The following provisions are prerequisites for registration and are supplementary to the provisions of § 55.1-1977 of the Code of Virginia.

1. The declarant shall own or have the right to acquire an estate in the land constituting or to constitute the condominium that is of at least as great a degree and duration as the estate to be conveyed in the condominium units.

2. The condominium instruments must be adequate to bring a condominium into existence upon recordation except that the certification requirements of § 55.1-1920 of the Code of Virginia need not be complied with as a prerequisite for registration. This subsection does not apply to condominium instruments that may be recorded after the condominium has been created.

3. The declarant shall have filed with the board reasonable evidence of its financial ability to complete all proposed improvements on the condominium. Such evidence may include (i) financial statements and a signed affidavit attesting that the declarant has sufficient funds to complete all proposed improvements on the condominium and that the funds will be used for completion of the proposed improvements or (ii) proof of a commitment of an institutional lender to advance construction funds to the declarant and, to the extent that any such commitments will not furnish all the necessary funds, other evidence, satisfactory to the board, of the availability to the declarant of necessary funds. A lender's commitment may be subject to such conditions, including registration of the condominium units and presale requirements, as are normal for loans of the type and as to which nothing appears to indicate that the conditions will not be complied with or fulfilled.

a. In the case of a condominium located in Virginia, "proposed improvements" are improvements that are not yet begun or not yet complete and that the declarant is affirmatively and unconditionally obligated to complete under §§ 55.1-1920 and 55.1-1930 B of the Code of Virginia and applicable provisions of the condominium instruments or that the declarant would be so obligated to complete if plats and plans filed with the board in accordance with 18VAC48-30-140 A were recorded.

b. In the case of a condominium located outside of Virginia, "proposed improvements" are improvements that are not yet begun or not yet complete and that the declarant represents, without condition or limitation, will be built or placed in the condominium.

4. The current and planned condominium marketing activities of the declarant shall comply with § 18.2-216 of the Code of Virginia, 18VAC48-30-80, and 18VAC48-30-660.

5. The declarant shall have filed with the board (i) a proposed public offering statement that complies with this chapter and subsection A of § 55.1-1976 of the Code of Virginia and, if applicable, subsection B of § 55.1-1982 of the Code of Virginia; (ii) a substituted public offering statement that complies with this chapter; or (iii) a prospectus that complies with this chapter.

6. Declarants may be organized as individuals or firms. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission in accordance with Chapter 5 of Title 59.1 (§ 59.1-69 et seq.) of the Code of Virginia before submitting an application to the board.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019; Volume 36, Issue 17, eff. June 1, 2020.

18VAC48-30-130. Minimum requirements for registration.

Applications for registration shall include the following:

1. The documents and information contained in § 55.1-1975 of the Code of Virginia.

2. The application fee specified in 18VAC48-30-100.

3. The following documents shall be included as exhibits. All exhibits shall be labeled as indicated and submitted in hardcopy form and electronically in a format acceptable to the board.

a. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission or other entity formation documents.

b. Exhibit B: A copy of the title opinion, title policy, or a statement of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title company or licensed attorney who is not a salaried employee, officer, or director of the declarant or owner, in accordance with subdivision A 5 of § 55.1-1975 of the Code of Virginia.

c. Exhibit C: A copy of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the unit and of the contracts and other agreements that a purchaser will be required to agree to or sign.

d. Exhibit D: A narrative description of the promotional plan for the disposition of the condominium units.

e. Exhibit E: A copy of documentation demonstrating the declarant's financial ability to complete the project in accordance with 18VAC48-30-120.

f. Exhibit F: A copy of the proposed public offering statement that complies with subsection A of § 55.1-1976 and subsection B of § 55.1-1982 of the Code of Virginia, as applicable, and this chapter. A substitute public offering statement or a prospectus pursuant to 18VAC48-30-370 and 18VAC48-30-380 respectively may be submitted for a condominium formed in another jurisdiction.

g. Exhibit G: Copies of bonds required by §§ 55.1-1921, 55.1-1968, and 55.1-1983 of the Code of Virginia, as applicable.

h. Exhibit H: A list with the name of every officer of the declarant who is directly responsible for the project or person occupying a similar status within, or performing similar functions for, the declarant. The list must include each individual's address, principal occupation for the past five years, and extent and nature of the individual's interest in the condominium as of a specified date within 30 days of the filing of the application.

i. Exhibit I: Plats and plans of the condominium that (i) comply with the provisions of § 55.1-1920 of the Code of Virginia and 18VAC48-30-140 other than the certification requirements and (ii) show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands. Hardcopy submittals of plats and plans must be no larger than 11 inches by 17 inches.

j. Exhibit J: Conversion condominiums must attach (i) a copy of the general notice provided to tenants of the condominium at the time of application pursuant to subsection C of § 55.1-1982 of the Code of Virginia, (ii) a copy of the formal notice to be sent at the time of registration to the tenants, if any, of the buildings, and (iii) the certified statement required in accordance with subsection D of § 55.1-1982 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-140. Requirements for plats and plans.

A. Except as provided in subsection C of this section, all plats and plans submitted with the application for registration shall comply with § 55.1-1920 of the Code of Virginia but the certification need not be signed until recordation. The plats and plans filed with the application for registration shall be the same as the plats and plans the declarant intends to record. A material change to the plats and plans shall be submitted to the board in accordance with Part VI (18VAC48-30-460 et seq.) of this chapter. Once recorded, copies of plats and plans as recorded shall be filed with the board in accordance with Part VI of this chapter.

B. In the case of units that are substantially identical, the requirement to show the location and dimensions (within normal construction tolerances) of the boundaries of each unit pursuant to subsection B of § 55.1-1920 of the Code of Virginia may be deemed satisfied by depiction of the location and dimensions of the vertical boundaries and horizontal boundaries, if any, of one such unit. The identifying numbers of all units represented by such depiction shall be indicated. Each structure within which any such units are located shall be depicted so as to indicate the exact location of each such unit within the structure.

C. In the case of a condominium located outside Virginia, certain materials may be filed with the application for registration in lieu of plats and plans complying with the provisions of § 55.1-1920 of the Code of Virginia. Such materials shall contain, as a minimum, (i) a plat of survey depicting all existing improvements, and all improvements that

the declarant represents, without condition or limitation, will be built or placed in the condominium; and (ii) legally sufficient descriptions of each unit. Any improvements whose completion is subject to conditions or limitations shall be appropriately labeled to indicate that such improvements may not be completed. Unit descriptions may be written or graphic, shall demarcate each unit vertically and, if appropriate, horizontally, and shall indicate each unit's location relative to established points or datum.

D. The plats and plans must bear the form of the certification statement required by subsections A and B of § 55.1-1920 of the Code of Virginia. However, as stated in subsection A of this section, the statement need not be executed prior to recordation. The certification statement may appear in a separate document that is recorded, or to be recorded.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-150. Application for registration of expandable condominium.

The declarant may include in the application for registration all units for which development rights have been reserved.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

Part IV. Public Offering Statement

18VAC48-30-160. Public offering statement requirements, generally.

In addition to the provisions of § 55.1-1976 of the Code of Virginia, the following will be considered, as applicable, during review of the public offering statement.

1. The public offering statement shall provide full and fair disclosure in accordance with 18VAC48-30-170.

2. The public offering statement shall pertain to a single offering and to the entire condominium in which the condominium units being offered are located.

3. The public offering statement shall be clear, organized, and legible.

4. Except for brief excerpts, the public offering statement may refer to, but should not incorporate verbatim, portions of the condominium instruments, the Virginia Condominium Act, or this chapter. This does not preclude compliance with 18VAC48-30-180.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-170. Full and fair disclosure.

A. The provisions of § 55.1-1976 and subsection B of § 55.1-1982 of the Code of Virginia and this chapter shall be strictly construed to promote full and fair disclosure in the public offering statement. In addition, the following will be considered, as applicable, during review to assure full and fair disclosure:

1. The information shall be presented in a manner that is clear and understandable to a reasonably informed consumer, while maintaining consistency with the requirements of this chapter and the Virginia Condominium Act.

2. In addition to specific information required by this chapter and the Virginia Condominium Act, the public offering statement shall disclose any other information necessary for full and fair disclosure.

3. No information shall be incorporated by reference to an outside source that is not reasonably available to a prospective purchaser.

4. If required information is not known or not reasonably available, such fact shall be stated and explained in the public offering statement.

B. The board has the sole discretion to require additional information or amendment of existing information as it finds necessary to ensure full and fair disclosure.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-180. Contents of public offering statement.

A. A cover, if used, must be blank or bear identification information only.

B. The first page of the public offering statement shall be substantially as follows:

PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S PROTECTION
PUBLIC OFFERING STATEMENT

NAME OF CONDOMINIUM:	_____
LOCATION OF CONDOMINIUM:	_____
NAME OF DECLARANT:	_____
ADDRESS OF DECLARANT:	_____
EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT:	_____
REVISED:	_____

THE PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S OWN PROTECTION. Living in a common interest community carries with it certain rights, responsibilities, and benefits, including certain financial obligations, rights, and restrictions concerning the use and maintenance of units and common elements, and decision-making authority vested in the unit owners' association. The purchaser will be bound by the provisions of the condominium instruments and should review the Public Offering Statement, the condominium instruments, and other exhibits carefully prior to purchase.

This Public Offering Statement presents information regarding condominium units being offered for sale by the declarant. Virginia law requires that a Public Offering Statement be given to every Purchaser in order to provide full and fair disclosure of the significant features of the condominium units being offered. The Public Offering Statement is not intended, however, to be all-inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the declarant to the Virginia Common Interest Community Board. The Board has carefully reviewed the Public Offering Statement to ensure that it contains required disclosures, but the Board does not guarantee the accuracy or completeness of the Public Offering

Statement. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the latter will control.

Under Virginia law a purchaser of a condominium unit is afforded a 5-day period during which the purchaser may cancel the purchase contract of sale and obtain a full refund of any sums deposited in connection with the purchase contract. The 5-day period begins on the purchase contract date or the date of delivery of a Public Offering Statement, whichever is later. The purchaser may, if practicable, inspect the condominium unit and the common elements and obtain professional advice. If the purchaser elects to cancel, the purchaser must deliver notice of cancellation to the declarant pursuant to § 55.1-1974 of the Code of Virginia.

Allegations of violation of any law or regulation contained in the Virginia Condominium Act or the Condominium Regulations should be reported to the Virginia Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233.

C. A summary of important considerations shall immediately follow the first page for the purpose of reinforcing the disclosure of significant information. The summary shall be titled as such and shall be introduced by the following statement:

"Following are important matters to be considered in acquiring a condominium unit. They are highlights only. The Public Offering Statement should be examined in its entirety to obtain detailed information."

Appropriate modifications shall be made to reflect facts and circumstances that may vary. The summary shall consist of, but not be limited to, the following, as applicable:

1. A statement on the governance of the condominium wherein unit owners are allocated votes for certain decisions of the association. In addition, the statement shall include that all unit owners will be bound by the decisions made by the association, even if the individual unit owner disagrees.

2. A statement concerning the decision-making authority of the executive board of the unit owners' association.

3. A statement regarding the payment of expenses of the association on the basis of a periodic budget, to include a disclosure of any provision for reserves, including a statement if there are no reserves.

4. A statement detailing the requirement for each unit owner to pay a periodic assessment and the inability to reduce the amount of an assessment by refraining from the use of the common elements.

5. A statement of the unit owner's responsibility to pay additional assessments, if any.

6. A statement regarding the consequences for failure to pay an assessment when due. The statement shall include reference to the enforcement mechanisms available to the association, including obtaining a lien against the condominium unit, pursuing civil action against the unit owner, and certain other penalties.

7. A statement that the declarant must pay assessments on unsold condominium units.

8. A statement indicating whether the declarant, its predecessors, or principal officer have undergone a debtor's relief proceeding.

9. A statement that the declarant will retain control of the unit owners' association for an initial period.

10. A statement indicating whether a managing agent will perform the routine operations of the unit owners' association. The statement shall include whether the managing agent is related to the declarant, director, or officer of the unit owners' association.

11. A statement indicating whether the declarant may lease unsold condominium units and a statement indicating whether the right of a unit owner to lease that owner's unit to another is subject to restrictions.

12. A statement indicating whether the declarant may expand or contract the condominium or convert convertible land or space without the consent of any unit owner.

13. A statement indicating whether the right of the unit owner to resell the owner's condominium unit is subject to restrictions.

14. A statement indicating whether the units are restricted to residential use and whether the units may be utilized for commercial, retail, or professional use. The statement shall provide detail if units have different voting rights. Further, the statement shall also detail whether the allocation of rights and responsibilities among commercial, retail, professional, or residential use units are the same.

15. A statement indicating whether approval of the declarant or unit owners' association is necessary in order for a unit owner to alter the structure of the unit or modify the exterior of the unit.

16. A statement regarding the obligation of the unit owners' association to obtain certain insurance benefiting the unit owner, along with the necessity for a unit owner to obtain other insurance.

17. A statement regarding the unit owner's obligation to pay real estate taxes.

18. A statement regarding any limits the declarant asserts on the association or the unit owner's right to bring legal action against the declarant. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

19. A statement that the association or unit owners are members of another association or obligated to perform duties or pay fees or charges to that association or entity.

20. A statement indicating whether the condominium is subject to development as a time-share.

21. A statement affirming that marketing and sale of condominium units will be conducted in accordance with the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia) and the Virginia Condominium Act (Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia).

D. The content after the summary of important considerations shall include the narrative sections in 18VAC48-30-190 through 18VAC48-30-360. Supplementary sections may be included as necessary.

E. Clear and legible copies of the following documents shall be attached as exhibits to the public offering statement:

1. The declaration;

2. The bylaws;

3. The projected budget;

4. Rules and regulations of the unit owners' association, if available;

5. Master association documents, if applicable;

6. Any management contract, along with the license number of the common interest community manager, if applicable;

7. Depiction of unit layouts;

8. Any lease of recreational areas;

9. Any contract or agreement affecting the use, maintenance, or access of all or any portion of the condominium, the nature, duration, or expense of which has a material impact on the operation and administration of the condominium;

10. Warranty information, if applicable; and

11. Other documents obligating the association or unit owner to perform duties or obligations or pay charges or fees.

F. Other information and documentation may be included as necessary to ensure full and fair disclosure. The board may also require additional information as necessary to ensure full and fair disclosure.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-190. Narrative sections; condominium concept.

The public offering statement shall contain a section captioned "The Condominium Concept." The section shall consist of a brief discussion of the condominium form of ownership. The section shall discuss the distinction among units, common elements and limited common elements, if any, and shall explain ownership of an undivided interest in the common elements. Attention shall be directed to any features of ownership of the condominium units being offered that are different from typical condominium unit ownership.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-200. Narrative sections; creation of condominium.

The public offering statement shall contain a section captioned "Creation of the Condominium." The section shall briefly explain the manner in which the condominium was or will be created, the locality wherein the condominium instruments will be or have been recorded, and each of the condominium instruments, their functions, and the procedure for their amendment. The section shall indicate where each of the condominium instruments or copies thereof may be found. In the case of a condominium located in Virginia or in a jurisdiction having a law similar to § 55.1-1984 of the Code of Virginia, the section shall indicate that the purchaser will receive copies of the recorded declaration and bylaws, including amendments, as appropriate, within the time provided in the applicable statute.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-210. Narrative sections; description of condominium.

A. The public offering statement shall contain a section captioned "Description of the Condominium." The description shall include statements of (i) the land area of the condominium to include either the square footage or the acreage, (ii) the number of units in the condominium, (iii) the number of units in the offering, (iv) the number of units in the condominium planned to be rented, and (v) the percentage of units the declarant intends to sell to persons who do not intend to occupy the units as their primary residence.

B. If the condominium is contractable, expandable, or includes convertible land or space, the section shall contain a brief description of each such feature, including the land area to include either the square footage or acreage, and the maximum number of units or maximum number of units per acre that may be added, withdrawn, or converted, as applicable, together with a statement of the declarant's plans for the implementation of each such feature. In the case of a contractable or expandable condominium, the section shall contain the substance of the following statement:

"At the declarant's option, the construction and development of the condominium may be abandoned or altered prior to completion, and land or buildings originally intended for condominium development may be put to other uses or sold."

In the case of a condominium including convertible land, the section shall contain the substance of the following statements:

"Until such time as the declarant converts the convertible land into units or limited common elements, the declarant is required by the Virginia Condominium Act to pay for the upkeep of the convertible land. Once the convertible land has been converted, maintenance and other financial responsibilities associated with the land so designated become the responsibility of the unit owners and, therefore, may be reflected in the periodic assessment for the condominium."

If the common expense assessments are expected to increase should convertible land be converted, this section shall also disclose an estimate of the approximate percentage by which such assessments are expected to increase as a result of such conversion.

C. The section shall state whether the units are restricted solely to residential use and shall identify where use and occupancy restrictions are found in the condominium instruments. If nonresidential use is permitted, the section shall identify the types of units and proportion of each, if known or reasonably anticipated.

D. The section shall state whether the project, as of the effective date of the public offering statement, is intended to comply with the underwriting guidelines of the secondary mortgage market agencies, including but not limited to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Virginia Housing Development Authority.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-220. Narrative sections; individual units.

The public offering statement shall contain a section captioned "Individual Units." The section shall contain a general description of the various types of units being offered to include the square footage, or number of bedrooms, or both, together with the dates on which substantial completion of unfinished units is anticipated. The section shall state any restrictions regarding changes unit owners may make to the structure or exterior of the units, regardless of whether the exterior is a portion of the common elements.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-230. Narrative sections; common elements.

A. The public offering statement shall contain a section captioned "Common Elements." The section shall contain a general description of the common elements.

B. For any common elements that are not completed or not expected to be substantially complete when the units are complete, a statement of the anticipated completion dates of unfinished common elements shall be included.

C. In the case of a condominium located in Virginia, if common elements are not expected to be substantially complete when the units are completed, the section shall state the nature, source, and extent of the obligation to complete such common elements that the declarant has incurred or intends to incur upon recordation of the condominium instruments pursuant to §§ 55.1-1920 A and 55.1-1930 B of the Code of Virginia and applicable provisions of the condominium instruments. In addition the section shall state that pursuant to § 55.1-1921 of the Code of Virginia, the declarant has filed with the board a bond to insure completion of improvements to the common elements that the declarant is obligated as stated in the declaration.

D. In the case of a condominium located outside of Virginia, a description of the nature, source, and extent of the obligation to complete such common elements that the declarant has incurred or intends to incur under the law of the jurisdiction in which the condominium is located shall be included.

E. The section shall describe any limited common elements that are assigned or that may be assigned and shall indicate the reservation of exclusive use. In the case of limited common elements that may be assigned, the section shall state the manner of such assignment or reassignment.

F. The section shall indicate the availability of vehicular parking spaces including the number of spaces available per unit and restrictions on or charges for the use of spaces.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-240. Narrative sections; maintenance, repair, and replacement responsibilities.

The public offering statement shall contain a section captioned "Maintenance, Repair, and Replacement Responsibilities." The section shall describe the basic allocation of maintenance, repair, and replacement responsibilities between the unit owner and the association as well as any unusual items to be maintained by the unit owner. The section shall refer to the location of the maintenance, repair, and replacement responsibility requirements in the condominium instruments.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-250. Narrative sections; declarant.

A. The public offering statement shall contain a section captioned "The Declarant." The section shall contain a brief history of the declarant with emphasis on its experience in condominium development.

B. The following information shall be stated with regard to persons immediately responsible for the development of the condominium: (i) name, (ii) length of time associated with the declarant, (iii) role in the development of the condominium, and (iv) experience in real estate development. If different from the persons immediately responsible for the development of the condominium, the principal officers of the declarant shall also be identified.

C. The section shall describe the type of legal entity of the declarant and explain if any other entities have any obligation to satisfy the financial obligations of the declarant.

D. If the declarant or its parent or predecessor organization has, during the preceding 10 years, been adjudicated as bankrupt or has undergone any proceeding for the relief of debtors, such facts shall be stated. If any of the persons identified pursuant to subsection B of this section has, during the preceding three years, been adjudicated as bankrupt or undergone any proceeding for the relief of debtors, such facts shall be stated.

E. The section shall indicate any final action taken against the declarant, its principals, or the condominium by an administrative agency, civil court, or criminal court where the action reflected adversely upon the performance of the declarant as a developer of real estate projects. The section shall also indicate any current or past proceedings brought against the declarant by any condominium unit owners' association or by its executive board or any managing agent on behalf of such association or that has been certified as a class action on behalf of some or all of the unit owners. For the purposes of the previous sentence with respect to past proceedings, if the ultimate disposition of those proceedings was one that reflected adversely upon the performance of the declarant, that disposition shall be disclosed. If the ultimate disposition was resolved favorably towards the declarant, its principals, or the condominium, the final action does not need to be disclosed. The board has the sole discretion to require additional disclosure of any proceedings where it finds such disclosure necessary to assure full and fair disclosure.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-260. Narrative sections; terms of the offering.

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a condominium unit and present information regarding the settlement of purchase contracts as provided in subsections B through H of this section.

B. The section shall indicate the offering prices for condominium units or a price range for condominium units, if either is established.

C. The section shall set forth the significant terms of any financing offered by or through the declarant to purchasers. Such discussion shall include the substance of the following statement:

"Financing is subject to additional terms and conditions stated in the loan commitment or instruments."

D. The section shall discuss in detail any costs collected by or paid to the declarant, association, or master association that are not normal for residential real estate transactions including, without limitation, any contribution to the initial or working capital of the unit owners' association, including any master association, to be paid by a purchaser.

E. The section shall discuss any penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase contract that are not normal for residential real estate transactions. Penalties or forfeitures to be discussed include, without limitation, the declarant's right to retain sums deposited in connection with a purchase contract in the event of a refusal by a lending institution to provide financing to a purchaser who has made proper application for same.

F. The section shall discuss the right of the declarant to cancel a purchase contract upon failure of the declarant to obtain purchase contracts on a given number or percentage of condominium units being offered or upon failure of the declarant to meet other conditions precedent to obtaining necessary financing.

G. The section shall discuss the process for cancellation of a purchase contract by a purchaser in accordance with subdivision 2 of § 55.1-1974 of the Code of Virginia. The section shall include a statement as to whether deposits will be held in an escrow fund or if a bond or letter of credit will be filed with the board in lieu of escrowing deposits, all in accordance with § 55.1-1983 of the Code of Virginia.

H. The section shall set forth any restrictions in the purchase contract that limit the unit owner's right to bring legal action against the declarant or the association. The section shall set forth the paragraph or section and page number of the purchase contract where such provision is located. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-270. Narrative sections; encumbrances.

A. The public offering statement shall contain a section captioned "Encumbrances" that shall include the significant terms of any encumbrances, easements, liens, and matters of title affecting the condominium other than those contained in the condominium instruments and disclosed elsewhere in the public offering statement, as provided in subsections B through J of this section.

B. Except to the extent that such encumbrances are required to be satisfied or released by subsection A of § 55.1-1908 of the Code of Virginia, or a similar law, the section shall describe every mortgage, deed of trust, other perfected lien, or choate mechanics' or materialmen's lien affecting all or any portion of the condominium other than those placed on condominium units by their purchasers or owners. Such description shall (i) identify the lender secured or the lienholder, (ii) state the nature and original amount of the obligation secured, (iii) identify the party having primary responsibility for performance of the obligation secured, and (iv) indicate the practical effect upon unit owners of failure of the party to perform the obligation.

C. Normal easements for utilities, municipal rights-of-way, and emergency access shall be described only as such, without reference to ownership, location, or other details.

D. Easements reserved to the declarant to facilitate conversion, expansion, or sales shall be briefly described.

E. Easements reserved to the declarant or to the unit owners' association or to either entity's representatives or agents for access to units shall be briefly described. In the event that access to a unit may be had without notice to the unit owner, such fact shall be stated.

F. Easements across the condominium reserved to the owners or occupants of land located in the vicinity of the condominium, or across adjacent land benefitting the condominium including, without limitation, easements for the use of recreational areas shall be briefly described.

G. Covenants, servitudes, or other devices that create an actual restriction on the right of any unit owner to use and enjoy the unit or any portion of the common elements other than limited common elements shall be briefly described.

H. Any matter of title that is not otherwise required to be disclosed by the provisions of this section and that has or may have a substantial adverse impact upon unit owners' interests in the condominium shall be described. Under normal circumstances, normal and customary utility easements, easements for encroachments, and easements running in favor of unit owners for ingress and egress across the common elements shall be deemed not to have a substantial adverse impact upon unit owners' interest in the condominium.

I. The section need not include any information required to be disclosed by 18VAC48-30-210 C, 18VAC48-30-220, or 18VAC48-30-280.

J. In addition to the description of easements required in this section, pertinent easements that can be located shall be shown on the condominium plats and plans.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-280. Narrative sections; restrictions on transfer.

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain any rights of first refusal, preemptive rights, limitations on leasing, or other restraints on free alienability created by the condominium instruments or the rules and regulations of the unit owners' association that affect the unit owners' right to resell, lease, or otherwise transfer an interest in the condominium unit.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-290. Narrative sections; unit owners' association..

A. The public offering statement shall contain a section captioned "Unit Owners' Association." The section shall discuss the manner in which the condominium is governed and administered and shall include the information required by subsections B through K of this section.

B. The section shall summarize the functions of the unit owners' association.

C. The section shall describe the organizational structure of the unit owners' association. Such description shall indicate (i) the existence of or provision for an executive board, officers, and managing agent, if any; (ii) the relationships between such persons or bodies; (iii) the manner of election or appointment of such persons or bodies; and (iv) the assignment or delegation of responsibility for the performance of the functions of the unit owners' association.

D. The section shall describe the method of allocating votes among the unit owners.

E. The section shall describe any retention by the declarant of control over the unit owners' association, including the time period of declarant control. The section shall state that the association shall register with the Common Interest Community Board upon transition of declarant control by filing the required annual report in accordance with § 55.1-1980 of the Code of Virginia.

F. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the declarant or a member of the executive board or an officer of the unit owners' association. The duration of any management agreement shall be stated.

G. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance, or access of all or any part of the condominium shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

H. Rules and regulations of the unit owners' association and the authority to promulgate rules and regulations shall be discussed. Particular provisions of the rules and regulations need not be discussed except as required by other provisions of this chapter. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.

I. Any standing committees established or to be established to perform functions of the unit owners' association shall be discussed. Such committees include, without limitation, architectural control committees and committees having the authority to interpret condominium instruments, rules, and regulations or other operative provisions.

J. Unless required to be disclosed by 18VAC48-30-270 E, any power of the declarant or of the unit owners' association or its representatives or agents to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated (i) a unit may be entered without notice to the unit owner, (ii) the declarant or the unit owners' association or its representatives or agents are empowered to take actions or perform work in a unit without the consent of the unit owner, and (iii) the unit owner may be required to bear the costs of actions so taken or work so performed.

K. The section shall state whether the condominium is part of a master or other association and briefly describe such relationship and the responsibilities of and obligations to the master association, including any charges for which the unit owner or the unit owners' association may be responsible. The disclosures required by this subsection may be contained in this narrative section or another narrative section. The section shall also describe any other obligation of the association or unit owners arising out of any agreements, easements, deed restrictions, or proffers, including the obligation to pay fees or other charges.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-300. Narrative sections; display of flag.

The public offering statement shall include a section captioned "Display of Flag." This section shall describe any restrictions, limitations, or prohibitions on the right of a unit owner to display the flag of the United States in accordance with § 55.1-1951 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-310. Narrative sections; surrounding area.

The public offering statement shall contain a section captioned "Surrounding Area." The section shall briefly describe the zoning of the immediate neighborhood of the condominium and the current uses.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-320. Narrative sections; financial matters.

A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a condominium unit, excluding certain taxes, in the manner provided in subsections B through I of this section.

B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair, and replacement of various portions of the condominium: (i) common expenses apportioned among and assessed to all of the condominium units pursuant to subsection D of § 55.1-1964 of the Code of Virginia or similar law or condominium instrument provision; (ii) common expenses, if any, apportioned among and assessed to less than all of the condominium units pursuant to subsections A and B of § 55.1-1964 of the Code of Virginia or similar law or condominium instrument provisions; and (iii) costs borne directly by individual unit owners. The section need not discuss taxes assessed against individual condominium units and payable directly by the unit owners.

C. A budget shall show projected common expenses for the first year of the condominium's operation or, if different, the latest year for which a budget is available. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention to such exhibit. The section shall describe the manner in which the projected budget is established. If the condominium is phased, the budget shall project future years until all phases are projected to be developed and all common elements that must be built have been completed. The budget shall include an initial working capital budget showing sources and uses of initial working capital and a reserve table showing amounts to be collected to fund those reserves. The budget shall show regular individual assessments by unit type. The budget shall note that the figures are not guaranteed and may vary.

D. The section shall describe the manner in which regular common expenses are apportioned among and assessed to the condominium units. The section shall include the substance of the following statement, if applicable:

"A unit owner cannot obtain a reduction of the regular common expenses assessed against the unit by refraining from use of any of the common elements."

E. The section shall describe budget provisions for reserves for capital expenditures in accordance with § 55.1-1965 of the Code of Virginia and for contingencies, if any. If there are no reserves, the section shall so state.

F. The section shall describe provisions for additional assessments to be levied in accordance with subsection E of § 55.1-1964 of the Code of Virginia in the event that budgeted assessments provide insufficient funds for operation of the

unit owners' association. The section shall also describe the provisions for an assessment against an individual unit owner.

G. The section shall discuss any common expenses actually planned to be specially assessed pursuant to subsections A and B of § 55.1-1964 of the Code of Virginia or similar law or condominium instrument provisions.

H. The section shall indicate any fee, rent, or other charge to be payable by unit owners other than through common expense assessments to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the condominium. As an exception to the provisions of this subsection, the section need not discuss any fees provided for in subsection H of §§ 55.1-1966 and 55.1-1969 of the Code of Virginia, or similar laws or condominium instrument provisions or any costs for certificates for resale.

I. The section shall discuss the effect of failure of a unit owner to pay the assessments levied against the condominium unit. Such discussion shall indicate provisions for charges or other remedies that may be imposed to be applied in the case of overdue assessments and for acceleration of unpaid assessments. The section shall indicate the existence of a lien for unpaid assessments and where applicable the bond or letter of credit conditioned on the payment of assessments filed with the board in accordance with § 55.1-1968 of the Code of Virginia. The section shall include, to the extent applicable, the substance of the following statement:

"The unit owners' association may obtain payment of overdue assessments by bringing legal action against the unit owner or by foreclosure of the lien resulting in a forced sale of the condominium unit."

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-330. Narrative sections; insurance.

A. The public offering statement shall contain a section captioned "Insurance." The section shall describe generally the insurance on the condominium to be maintained by the unit owners' association. The section shall state, with respect to such insurance, each of the following circumstances, to the extent applicable: (i) property damage coverage will not insure personal property belonging to unit owners; (ii) property damage coverage will not insure improvements to a unit that increase its value beyond the limits of coverage provided in the unit owners' association's policy; and (iii) liability coverage will not insure against liability arising from an accident or injury occurring within a unit or as a result of the act or negligence of a unit owner. The section shall include a statement whether the unit owner is obligated to obtain coverage for any or all of the coverages described. The section shall also include a statement that the unit owner should consult with an insurance professional to determine the appropriate coverage.

B. The section shall indicate any conditions imposed by the condominium instruments or the rules and regulations to which insurance obtained directly by unit owners will be subject. Such indication may be made by reference to pertinent provisions of the condominium instruments or the rules and regulations.

C. The section shall explain that the association is the only party that can make a claim under the master policy and is the sole decision-maker as to whether to make a claim, including a statement as to the circumstances under which a unit owner could be responsible for payment of the deductible.

D. The section shall state that the unit owners' association is required to obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy in accordance with subsection B of § 55.1-1963 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-340. Narrative sections; taxes.

A. The public offering statement shall contain a section captioned "Taxes." The section shall describe all existing or pending taxes to be levied against condominium units individually including, without limitation, real property taxes, sewer connection charges, and other special assessments.

B. With respect to real property taxes, the section shall state the current tax rate or provide information for obtaining the current tax rate. The section shall also state a procedure or formula by means of which the taxes may be estimated.

C. With respect to other taxes, the section shall describe each tax in sufficient detail as to indicate the time at which the tax will be levied and the actual or estimated amount to be levied, or a procedure or formula by means of which the taxes may be estimated.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-350. Narrative sections; governmental review.

The public offering statement shall contain a section captioned "Governmental Reviews." The section shall discuss governmental reviews applicable to the condominium property and the status of any governmental approvals required for the development of the condominium. In addition, the section shall discuss approval of the zoning application and site plan and issuance of building permits by appropriate governmental authorities. The section shall state the current zoning classification for the condominium property. The section shall also include a statement regarding any zoning, subdivision, or land use obligations or proffers that would be imposed on the unit owner or the association, but need not disclose any zoning, subdivision, or land use obligations or proffers that do not impose any obligation on the association.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-360. Narrative sections; warranties.

The public offering statement shall contain a section captioned "Warranties." The section shall describe any warranties provided by or through the declarant on the units or the common elements and a summary of the process for commencement of an action for breach of warranty in accordance with subsection C of § 55.1-1955 of the Code of Virginia. The section shall describe the structural defect warranty required by and described in subsection B of § 55.1-1955 of the Code of Virginia. The section shall also include the substance of the following statement:

"Nothing contained in the warranty provided by the declarant shall limit the protection afforded by the statutory warranty."

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-370. Documents from other jurisdictions.

A. A substituted public offering statement shall only be permitted for a condominium located outside of Virginia.

B. The substituted public offering statement shall be prepared by deleting from the original disclosure document (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the condominium; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgment of receipt, or related events involving the disclosure document; (iv) the effective dates in another jurisdiction of the disclosure document; and (v) all other information that is untrue, inaccurate, or misleading with respect to marketing, offers, or disposition of condominium units in Virginia.

C. The substituted public offering statement shall incorporate all information not otherwise included that is necessary to effect fully and accurately the disclosures required by subsection A of § 55.1-1976 of the Code of Virginia and, if applicable, subsection B of § 55.1-1982 of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature that is different from the definitions provided in § 55.1-1900 of the Code of Virginia.

D. The substituted public offering statement shall include as the first item of the summary of important considerations a statement that includes the following information: (i) the designation by which the original disclosure document is identified in the original jurisdiction, (ii) the governmental agency of such other jurisdiction where the original disclosure document is or will be filed, and (iii) the jurisdiction of such filing.

E. The provisions of subdivision 2 of § 55.1-1974, § 55.1-1976, and subsection B of § 55.1-1982 of the Code of Virginia and 18VAC48-30-160, 18VAC48-30-170, and 18VAC48-30-180 shall apply to substituted public offering statements in the same manner and to the same extent that they apply to public offering statements.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-380. Condominium securities.

A prospectus filed in compliance with the securities laws of a state or federal agency used in lieu of a public offering statement shall contain or have attached thereto copies of documents, other than the projected budget required to be attached to a public offering statement by subsection E of 18VAC48-30-180. Such prospectus shall be deemed to satisfy all of the disclosure requirements of subsections C and D of 18VAC48-30-180 and 18VAC48-30-190 through 18VAC48-30-360. In the case of a conversion condominium, the prospectus shall have attached thereto, in suitable form, the information required by 18VAC48-30-420, subsections C and D of 18VAC48-30-430, and 18VAC48-30-440 to be disclosed in public offering statements for conversion condominiums. The provisions of subdivision 2 of § 55.1-1974 of the Code of Virginia shall apply to the delivery of the prospectus in the same manner and to the same extent that they apply to the delivery of a public offering statement.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-390. Board oversight of public offering statement.

The board at any time may require a declarant to alter or amend the public offering statement to assure full and fair disclosure to prospective purchasers and to ensure compliance with the Virginia Condominium Act and this chapter.

In accordance with subsection B of § 55.1-1976 of the Code of Virginia, the board does not approve or recommend the condominium or disposition thereof. The board's issuance of an effective date for a public offering statement shall not be

construed to (i) constitute approval of the condominium, (ii) represent that the board asserts that either all facts or material changes or both concerning the condominium have been fully or adequately disclosed, or (iii) indicate that the board has made judgment on the value or merits of the condominium.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

Part V. Conversion Condominiums

18VAC48-30-400. Public offering statement for conversion condominium; general instructions.

The public offering statement for a conversion condominium shall conform in all respects to the requirements of 18VAC48-30-160 through 18VAC48-30-380. In addition, the public offering statement for a conversion condominium shall (i) contain special disclosures in the narrative sections captioned "Description of the Condominium," "Terms of the Offering," and "Financial Matters"; and (ii) incorporate narrative sections captioned "Present Condition of the Condominium" and "Replacement Requirements." Provisions for such additional disclosure are set forth in 18VAC48-30-410 through 18VAC48-30-440.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-410. Description of conversion condominium.

In addition to the information required by 18VAC48-30-210, the section captioned "Description of the Condominium" shall indicate that the condominium is a conversion condominium. The term conversion condominium shall be defined and the particular circumstances that bring the condominium within the definition shall be stated. The nature and inception date of prior occupancy of the property being converted shall be stated.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-420. Financial matters, conversion condominium.

A. The provisions for capital reserves described in the section captioned "Financial Matters" shall conform with 18VAC48-30-320 and shall be supplemented by the information set forth in subsections B and C of this section.

B. The section shall state the aggregate replacement cost of all physical assets whose replacement costs will constitute regular common expenses and whose expected useful lives are 10 years or less. For the purposes of this subsection, an expected useful life that is stated as being within a range of years pursuant to subsection E of 18VAC48-30-440 shall be deemed to be 10 years or less, if the lower limit of such range is 10 years or less. The total common expense assessments per unit that would be necessary in order to accumulate an amount of capital reserves equal to such aggregate replacement cost shall be stated.

C. The section shall state the amount of capital reserves that will be accumulated by the unit owners' association during the period of declarant control together with any provisions of the condominium instruments specifying the rate at which reserves are to be accumulated thereafter. If any part of the capital reserves will or may be obtained other than through regular common expense and limited common expense assessments, such fact shall be stated.

D. The actual expenditures made over a three-year period on operation, maintenance, repair, or other upkeep of the property prior to its conversion to condominium shall be set forth in tabular form as an exhibit immediately preceding or following the budget attached to the public offering statement pursuant to subsection C of 18VAC48-30-320, and shall be presented in a manner that is not misleading. Distinction shall be made between expenditures that would have constituted regular common expenses and limited common expenses, and expenditures that would have been borne by unit owners individually if the property had been converted to a condominium prior to the commencement of the three-year period. To the extent that it is impossible or impracticable to so distinguish the expenditures it shall be assumed that they would have constituted regular common expenses or limited common expenses.

Both types of expenditures shall be cumulatively broken down on a per unit basis in the same proportion that common expenses are or will actually be assessed against the condominium units. The three-year period to which this subsection refers shall be the most recent three-year period prior to application for registration during which the property was occupied and for which expenditure information is available. The expenditure information shall indicate the years for which expenditures are stated. If any portion of the property being converted to condominium was not occupied for the full three-year period, expenditure information shall be set forth only for the entire time period that portion of the property was occupied. The "Financial Matters" section shall direct the purchaser's attention to the expenditure information.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-430. Present condition of conversion condominium.

A. The section captioned "Present Condition of the Condominium" shall contain a statement of the approximate dates of original construction or installation of all physical assets in the condominium. A single construction or installation date may be stated for all of the physical assets (i) in the condominium, (ii) within a distinctly identifiable portion of the condominium, or (iii) within a distinctly identifiable category of physical assets. A statement made pursuant to the preceding sentence shall include a separate reference to the construction or installation date of any physical asset within a stated group of physical assets that was constructed or installed significantly earlier than the construction or installation date indicated for the group generally. No statement shall be made that a physical asset or portion thereof has been repaired, altered, improved, or replaced subsequent to its construction or installation unless the approximate date, nature, and extent of such repair, alteration, improvement, or replacement is also stated.

B. Subject to the exceptions provided in subsections D, E, and F of this section, the section captioned "Present Condition of the Condominium" shall contain a description of the present condition of all physical assets within the condominium. The description of present condition shall disclose all structural defects and incapacities of major utility installations to perform their intended functions as would be observable, detectable, or deducible by means of standard inspection and investigative techniques employed by architects or professional engineers, as the case may be.

C. The section shall indicate the dates of inspection by means of which the described present condition was determined; provided, however, that such inspections shall have been conducted not more than one year prior to the date of filing the application for registration. The section shall identify the party by whom present condition was ascertained and shall indicate the relationship of such party to the declarant.

D. A single statement of the present condition of a class of physical assets shall suffice to disclose the present condition of each physical asset within the class; provided, however, that, unless subsection F of this section applies, such statement shall include a separate reference to the present condition of any physical asset within the class that is significantly different from the present condition indicated for the class generally.

E. The description of present condition may include a statement that all structural components in the condominium or in a distinctly identifiable portion thereof are in sound condition except those for which structural defects are noted.

F. In a case in which there are numerous physical assets within a class of physical assets and inspection of each such physical asset is impracticable, the description of present condition of all the physical assets within the class may be

based upon an inspection of a number of them selected at random, provided that the number selected is large enough to yield a reasonably reliable sample and that the total number of physical assets within the class and the number selected are disclosed.

G. The section shall include statements disclosing any environmental issues pertaining to the building and the surrounding area, to include:

1. The presence of any asbestos-containing material following an inspection of each building completed prior to July 1, 1978, as well as whether any response actions have been or will need to be taken as required by § 55.1-1982 B 5 of the Code of Virginia;

2. Any known information on lead-based paint and lead-based paint hazards in each building constructed prior to 1978 pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992 - Title X (42 USC § 4851 et seq.); and

3. Any obligations related to the declarant's participation in voluntary or nonvoluntary remediation activities.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-440. Replacement requirements in conversion condominium.

A. Subject to the exceptions provided in subsections B and H of this section, the section captioned "Replacement Requirements" shall state the expected useful lives of all physical assets in the condominium. The section shall state that expected useful lives run from the date of the inspection by means of which the expected useful lives were determined. Such inspection date shall be stated.

B. A single statement of the expected useful life of a class of physical assets shall suffice to disclose the expected useful life of each physical asset within the class; provided, however, that such statement shall include a separate reference to the expected useful life of any physical asset within such class that is significantly shorter than the expected useful life indicated for the class generally.

C. An expected useful life may be qualified. A qualified expected useful life is an expected useful life expressly conditioned upon a given use or level of maintenance or other factor affecting longevity. No use, level of maintenance, or other factor affecting longevity shall be stated as a qualification unless such use, level of maintenance, or factor affecting longevity is normal or reasonably anticipated for the physical asset involved. If appropriate, an expected useful life may be stated as being indefinite, subject to the stated qualification that the physical asset involved must be properly used and maintained. An expected useful life may be stated as being within a range of years, provided that the range is not so broad as to render the statement meaningless. In no event shall the number of years constituting the lower limit of such range be less than two-thirds of the number of years constituting the upper limit.

D. Subject to the exceptions provided in subsections E and H of this section, the section captioned "Replacement Requirements" shall state the replacement costs of all physical assets in the condominium including those whose expected useful lives are stated as being indefinite.

E. A statement of the replacement cost of a representative member of a class of physical assets shall suffice to disclose the replacement cost of each physical asset within the class; provided, however, that such statement shall include a separate reference to the replacement cost of any physical asset within the class that is significantly greater than the replacement cost indicated for the representative member of the class.

F. Distinction shall be made between replacement costs that will be common expenses and replacement costs that will be borne by unit owners individually. The latter type of replacement costs shall be broken down on a per unit basis. The purchaser's attention shall be directed to the "Financial Matters" section for an indication of the amount of the former type of replacement costs.

G. In any case in which the replacement cost of a physical asset may vary depending upon the circumstances surrounding its replacement, the stated replacement cost shall reflect the circumstances under which replacement will most probably be undertaken.

H. A single expected useful life and an aggregate replacement cost may be stated for all of the structural components of a building or structure that have both (i) the same expected useful lives and (ii) replacement costs that will constitute regular common expenses. A statement made pursuant to the preceding sentence shall be accompanied by statements of the expected useful lives and replacement costs, stated on a per unit basis, of all of the structural components of the building or structure whose expected useful lives differ from the general expected useful life or whose replacement costs will be borne by unit owners individually.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-450. Notice to tenants.

No notice to terminate tenancy of a unit provided for by subsection C of § 55.1-1982 of the Code of Virginia shall be given prior to the registration of the condominium including such unit as to which the tenancy is to be terminated.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

Part VI. Post-Registration Provisions

18VAC48-30-460. Minimum post-registration reporting requirements.

A. Subsequent to the issuance of a registration for a condominium by the board, the declarant of a condominium shall:

1. File an annual report in accordance with § 55.1-1979 of the Code of Virginia and this chapter.

2. File a copy of the formal notice to the tenants of a conversion condominium upon delivery or no later than 15 days after delivery to such tenants in accordance with subsection C of § 55.1-1982.

3. Upon the occurrence of a material or nonmaterial change, file an amended public offering statement or substituted public offering statement in accordance with the provisions of 18VAC48-30-480 or 18VAC48-30-490, as applicable.

4. Notify the board of a change in the bond or letter of credit, as applicable, required by §§ 55.1-1921, 55.1-1968, and 55.1-1983 of the Code of Virginia.

5. File a complete application for registration of unregistered additional units upon the expansion of the condominium or the formation of units out of additional land. Notwithstanding the preceding, nonresidential units created out of convertible space need not be registered. Documents on file with the board and not changed with the creation of additional units need not be refiled provided that the application indicates that such documents are unchanged.

6. Notify the board of transition of control of the unit owners' association.

7. Notify the board upon the transfer of special declarant rights to a successor declarant.

8. Submit appropriate documentation to the board once the registration is eligible for termination.

9. Submit to the board any other document or information that may include information or documents that have been amended or may not have existed previously that affects the accuracy, completeness, or representation of any

information or document filed with the application for registration.

10. Submit to the board any document or information to make the registration file accurate and complete.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require a declarant to provide information or documents, or amendments thereof, to assure full and fair disclosure to prospective purchasers and to ensure compliance with the Virginia Condominium Act and this chapter.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-470. Amendment of public offering statement.

Any amendment of the public offering statement or substituted public offering statement shall comply with this chapter.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-480. Nonmaterial changes to the public offering statement.

A. Changes to the public offering statement that are not material shall be filed with the board but shall not be deemed an amendment of the public offering statement for the purposes of this chapter and shall not give rise to a renewed right of rescission in any purchase. Nonmaterial changes to the public offering statement include the following:

1. Correction of spelling, grammar, omission, or other similar errors not affecting the substance of the public offering statement;

2. Changes in presentation or format;

3. Substitution of an executed, filed, or recorded copy of a document for the otherwise substantially identical unexecuted, unfiled, or unrecorded copy of the document that was previously submitted;

4. Inclusion of updated information such as identification or description of the current officers and directors of the declarant;

5. Disclosure of completion of improvements for improvements that were previously proposed or not complete;

6. Changes in real estate tax assessment or rate or modifications related to those changes;

7. Changes in utility charges or rates or modifications related to those changes;

8. Adoption of a new budget that does not result in a significant change in the common expense assessment or significantly impact the rights or obligations of the prospective purchasers;

9. Modifications related to changes in insurance company or financial institution, policy, or amount for bonds or letters of credit required pursuant to §§ 55.1-1921, 55.1-1968, and 55.1-1983 of the Code of Virginia;

10. Changes in management agent or common interest community manager; and

11. Any change that is the result of orderly development of the condominium in accordance with the condominium instruments as described in the public offering statement.

B. Nonmaterial changes to the public offering statement shall be submitted with the effective date of the changes detailed. All changes shall be clearly represented in the documentation presented. The additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted, and any documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strike-throughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided. In addition, the declarant shall include a statement with the submission of the declarant's plans, if any, to deliver the public offering statement to purchasers pursuant to subdivision 2 of § 55.1-1974 of the Code of Virginia.

C. The board has the sole discretion for determining whether a change is nonmaterial. The declarant will be notified in writing within 15 days of receipt by the board if the submitted changes are determined to be material. Should a change be submitted as nonmaterial but determined to be a material change during review, the requirements contained in 18VAC48-30-470 and 18VAC48-30-490 shall be applicable.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-490. Filing of amended public offering statement.

A. The declarant shall promptly file with the board for review a copy of the amended public offering statement or substituted public offering statement together with a copy of a summary of proposed amendments that shall be distributed to purchasers during the board review period. The summary of proposed amendments shall enumerate the amendments to the public offering statement submitted for board review and include a statement that the amendments to the public offering statement have been filed with the board but have not yet been accepted. The form of the submission is at the discretion of the declarant provided, however, that (i) all amendments are clearly represented in the documentation presented, (ii) the additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted, and (iii) any documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strike-throughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided.

B. The amended public offering statement submitted to the board for review shall include the effective date of the amendments.

C. The board shall issue a notice of filing within five business days following receipt of the amended public offering statement.

D. Within 30 days of the issuance of the notice of filing required by subsection C of this section, the board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines that the amended public offering statement complies with this chapter, it shall notify the declarant in writing and confirm the new effective date of the public offering statement.

E. If the board's review determines that the amended public offering statement does not comply with this chapter, it shall immediately notify the declarant in writing that the review has determined the amended public offering statement is not in compliance and shall specify the particulars of such noncompliance. The declarant shall then have 20 days in which to correct the particulars of noncompliance identified by the board. The declarant may, prior to the completion of the 20-day correction period, request an extension in writing of the 20-day correction period. Upon expiration of the 20-day correction period, if requested corrections have not been made or a request for extension properly received, the board may issue a temporary cease and desist order in accordance with § 55.1-1986 B of the Code of Virginia to require the cessation of sales until such time as affirmative action as directed by the board is taken. Use of the noncompliant public offering statement may result in further action by the board pursuant to §§ 55.1-1986, 55.1-1987, and 55.1-1989 of the Code of Virginia.

F. Notwithstanding an extension of the 30-day period for review agreed to in writing by the board and declarant, if the board does not perform the required review of the public offering statement in accordance with subsection D of this section, the amendment shall be deemed to comply with 18VAC48-30-160 through 18VAC48-30-380, and the new effective date shall be the effective date of the amendment provided pursuant to subsection B of this section.

G. In each case in which an amended document is filed pursuant to this section and the manner of its amendment is not apparent on the face of the document, the declarant shall provide an indication of the manner and extent of amendment.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-500. Current public offering statement.

A. Upon issuance of an effective date by the board, any purchasers who received a public offering statement and summary of proposed amendments during the board review period pursuant to subsection A of 18VAC48-30-490 shall be provided with the public offering statement as accepted by the board. A public offering statement remains current until such time as the occurrence of a material change requires amendment of the public offering statement pursuant to this chapter and a new effective date is issued by the board.

B. Upon issuance of an effective date by the board, a public offering statement remains current until such time as a new effective date is established pursuant to this chapter.

C. Notwithstanding the board's authority to issue a cease and desist order pursuant to § 55.1-1986 of the Code of Virginia, the filing of an amended public offering statement shall not require the declarant to cease sales provided that the declarant provides to purchasers the summary of proposed amendments pursuant to subsection A of 18VAC48-30-490 pending the issuance of a new effective date by the board.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-510. Public offering statement not current; notification of purchasers.

A. A purchaser who has been delivered a public offering statement that is not current due to a material change and was not provided with the summary of proposed amendments containing the proposed changes to the amended public offering statement pursuant to subsection A of 18VAC48-30-490 pending the issuance of a new effective date by the board shall be notified of such fact by the declarant.

B. A purchaser who has been delivered a public offering statement and summary of proposed amendments pursuant to subsection A of 18VAC48-30-490, but the amended public offering statement is determined to be noncompliant in accordance with subsection E of 18VAC48-30-490 shall be notified of such fact by the declarant.

1. The notification shall indicate that any contract for disposition of a condominium unit may be canceled by the purchaser pursuant to subdivision 2 of § 55.1-1974 of the Code of Virginia.

2. The declarant shall file a copy of the notification with the board and provide proof that such notification has been delivered to all purchasers under contract.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-520. Provisions applicable to substituted public offering statement and prospectus.

A. The provisions of 18VAC48-30-470 through 18VAC48-30-510 shall apply to a substituted public offering statement in the same manner and to the same extent that they apply to public offering statements.

B. The provisions of 18VAC48-30-470 through 18VAC48-30-510 shall apply to a prospectus only to the extent that amendment of the information or documents attached to the prospectus pursuant to 18VAC48-30-380 is required or permitted. The body of the prospectus shall be amended only as provided in applicable securities law. The declarant shall immediately file with the board any amendments to the body of the prospectus and, upon receipt thereof, the board shall notify the declarant in writing and confirm the new effective date for use of the prospectus. A prospectus is current so long as it is effective under applicable securities law and the information and attached documents are current under the provisions of 18VAC48-30-490. The declarant shall immediately notify the board if the prospectus ceases being effective. If no prospectus is effective and the declarant proposes to continue offering condominium units, the declarant shall file a public offering statement with the board pursuant to 18VAC48-30-490.

C. The provisions of 18VAC48-30-510 shall apply to a prospectus in the same manner and to the same extent that they apply to a public offering statement.

D. In an annual report involving a prospectus, the declarant shall comply with all of the provisions of 18VAC48-30-540 applicable to public offering statements and, in addition, shall certify that an effective prospectus is available for delivery to purchasers and shall indicate the declarant's plans or expectations regarding the continuing effectiveness of the prospectus.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-530. Filing of phase amendment application.

A. A phase amendment application shall be filed when adding land to or converting land in the condominium, provided that no such application need be filed for units previously registered. Such phase amendment application shall be accompanied by the fee provided for in 18VAC48-30-100 and shall be subject to all of the provisions of 18VAC48-30-90 through 18VAC48-30-150. Documents on file with the board that have not changed in connection with the additional units need not be refiled, provided that the phase amendment application indicates that such documents are unchanged.

B. The application shall include a new or amended bond or letter of credit required pursuant to § 55.1-1968 of the Code of Virginia for the additional units.

C. The board shall review the phase amendment application and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines the phase amendment application complies with this chapter, it shall issue an amended order of registration for the condominium and shall provide that any previous orders and designations of the form, content, and effective date of the public offering statement, substituted public offering statement, or prospectus to be used are superseded. If the board's review determines that the phase amendment application is not complete, the board shall correspond with the declarant to specify the particulars that must be completed to obtain compliance with this chapter.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-540. Annual report by declarant.

A. A declarant shall file an annual report on a form provided by the board to update the material contained in the registration file at least 30 days prior to the anniversary date of the order registering the condominium. Prior to filing the annual report required by § 55.1-1979 of the Code of Virginia, the declarant shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the declarant shall so certify in the annual report. If such public offering statement is not current, the declarant shall amend the public offering statement, and the annual report shall, in that event, include a filing in accordance with 18VAC48-30-490.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the declarant;

2. Current contact information for the declarant's attorney, if applicable;

3. Date of the public offering statement currently being delivered to purchasers;

4. Date the condominium instruments were recorded and locality wherein recorded;

5. Number of phases registered with the board, if applicable;

6. Number of phases recorded, if applicable;

7. Number of units recorded;

8. Number of units conveyed;

9. Status of completion of all common elements within the condominium;

10. Status of declarant control;

11. Whether the declarant is current in the payment of assessments; and

12. Current evidence from the surety or financial institution of any bond or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant to §§ 55.1-1921, 55.1-1968, and 55.1-1983 of the Code of Virginia. Such verification shall provide the following:

a. Principal of bond or letter of credit;

b. Beneficiary of bond or letter of credit;

c. Name of the surety or financial institution that issued the bond or letter of credit;

d. Bond or letter of credit number as assigned by the issuer;

e. The dollar amount; and

f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-550. Board review of annual report.

A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.

B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to §§ 55.1-1986, 55.1-1987, and 55.1-1989 of the Code of Virginia for failing to file an annual report as required by § 55.1-1979 of the Code of Virginia.

C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be deemed to comply with § 55.1-1979 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-560. Transition of control of unit owners' association.

Upon transition of control of the association to the unit owners following the period of declarant control, the declarant shall, in addition to the requirements contained in subsection H of § 55.1-1943 of the Code of Virginia, notify the board in writing of the date of such transition and provide the name and contact information for members of the board of directors of the unit owners' association or the association's common interest community manager.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 35, Issue 17, eff. May 15, 2019; Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-570. Return of assessment bond or letter of credit to declarant.

A. The declarant of a condominium required to post a bond or letter of credit pursuant to § 55.1-1968 of the Code of Virginia shall maintain such bond or letter of credit for all units registered with the board until the declarant owns less than 10% of the units in the condominium and is current in the payment of assessments. For condominiums containing less than 10 units, the bond or letter of credit shall be maintained until the declarant owns only one unit.

B. The declarant shall submit a written request to the board for the return of the bond or letter of credit. The written request shall attest that the declarant (i) owns less than 10% of the units or for condominiums containing less than 10 units, that the declarant owns only one unit and (ii) is current in the payment of assessments. The written request shall provide contact information for the unit owners' association.

C. Upon receipt of the written request from the declarant, the board shall send a request to the unit owners' association to confirm the information supplied by the declarant. The person certifying the information on behalf of the unit owners' association must not be affiliated with the declarant. The managing agent may confirm the information supplied by the declarant.

D. The board shall return the bond or letter of credit to the declarant if (i) the unit owners' association confirms that the declarant is current in the payment of assessments and owns less than 10% of the units in the condominium or (ii) no response is received from the unit owners' association within 90 days. The 90-day time frame in clause (ii) of this subsection may be extended at the discretion of the board.

E. If the unit owners' association attests the declarant is not current in the payment of assessments, the board shall retain the bond or letter of credit until evidence is received satisfactory to the board that the declarant is current in the payment of assessments.

F. The board may ask for additional information from the unit owners' association or the declarant as needed to confirm compliance with § 55.1-1968 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-580. Return of completion bond or letter of credit to declarant.

A bond on file with the board pursuant to § 55.1-1921 of the Code of Virginia may be returned to the declarant upon written request. Such request shall include a copy of the recorded plat or plan showing completion or documentation acceptable to the board that the improvements to the common elements for which the bond was submitted is completed to the extent of the declarant's obligation.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-590. Return of bond or letter of credit upon termination of registration.

Upon issuance of an order of termination of the condominium registration pursuant to 18VAC48-30-610 and if the bond or letter of credit on file with the board has not been returned to the declarant or the declarant's agent previously, it will be considered for return in accordance with 18VAC48-30-570 or 18VAC48-30-580.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-600. Maintenance of bond or letter of credit.

A. The declarant shall report the extension, cancellation, amendment, expiration, termination, or any other change of any bond or letter of credit submitted in accordance with §§ 55.1-1921, 55.1-1968, and 55.1-1983 of the Code of Virginia within five days of the change.

B. The board at any time may request verification from the declarant of the status of a bond or letter of credit on file with the board. Such verification shall comply with the provisions of subdivision B 12 of 18VAC48-30-540.

C. Failure to report a change in the bond or letter of credit in accordance with this section shall result in further action by the board pursuant to Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-610. Termination of condominium registration.

A. The condominium registration shall be terminated upon receipt of documentation of one of the following:

1. In accordance with § 55.1-1979 of the Code of Virginia, an annual report filed pursuant to 18VAC48-30-540 indicates that all units in the condominium have been disposed of and all periods for conversion or expansion have expired.

2. Written notification is received from the declarant 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.

3. Written notification is received from the declarant requesting termination pursuant to § 55.1-1937 of the Code of Virginia. Should the declarant later choose to offer condominium units in a condominium for which the registration has been terminated in accordance with this subsection, prior to offering a condominium unit, the declarant must submit a new application for registration of the condominium, meet all requirements in effect at the time of application, and be issued an order of registration for the condominium by the board.

B. Upon receipt and review of documentation pursuant to subsection A of this section, the board shall issue an order of termination for the condominium registration. The board may request additional information as necessary during the review of the submitted documentation to ensure that the condominium registration is eligible for termination.

C. The board shall send a copy of the order of termination for the condominium registration to the association.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-620. Administrative termination of condominium registration.

In accordance with subsection B of § 55.1-1981 of the Code of Virginia, the board may administratively terminate the registration of a condominium. Prior to the administrative termination of the registration, the board shall send written notice of its intent to terminate the registration to all known parties associated with the condominium, including the registered agent, officer of the unit owners' association, declarant's and association's attorneys, and principal of the declarant. Such written notice shall be given to the parties by mail or otherwise if acknowledged by them in writing.

The board shall issue an order of termination for the condominium registration if (i) a response is not received within 30 days after sending the written notice or (ii) the response received does not indicate termination of the registration is inappropriate in accordance with Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia and this chapter.

Nothing contained in this section shall prevent the board from taking further action as allowed by law including issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-630. Notification of successor declarant and transfer of special declarant rights.

A. In the event the special declarant rights of a condominium are transferred to a successor in accordance with § 55.1-1947 of the Code of Virginia, the successor declarant shall notify the board within 30 days. Before units may be offered for sale, the successor declarant shall submit the following to the board:

1. Completed application for the successor declarant;

2. Copy of the recorded document evidencing the transfer;

3. Copies of all condominium instruments that were amended to reflect the successor or transfer of special declarant rights;

4. A public offering statement amended in accordance with this chapter;

5. All bonds or letters of credit required pursuant to §§ 55.1-1921, 55.1-1968, and 55.1-1983 of the Code of Virginia; and

6. Other documents that may be required to ensure compliance with Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia and this chapter.

B. Documents on file with the board that have not changed in connection with the transfer need not be refiled, provided that the application for successor declarant indicates that such documents are unchanged.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-640. Reporting of other changes to the condominium project.

Any other change made or known by the declarant that may affect the accuracy or completeness of the condominium registration file shall be promptly reported to the board. Such change may include the name of the declarant, name of the condominium project, or any other changes in information submitted in accordance with § 55.1-1975 of the Code of Virginia. The board may request additional information as necessary to ensure compliance with Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia and this chapter.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

Part VII. Board Authority and Standards of Conduct

18VAC48-30-650. Grounds for disciplinary action.

The board may revoke a registration upon a finding that the registration is not in compliance with, or the declarant has violated, any provision of the regulations of the board or Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia. Additional action may include issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

18VAC48-30-660. Registration of condominium required.

No declarant or individual or entity acting on behalf of the declarant shall offer a condominium unit prior to the registration of the condominium including such unit.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-670. Condominium advertising standards.

A. No promise, assertion, representation, or statement of fact or opinion in connection with a condominium marketing activity shall be made that is false, inaccurate, or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances, or features of the condominium or a condominium unit.

B. No promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity shall indicate that an improvement will be built or placed on the condominium unless the improvement is a proposed improvement within the meaning of subdivision 3 of 18VAC48-30-120.

C. No promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity and relating to a condominium unit not registered shall, by its express terms, induce, solicit, or encourage a prospective purchaser to leave Virginia for the purpose of executing a contract for sale or lease of the condominium unit or performing some other act that would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 17, eff. June 1, 2020.

18VAC48-30-680. Response to inquiry and provision of records.

A. The declarant must respond within 15 days to a request by the board or any of its agents regarding any complaint filed with the department. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.

B. Unless otherwise specified by the board, the declarant shall produce to the board or any of its agents within 15 days of the request any document, book, or record concerning any transaction in which the declarant was involved, or for which the declarant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.

C. A declarant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a declarant must respond to an inquiry by the board or its agent within 21 days.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-690. Prohibited acts.

The following acts are prohibited and any violation may result in action by the board, including issuance of a temporary cease and desist order in accordance with § 55.1-1986 B of the Code of Virginia:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board, Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, or Chapter 19 (§ 55.1-1900 et seq.) or Chapter 20 (§ 55.1-2000 et seq.) of Title 55.1 of the Code of Virginia.

2. Obtaining or attempting to obtain a registration by false or fraudulent representation, or maintaining a registration by false or fraudulent representation.

3. Failing to comply with 18VAC48-30-80 in offering literature.

4. Failing to alter or amend the public offering statement as directed in accordance with 18VAC48-30-390 or 18VAC48-30-490.

5. Providing information to purchasers in a manner that willfully and intentionally fails to promote full and fair disclosure.

6. Failing to provide information or documents, or amendments thereof, in accordance with subsection B of 18VAC48-30-460.

7. Failing to comply with the post-registration requirements of 18VAC48-30-460, 18VAC48-30-470, 18VAC48-30-480, 18VAC48-30-490, 18VAC48-30-500, 18VAC48-30-510, 18VAC48-30-520, 18VAC48-30-530, and 18VAC48-30-540.

8. Failing to give notice to a purchaser in accordance with 18VAC48-30-510.

9. Failing to give notice to the board of transition of control of unit owners' association in accordance with 18VAC48-30-560.

10. Failing to transition control of the unit owners' association in accordance with § 55.1-1943 of the Code of Virginia.

11. Failing to turn over books and records in accordance with subsection H of § 55.1-1943 of the Code of Virginia.

12. Providing false information or misrepresenting an affiliation with an association in seeking return of a bond or letter of credit in accordance with 18VAC48-30-570 or 18VAC48-30-580.

13. Filing false or misleading information in the course of terminating a registration in accordance with 18VAC48-30-610 or 18VAC48-30-620.

14. Failing to comply with 18VAC48-30-630 and 18VAC48-30-640.

15. Failing to comply with the advertising standards contained in 18VAC48-30-670.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended, Virginia Register Volume 36, Issue 6, eff. December 31, 2019.

FORMS (18VAC48-30).

Condominium Registration Application, A492-0517REG-v5 (rev. 4/2020)

Condominium Registration Application - Exhibit G - Bond to Insure Payment of Assessments, Sample Form, A492-0517BOND-v4 (rev. 1/2020)

Condominium Registration Application - Exhibit G - Irrevocable Letter of Credit, Sample Form, A492-0517LOC-v4 (rev. 1/2020)

Declarant Annual Report - Condominium, A492-0517ANRPT-v4 (rev. 1/2020)

Condominium Bond/Letter of Credit Verification Form, A492-0517BNDLOC-v2 (rev. 1/2020)

Statutory Authority

Historical Notes

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.

7/21/2022

Virginia Administrative Code
Title 18. Professional And Occupational Licensing
Agency 48. Common Interest Community Board
Chapter 50. Common Interest Community Manager Regulations

Part I. General

18VAC48-50-10. Definitions.

Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

"Common interest community"

"Common interest community manager"

"Declaration"

"Governing board"

"Lot"

"Management services"

The following words, terms, and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active status" means the status of a certificated person in the employ of a common interest community manager.

"Address of record" means the mailing address designated by the regulant to receive notices and correspondence from the board. Notice mailed to the address of record by certified mail, return receipt requested, shall be deemed valid notice.

"Applicant" means a common interest community manager who has submitted an application for licensure or an individual who has submitted an application for certification.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation.

"Certified principal or supervisory employee" refers to any individual who has principal responsibility for management services provided to a common interest community or who has supervisory responsibility for employees who participate directly in the provision of management services to a common interest community, and who holds a certificate issued by the board.

"Contact hour" means 50 minutes of instruction.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Direct supervision" means exercising oversight and direction of, and control over, the work of another.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia and properly registered, as may be required, with the Virginia State Corporation Commission.

"Principal responsibility" means having the primary obligation for the direct provision of management services provided to a common interest community.

"Regulant" means a common interest community manager as defined in § 54.1-2345 of the Code of Virginia who holds a license issued by the board or an individual who holds a certificate issued by the board.

"Reinstatement" means the process and requirements through which an expired license or certificate can be made valid without the regulant having to apply as a new applicant.

"Renewal" means the process and requirements for periodically approving the continuance of a license or certificate.

"Responsible person" means the employee, officer, manager, owner, or principal of the firm who shall be designated by each firm to ensure compliance with Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, and all regulations of the board, and to receive communications and notices from the board that may affect the firm. In the case of a sole proprietorship, the sole proprietor shall have the responsibilities of the responsible person.

"Sole proprietor" means any individual, not a corporation or other registered business entity, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of Chapter 5 of Title 59.1 (§ 59.1-69 et seq.) of the Code of Virginia.

"Supervisory responsibility" means providing formal supervision of the work of at least one other person. The individual who has supervisory responsibility directs the work of another employee or other employees, has control over the work performed, exercises examination and evaluation of the employee's performance, or has the authority to make decisions personally that affect the management services provided.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012; Volume 35, Issue 19, eff. July 1, 2019; Volume 36, Issue 17, eff. June 1, 2020.

Part II. Entry

18VAC48-50-20. Application procedures.

All applicants seeking licensure or certification shall submit an application with the appropriate fee specified in 18VAC48-50-60. Application shall be made on forms provided by the board or its agent.

By submitting the application to the department, the applicant certifies that the applicant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board does not indicate approval by the board.

The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained herein and on the application. Applications will not be considered complete until all required documents are received by the board.

An individual or firm will be notified within 30 days of the board's receipt of an initial application if the application is incomplete. An individual or firm that fails to complete the process within 12 months of receipt of the application in the board's office must submit a new application and fee.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-30. Qualifications for licensure as a common interest community manager.

A. Firms that provide common interest community management services shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2346 of the Code of Virginia, as well as the additional qualifications of this section.

B. Any firm offering management services as defined in § 54.1-2345 of the Code of Virginia shall hold a license as a common interest community manager. All names under which the common interest community manager conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission in accordance with Chapter 5 of Title 59.1 (§ 59.1-69 et seq.) of the Code of Virginia before submitting an application to the board.

C. The applicant for a common interest community manager license shall disclose the firm's mailing address, the firm's physical address, and the address of the office from which the firm provides management services to Virginia common interest communities. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for a common interest community manager license shall disclose the following information about the firm, the responsible person, and any of the principals of the firm:

1. All felony convictions.

2. All misdemeanor convictions, except marijuana convictions, in any jurisdiction that occurred within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant for a common interest community manager license shall submit evidence of a blanket fidelity bond or employee dishonesty insurance policy in accordance with § 54.1-2346 D of the Code of Virginia. Proof of current bond or insurance policy with the firm as the named bondholder or insured must be submitted in order to obtain or renew the license. The bond or insurance policy must be in force no later than the effective date of the license and shall remain in effect through the date of expiration of the license.

F. The applicant for a common interest community manager license shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et. seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

G. The applicant for a common interest community manager license, the responsible person, and any principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered and the board, in its discretion, may deny licensure to any applicant who has been subject to, or whose principals have been subject to, or any firm in which the principals of the applicant for a common interest community manager license hold a 10% or greater interest have been subject to, any form of adverse disciplinary action, including reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining licensure in Virginia.

H. The applicant for a common interest community manager license shall provide all relevant information about the firm, the responsible person, and any of the principals of the firm for the seven years prior to application on any outstanding

judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies and specifically shall provide all relevant financial information related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant for a common interest community manager license shall further disclose whether or not one or more of the principals who individually or collectively own more than a 50% equity interest in the firm are or were equity owners holding, individually or collectively, a 10% or greater interest in any other entity licensed by any agency of the Commonwealth of Virginia that was the subject of any adverse disciplinary action, including revocation of a license, within the seven-year period immediately preceding the date of application.

I. An applicant for a common interest community manager license shall hold an active designation as an Accredited Association Management Company by the Community Associations Institute.

J. Prior to July 1, 2012, in lieu of the provisions of subsection I of this section, an application for a common interest community manager license may be approved provided the applicant certifies to the board that the applicant has:

1. At least one supervisory employee, officer, manager, owner, or principal of the firm who is involved in all aspects of the management services offered and provided by the firm and who has satisfied one of the following criteria:

a. Holds an active designation as a Professional Community Association Manager by Community Associations Institute;

b. Has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, and has at least three years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services;

c. Has successfully completed an introductory training program as described in 18VAC48-50-250 A, as approved by the board, and has at least five years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services; or

d. Has not completed a board-approved training program but who, in the judgment of the board, has obtained the equivalent of such training program by documented course work that meets the requirements of a board-approved comprehensive training program as described in Part VI (18VAC48-50-230 et seq.) of this chapter and has at least 10 years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services.

2. At least 50% of persons in the firm with principal responsibility for management services to a common interest community in the Commonwealth of Virginia have satisfied one of the following criteria:

a. Hold an active designation as a Professional Community Association Manager and certify having provided management services for a period of 12 months immediately preceding application;

b. Hold an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certify having two years of experience in providing management services. Of the required two years of experience, a minimum of 12 months of experience must have been gained immediately preceding application;

c. Hold an active designation as an Association Management Specialist and certify having two years of experience in providing management services. Of the required two years of experience, a minimum of 12 months of experience must have been gained immediately preceding application; or

d. Have completed a comprehensive or introductory training program, as set forth in 18VAC48-50-250 A or B, and passed a certifying examination approved by the board and certify having two years of experience in providing management services. Of the required two years of experience, a minimum of 12 months of experience must have been gained immediately preceding application.

K. Effective July 1, 2012, the applicant for a common interest community manager license shall attest that all employees of the firm who have principal responsibility for management services provided to a common interest community or who

have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate as a certified principal or supervisory employee issued by the board or shall be under the direct supervision of a certified principal or supervisory employee.

L. Effective July 1, 2012, in lieu of the provisions of subsection I of this section, an application for a common interest community manager license may be approved provided the applicant certifies to the board that the applicant has at least one supervisory employee, officer, manager, owner, or principal of the firm who is involved in all aspects of the management services offered and provided by the firm and who has satisfied one of the following criteria:

1. Holds an active designation as a Professional Community Association Manager by Community Associations Institute;

2. Has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, and has at least three years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services;

3. Has successfully completed an introductory training program as described in 18VAC48-50-250 A, as approved by the board, and has at least five years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services; or

4. Has not completed a board-approved training program but, in the judgment of the board, has obtained the equivalent of such training program by documented coursework that meets the requirements of a board-approved comprehensive training program as described in Part VI (18VAC48-50-230 et seq.) of this chapter and has at least 10 years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services.

M. The firm shall designate a responsible person.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012; Volume 36, Issue 17, eff. June 1, 2020; Volume 38, Issue 5, eff. December 1, 2021.

18VAC48-50-35. Qualifications for certification as a certified principal or supervisory employee effective July 1, 2012.

A. Principal or supervisory employees requiring certification pursuant to § 54.1-2346 of the Code of Virginia shall meet the requirements of this section and submit an application for certification on or after July 1, 2012.

B. The applicant for certification shall be at least 18 years of age.

C. The applicant for certification shall have a high school diploma or its equivalent.

D. The applicant for certification shall provide a mailing address. A post office box is only acceptable as a mailing address when a physical address is also provided. The mailing address provided shall serve as the address of record.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant for certification shall disclose the following information:

1. All felony convictions.

2. All misdemeanor convictions, except marijuana convictions, that occurred in any jurisdiction within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

F. The applicant for certification shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the certificate is in effect.

G. The applicant for certification shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered to provide management or related services; and the board, in its discretion, may deny certification to any applicant for certification who has been subject to any form of adverse disciplinary action, including reprimand, revocation, suspension or denial, imposition of a monetary penalty, requirement to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining certification in Virginia.

H. The applicant for certification shall provide all relevant information for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies, all as related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant for certification shall further disclose whether or not he was the subject of any adverse disciplinary action, including revocation of a license, certificate, or registration within the seven-year period immediately preceding the date of application.

I. An applicant for certification may be certified provided the applicant provides proof to the board that the applicant meets one of the following:

1. Holds an active designation as a Professional Community Association Manager by Community Associations Institute and certifies having provided management services for a period of three months immediately preceding application;

2. Holds an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certifies having two years of experience in providing management services. Of the required two years of experience, a minimum of six months of experience must have been gained immediately preceding application;

3. Holds an active designation as an Association Management Specialist by Community Associations Institute and certifies having two years of experience in providing management services. Of the required two years of experience, a minimum of three months of experience must have been gained immediately preceding application; or

4. Has completed an introductory or comprehensive training program as set forth in 18VAC48-50-250 A or B and passed a certifying examination approved by the board and certifies having two years of experience in providing management services. Of the required two years of experience, a minimum of six months of experience must have been gained immediately preceding application.

J. The applicant for certification shall provide the name of his employing common interest community manager, if applicable.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 28, Issue 11, eff. March 1, 2012; amended, Virginia Register Volume 38, Issue 5, eff. December 1, 2021.

18VAC48-50-37. Licensure and certification by reciprocity.

A. The board may waive the requirements of 18VAC48-50-30 I, J, and L and issue a license as a common interest community manager to an applicant who holds an active, current license, certificate, or registration in another state, the

District of Columbia, or any other territory or possession of the United States provided the requirements and standards under which the license, certificate, or registration was issued are substantially equivalent to those established in this chapter and related statutes.

B. Effective July 1, 2012, the board may waive the requirements of 18VAC48-50-35 I and issue a certificate as a certified employee to an applicant who holds an active, current license, certificate, or registration in another state, the District of Columbia, or any other territory or possession of the United States provided the requirements and standards under which the license, certificate, or registration was issued are substantially equivalent to those established in this chapter and related statutes.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-40. Application denial.

The board may refuse initial licensure or certification due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

Part III. Fees

18VAC48-50-50. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010.

18VAC48-50-60. Fee schedule.

Fee Type	Fee Amount		Recovery Fund Fee* (if applicable)	Total Amount Due	When Due
Initial Common Interest Community Manager Application	$100	+	25	$125	With application
Common Interest Community Manager Renewal	$100			$100	With renewal application
Common Interest Community Manager Reinstatement (includes a $200 reinstatement fee	$300			$300	With renewal application

in addition to the regular $100 renewal fee)					
Certified Principal or Supervisory Employee Initial Application	$75			$75	With application
Certified Principal or Supervisory Employee Renewal	$75			$75	With renewal application
Certified Principal or Supervisory Employee Reinstatement (includes a $75 reinstatement fee in addition to the regular $75 renewal fee)	$150			$150	With renewal application
Training Program Provider Initial Application	$100			$100	With application
Training Program Provider Additional Program	$50			$50	With application
*In accordance with § 54.1-2354.5 of the Code of Virginia.					

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012; Volume 35, Issue 19, eff. July 1, 2019; Volume 36, Issue 3, eff. November 1, 2019.

18VAC48-50-70. (Repealed.)

Statutory Authority

Historical Notes

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; repealed, Virginia Register Volume 35, Issue 19, eff. July 1, 2019.

18VAC48-50-80. (Repealed.)

Statutory Authority

Historical Notes

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012; Volume 35, Issue 19, eff. July 1, 2019; repealed, Virginia Register Volume 36, Issue 3, eff. November 1, 2019.

Part IV. Renewal and Reinstatement

18VAC48-50-90. Renewal required.

A license issued under this chapter shall expire one year from the last day of the month in which it was issued. A certificate issued under this chapter shall expire two years from the last day of the month in which it was issued. A fee shall be required for renewal.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012; Volume 36, Issue 3, eff. November 1, 2019.

18VAC48-50-100. Expiration and renewal.

A. Prior to the expiration date shown on the license, licenses shall be renewed upon (i) completion of the renewal application, (ii) submittal of proof of current bond or insurance policy as detailed in 18VAC48-50-30 E, and (iii) payment of the fees specified in 18VAC48-50-60.

B. Prior to the expiration date shown on the certificate, certificates shall be renewed upon (i) completion of the renewal application; (ii) submittal of proof of completion of two hours of fair housing training as it relates to the management of common interest communities and two hours of Virginia common interest community law and regulation training, both as approved by the board and completed within the two-year certificate period immediately prior to the expiration date of the certificate; and (iii) payment of the fees specified in 18VAC48-50-60.

C. The board will mail a renewal notice to the regulant at the last known mailing address of record. Failure to receive this notice shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a copy of the license or certificate may be submitted with the required fees as an application for renewal. By submitting an application for renewal, the regulant is certifying continued compliance with the Standards of Conduct and Practice in Part V (18VAC48-50-140 et seq.) of this chapter.

D. Applicants for renewal shall continue to meet all of the qualifications for licensure and certification set forth in Part II (18VAC48-50-20 et seq.) of this chapter.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012; Volume 35, Issue 19, eff. July 1, 2019.

18VAC48-50-110. Reinstatement of common interest community manager license and certified principal or supervisory employee certificate required.

A. If all of the requirements for renewal of a license as specified in 18VAC48-50-100 A are not completed within 30 days of the license expiration date, the licensee shall be required to reinstate the license by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-60.

B. If all of the requirements for renewal of a certificate as specified in 18VAC48-50-100 B are not completed within 30 days of the certificate expiration date, the certificateholder shall be required to reinstate the certificate by meeting all renewal requirements and by paying the reinstatement fee specified in 18VAC48-50-60.

C. A license or certificate may be reinstated for up to six months following the expiration date. After six months, the license or certificate may not be reinstated under any circumstances and the firm or individual must meet all current entry requirements and apply as a new applicant.

D. Any regulated activity conducted subsequent to the license expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-120. Status of license or certificate during the period prior to reinstatement.

A regulant who applies for reinstatement of a license or certificate shall be subject to all laws and regulations as if the regulant had been continuously licensed or certified. The regulant shall remain under and be subject to the disciplinary authority of the board during this entire period.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-130. Board discretion to deny renewal or reinstatement.

The board may deny renewal or reinstatement of a license or certificate for the same reasons as the board may refuse initial licensure or certification, or discipline a regulant.

The board may deny renewal or reinstatement of a license or certificate if the regulant has been subject to a disciplinary proceeding and has not met the terms of an agreement for licensure or certification, has not satisfied all sanctions, or has not fully paid any monetary penalties and costs imposed by the board.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

Part V. Standards of Conduct and Practice

18VAC48-50-140. Grounds for disciplinary action.

The board may place a regulant on probation, impose a monetary penalty in accordance with § 54.1-202 A of the Code of Virginia, or revoke, suspend or refuse to renew any license or certificate when the regulant has been found to have violated or cooperated with others in violating any provisions of the regulations of the board or Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-150. Maintenance of license or certificate.

A. No license or certificate issued by the board shall be assigned or otherwise transferred.

B. A regulant shall report, in writing, all changes of address to the board within 30 days of the change and shall return the license or certificate to the board. In addition to the address of record, a physical address is required for each license or certificate. If the regulant holds more than one license, certificate, or registration, the regulant shall inform the board of all licenses, certificates, and registrations affected by the address change.

C. Any change in any of the qualifications for licensure or certification found in 18VAC48-50-30 or 18VAC48-50-35 shall be reported to the board within 30 days of the change.

D. Notwithstanding the provisions of subsection C of this section, a licensee shall report the cancellation, amendment, expiration, or any other change of any bond or insurance policy submitted in accordance with 18VAC48-50-30 E within five days of the change.

E. A licensee shall report to the board the discharge or termination of active status of an employee holding a certificate within 30 days of the discharge or termination of active status.

F. A certified principal or supervisory employee shall report a change in employing common interest community manager within 30 days of the change.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-160. Maintenance and management of accounts.

Licensed firms shall maintain all funds from associations in accordance with § 54.1-2353 A of the Code of Virginia. Funds that belong to others that are held as a result of the fiduciary relationship shall be labeled as such to clearly distinguish funds that belong to others from those funds of the common interest community manager.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-170. Change of business entity requires a new license.

A. Licenses are issued to firms as defined in this chapter and are not transferable. Whenever the legal business entity holding the license is dissolved or altered to form a new business entity, the license becomes void and shall be returned to the board within 30 days of the change. Such changes include but are not limited to:

1. Cessation of the business or the voluntary termination of a sole proprietorship or general partnership;

2. Death of a sole proprietor;

3. Formation, reformation, or dissolution of a general partnership, limited partnership, corporation, limited liability company, association, or any other business entity recognized under the laws of the Commonwealth of Virginia; or

4. The suspension or termination of the corporation's existence by the State Corporation Commission.

B. When a new firm is formed, the new firm shall apply for a new license on a form provided by the board before engaging in any activity regulated by Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010.

18VAC48-50-180. Notice of adverse action.

A. Licensed firms shall notify the board of the following actions against the firm, the responsible person, and any principals of the firm:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including any reprimand, license or certificate revocation, suspension or denial, monetary penalty, or requirement for remedial education or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. Certified principal or supervisory employees shall notify the board, and the responsible person of the employing firm, if applicable, of the following actions against the certified principal or supervisory employee:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including any reprimand, license or certificate revocation, suspension or denial, monetary penalty, requirement for remedial education, or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012; Volume 38, Issue 5, eff. December 1, 2021.

18VAC48-50-190. Prohibited acts.

The following acts are prohibited and any violation may result in disciplinary action by the board:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board; Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia; or Chapter 18 (§ 55.1-1800 et seq.), Chapter 19 (§ 55.1-1900 et seq.), or Chapter 21 (§ 55.1-2100 et seq.) of Title 55.1 of the Code of Virginia or engaging in any acts enumerated in §§ 54.1-102 and 54.1-111 of the Code of Virginia.

2. Allowing a license or certificate issued by the board to be used by another.

3. Obtaining or attempting to obtain a license or certificate by false or fraudulent representation, or maintaining, renewing, or reinstating a license or certificate by false or fraudulent representation.

4. A regulant having been convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

5. Failing to inform the board in writing within 30 days that the regulant was convicted, found guilty, or disciplined in any jurisdiction of any offense or violation enumerated in 18VAC48-50-180.

6. Failing to report a change as required by 18VAC48-50-150 or 18VAC48-50-170.

7. The intentional and unjustified failure to comply with the terms of the management contract, operating agreement, or association governing documents.

8. Engaging in dishonest or fraudulent conduct in providing management services.

9. Failing to satisfy any judgments or restitution orders entered by a court or arbiter of competent jurisdiction.

10. Egregious or repeated violations of generally accepted standards for the provision of management services.

11. Failing to handle association funds in accordance with the provisions of § 54.1-2353 A of the Code of Virginia or 18VAC48-50-160.

12. Failing to account in a timely manner for all money and property received by the regulant in which the association has or may have an interest.

13. Failing to disclose to the association material facts related to the association's property or concerning management services of which the regulant has actual knowledge.

14. Failing to provide complete records related to the association's management services to the association within 30 days of any written request by the association or within 30 days of the termination of the contract unless otherwise agreed to in writing by both the association and the common interest community manager.

15. Failing upon written request of the association to provide books and records such that the association can perform pursuant to §§ 55.1-1815 (Property Owners' Association Act), 55.1-1945 (Virginia Condominium Act), and 55.1-2151 (Virginia Real Estate Cooperative Act) of the Code of Virginia.

16. Commingling the funds of any association by a principal, his employees, or his associates with the principal's own funds or those of his firm.

17. Failing to act in providing management services in a manner that safeguards the interests of the public.

18. Advertising in any name other than the name in which licensed.

19. Failing to make use of a legible, written contract clearly specifying the terms and conditions of the management services to be performed by the common interest community manager. The contract shall include the following:

a. Beginning and ending dates of the contract;

b. Cancellation rights of the parties;

c. Record retention and distribution policy;

d. A general description of the records to be kept and the bookkeeping system to be used; and

e. The common interest community manager's license number.

20. Performing management services or accepting payments prior to the signing of the contract by an authorized official of the licensed firm and the client or the client's authorized agent.

Statutory Authority

§ 54.1-2349 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012; Volume 36, Issue 3, eff. November 1, 2019.

18VAC48-50-200. Establishment of code of conduct.

The firm shall establish and distribute to the firm's employees, principals, and agents a written code of conduct to address business practices including the appropriateness of giving and accepting gifts, bonuses, or other remuneration to and from common interest communities or providers of services to common interest communities. In accordance with clause (ii) of § 54.1-2346 E of the Code of Virginia, the code of conduct for officers, directors, and employees shall also address disclosure of relationships with other firms that provide services to common interest communities and that may give rise to a conflict of interest.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010.

18VAC48-50-210. Establishment of internal accounting controls.

The firm shall establish written internal accounting controls to provide adequate checks and balances over the financial activities and to manage the risk of fraud and illegal acts. The internal accounting controls shall be in accordance with generally accepted accounting practices.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010.

18VAC48-50-220. Response to inquiry and provision of records.

A. A regulant must respond within 10 days to a request by the board or any of its agents regarding any complaint filed with the department.

B. Unless otherwise specified by the board, a regulant of the board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any transaction pertaining to a complaint filed in which the regulant was involved, or for which the regulant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

C. A regulant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

D. With the exception of the requirements of subsections A and B of this section, a regulant must respond to an inquiry by the board or its agent within 21 days.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

Part VI. Training Programs and Examination

18VAC48-50-230. Training programs generally.

All training programs proposed for the purposes of meeting the requirements of this chapter must be approved by the board. Any or all of the approved training programs can be met using distance or online education technology. Training programs may be approved retroactively; however, no applicant will receive credit for the training program until such approval is granted by the board.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010.

18VAC48-50-240. Approval of common interest community manager training programs.

Each provider of a training program shall submit an application for program approval on a form provided by the board. In addition to the appropriate fee provided in 18VAC48-50-60, the application shall include but is not limited to:

1. The name of the provider;

2. Provider contact person, address, and telephone number;

3. Program contact hours;

4. Schedule of training program, if established, including dates, times, and locations;

5. Instructor information, including name, license or certificate number(s), if applicable, and a list of trade-appropriate designations, as well as a professional resume with a summary of teaching experience and subject-matter knowledge and qualifications acceptable to the board;

6. A summary of qualifications and experience in providing training under this chapter;

7. Training program and material fees; and

8. Training program syllabus.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-250. Introductory and comprehensive training program requirements.

A. In order to qualify as an introductory training program under 18VAC48-50-30 or 18VAC48-50-35, the introductory training program must include a minimum of 16 contact hours and the syllabus shall encompass all of the subject areas set forth in subsection C of this section.

B. In order to qualify as a comprehensive training program under 18VAC48-50-30 or 18VAC48-50-35, the comprehensive training program must include a minimum of 80 contact hours and the syllabus shall include at least 40 contact hours encompassing all of the subject areas set forth in subsection C of this section and may also include up to 40 contact hours in other subject areas approved by the board.

C. The following subject areas as they relate to common interest communities and associations shall be included in all comprehensive and introductory training programs. The time allocated to each subject area must be sufficient to ensure adequate coverage of the subject as determined by the board.

1. Governance, legal matters, and communications;

2. Financial matters, including budgets, reserves, investments, internal controls, and assessments;

3. Contracting;

4. Risk management and insurance;

5. Management ethics for common interest community managers;

6. Facilities maintenance; and

7. Human resources.

D. All training programs are required to have a final, written examination.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-253. Virginia common interest community law and regulation training program requirements.

In order to qualify as a Virginia common interest community law and regulation training program for renewal of certificates issued by the board, the common interest community law and regulation program must include a minimum of two contact hours and the syllabus shall encompass updates to Virginia laws and regulations directly related to common interest communities.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 28, Issue 11, eff. March 1, 2012; amended, Virginia Register Volume 33, Issue 20, eff. July 1, 2017.

18VAC48-50-255. Fair housing training program requirements.

In order to qualify as a fair housing training program for renewal of certificates issued by the board, the fair housing training program must include a minimum of two contact hours and the syllabus shall encompass Virginia fair housing laws and any updates, all as related to common interest communities.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 28, Issue 11, eff. March 1, 2012; amended, Virginia Register Volume 33, Issue 20, eff. July 1, 2017.

18VAC48-50-257. Documentation of training program completion required.

All training program providers must provide each student with a certificate of training program completion or other documentation that the student may use as proof of training program completion. Such documentation shall contain the contact hours completed.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

18VAC48-50-260. Maintenance of records.

All providers must establish and maintain a record for each student. The record shall include the student's name and address, the training program name and hours attended, the training program syllabus or outline, the name or names of the instructors, the date of successful completion, and the board's approved training program code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain these records for a minimum of five years.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010.

18VAC48-50-270. Reporting of changes.

Any change in the information provided in 18VAC48-50-240 must be reported to the board within 30 days of the change with the exception of changes in the schedule of training program offerings, which must be reported within 10 days of the change. Any change in information submitted will be reviewed to ensure compliance with the provisions of this chapter.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010.

18VAC48-50-280. Withdrawal of approval.

The board may withdraw approval of any training program for the following reasons:

1. The training program being offered no longer meets the standards established by the board.

2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.

3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, training program information, or student records or fails to produce records required by 18VAC48-50-260.

4. A change in the information provided that results in noncompliance with 18VAC48-50-240, except for subdivision 4 of 18VAC48-50-240.

5. Failure to comply with 18VAC48-50-270.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010.

18VAC48-50-290. Examinations.

All examinations required for licensure or certification shall be approved by the board and administered by the board, a testing service acting on behalf of the board, or another governmental agency or organization.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 26, Issue 11, eff. April 1, 2010; amended, Virginia Register Volume 28, Issue 11, eff. March 1, 2012.

FORMS (18VAC48-50).

Common Interest Community Manager License Application, A492-0501LIC-v6 (rev. 12/2021)

Common Interest Community Manager License Renewal Application, A492-0501REN-v4 (rev. 11/2019)

Common Interest Community Manager Change of Personnel Form, A492-0501MGTCHG-v3 (rev. 12/2021)

Common Interest Community Manager Training Program Approval Application, A492-05TRAPRV-v3 (rev. 10/2018)

Experience Verification Form, A492-0501_10EXPv2 (rev. 10/2018)

Common Interest Community Manager Principal or Supervisory Employee Certificate Application, A492-0510CERT-v3 (rev. 12/2021)

Principal or Supervisory Employee Certificate Renewal Form, A492-0510REN-v2 (rev. 10/2018)

Common Interest Community Manager Application Supplement Comprehensive Training Program Equivalency Form, A492-0501TREQ-v2 (rev. 10/2018)

Statutory Authority

Historical Notes

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.

7/21/2022

Virginia Administrative Code
Title 18. Professional And Occupational Licensing
Agency 48. Common Interest Community Board
Chapter 60. Common Interest Community Association Registration Regulations

18VAC48-60-10. Purpose.

These regulations govern the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by §§ 54.1-2350, 54.1-2354.2, 55.1-1835, 55.1-1980, and 55.1-2182 of the Code of Virginia.

Statutory Authority
§§ 54.1-201 and 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 25, Issue 4, eff. November 27, 2008; amended, Virginia Register Volume 36, Issue 3, eff. November 1, 2019.

18VAC48-60-13. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Annual report" means the proper filing with the board of a completed, board-prescribed form submitted with the appropriate fee, and other required documentation for registration or renewal of an association.

"Association" means the same as the term is defined in § 54.1-2345 of the Code of Virginia.

"Board" means the same as the term is defined in § 54.1-2345 of the Code of Virginia.

"Common interest community" means the same as the term is defined in § 54.1-2345 of the Code of Virginia.

"Contact person" means the individual designated by an association to receive communications and notices from the board on behalf of the association.

"Governing board" means the same as the term is defined in § 54.1-2345 of the Code of Virginia.

"Property owners' association" means the same as the term is defined in § 55.1-1800 of the Code of Virginia.

"Proprietary lessees' association" means the same as the term is defined in § 55.1-2100 of the Code of Virginia.

"Registration" means the proper filing of an annual report with the board by an association and issuance of a certificate of filing by the board to an association in accordance with § 54.1-2349 A 8 of the Code of Virginia.

"Renew" means the process of filing an annual report with the board for continuance of a registration.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 25, Issue 15, eff. May 15, 2009; amended, Virginia Register Volume 36, Issue 3, eff. November 1, 2019; Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-14. Association registration, generally.

A. Within the meaning and intent of § 54.1-2349 A 8 of the Code of Virginia, an association is registered upon acceptance by the board of an annual report and issuance of a certificate of filing by the board in accordance with 18VAC48-60-15 and 18VAC48-60-17.

B. In accordance with §§ 55.1-1808 and 55.1-1990 of the Code of Virginia, for an association governing a condominium or for any property owners' association that does not have a current registration with the board in accordance with §§ 55.1-1835 and 55.1-1980 of the Code of Virginia, the disclosure packet or resale certificate, as applicable, is deemed not available.

C. A property owners' association that is not (i) registered with the board, (ii) current in filing the most recent annual report with the board, and (iii) current in paying any assessment made by the board pursuant to § 54.1-2354.5 of the Code of Virginia is prohibited from collecting fees for disclosure packets authorized by §§ 55.1-1810 and 55.1-1811 of the Code of Virginia.

D. In accordance with §§ 54.1-2351 and 54.1-2352 of the Code of Virginia, the board may take action against the governing board of an association that fails to register in accordance with this chapter, which action may include issuance of a cease and desist order and an affirmative order to file an annual report or assessment of a monetary penalty of not more than $1,000.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-15. Timeframe for association registration and annual report.

A. Within 30 days after the date of termination of the declarant control period, an association governing a condominium shall register with the board by filing the annual report required by § 55.1-1980 of the Code of Virginia and shall file an annual report every year thereafter.

B. Within 30 days after the date of termination of the declarant control period, a proprietary lessees' association shall register with the board by filing the annual report required by § 55.1-2182 of the Code of Virginia and shall file an annual report every year thereafter.

C. Within the meaning and intent of § 55.1-1835 of the Code of Virginia, a property owners' association shall register with the board by filing an annual report within 30 days of recordation of the declaration and shall file an annual report every year thereafter.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-17. Association registration expiration and renewal.

A. An association registration shall expire one year from the last day of the month in which it was issued.

B. Prior to the expiration date on the registration, the board shall mail a renewal notice to the registered association's contact person named in the board's records. Failure to receive a renewal notice from the board does not relieve the association of the obligation to renew by filing the annual report with the applicable fee.

C. Each association shall renew its registration by filing an annual report with the board. A registration shall be renewed and considered current upon receipt and processing by the board office of the completed annual report along with the renewal fee pursuant to 18VAC48-60-60.

D. An association that does not renew registration within 12 months after expiration of the registration may not renew and must submit a new common interest community association registration application by filing the annual report and applicable registration fee.

E. The governing board of an association that fails to comply with registration requirements in this chapter may be subject to action by the board in accordance with 18VAC48-60-14 D.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 25, Issue 15, eff. May 15, 2009; amended, Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-20. (Repealed.)
Statutory Authority

Historical Notes
Derived from Virginia Register Volume 25, Issue 4, eff. November 27, 2008; amended, Virginia Register Volume 25, Issue 15, eff. May 15, 2009; Volume 35, Issue 19, eff. July 1, 2019; repealed, Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-25. Maintenance of registration.

An association shall notify the board office, in writing, within 30 days of any of the following:

1. Change of address of contact person;

2. Change of members of the governing board; and

3. Any other changes in information reported on the association's annual report.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-30. (Repealed.)
Statutory Authority

Historical Notes
Derived from Virginia Register Volume 25, Issue 4, eff. November 27, 2008; repealed, Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-40. (Repealed.)
Statutory Authority

Historical Notes
Derived from Virginia Register Volume 25, Issue 4, eff. November 27, 2008; repealed, Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-50. (Repealed.)
Statutory Authority

Historical Notes
Derived from Virginia Register Volume 25, Issue 4, eff. November 27, 2008; amended, Virginia Register Volume 36, Issue 3, eff. November 1, 2019; repealed, Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-55. Fees, generally.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the board or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 37, Issue 24, eff. September 1, 2021.

18VAC48-60-60. Registration and renewal fees.

The following fee schedule is based upon the number of lots or units subject to the declaration for each association. Each association filing its first annual report shall also pay the assessment required by § 54.1-2354.5 B of the Code of Virginia.

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

Statutory Authority
§ 54.1-2349 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 25, Issue 4, eff. November 27, 2008; amended, Virginia Register Volume 25, Issue 15, eff. May 15, 2009; Volume 31, Issue 10, eff. March 1, 2015; Volume 32, Issue 11, eff. March 1, 2016; Volume 33, Issue 17, eff. May 17, 2017; Volume 34, Issue 17, eff. June 1, 2018; Volume 35, Issue 19, eff. July 1, 2019; Volume 37, Issue 24, eff. September 1, 2021.

FORMS (18VAC48-60).

Common Interest Community Association Registration Application, A492-0550REG-v8 (rev. 7/2020)

Common Interest Community Association Annual Report Form, A492-0550ANRPT-v10 (rev. 7/2020)

Common Interest Community Association Contact Person/Management Change Form, A492-0550POCCHG-v3 (eff. 11/2019)

Common Interest Community Association Governing Board Change Form, A492-0550GBCHG-v2 (eff. 11/2019)

Statutory Authority

Historical Notes

USBC

7/21/2022

Code of Virginia
Title 36. Housing

Chapter 6. Uniform Statewide Building Code

Article 1. General Provisions

§ 36-97. Definitions

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

"Board" means the Board of Housing and Community Development.

"Review Board" means the State Building Code Technical Review Board.

"Building Code" means the Uniform Statewide Building Code and building regulations adopted and promulgated pursuant thereto.

"Code provisions" means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

"Building regulations" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

"Municipality" means any city or town in this Commonwealth.

"Local governing body" means the governing body of any city, county or town in this Commonwealth.

"Local building department" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of the Building Code and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents.

"State agency" means any state department, board, bureau, commission, or agency of this Commonwealth.

"Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Building" shall not include roadway tunnels and bridges owned by the Department of Transportation, which shall be governed by construction and design standards approved by the Commonwealth Transportation Board.

"Equipment" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

"Farm building or structure" means a building or structure not used for residential purposes, located on property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm;

2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products;

3. Business or office uses relating to the farm operations;

4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm;

5. Storage or use of supplies and materials used on the farm; or

6. Implementation of best management practices associated with farm operations.

"Construction" means the construction, reconstruction, alteration, repair or conversion of buildings and structures.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of a building or structure.

"Director" means the Director of the Department of Housing and Community Development.

"Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Structure" shall not include roadway tunnels and bridges owned by the Department of Transportation, which shall be governed by construction and design standards approved by the Commonwealth Transportation Board.

"Department" means the Department of Housing and Community Development.

1972, c. 829; 1974, cc. 622, 668; 1975, c. 394; 1977, cc. 423, 613; 1978, c. 703; 1986, c. 401; 1993, c. 662; 1994, c. 256; 1998, c. 755; 2005, c. 341.

§ 36-98. Board to promulgate Statewide Code; other codes and regulations superseded; exceptions

The Board is hereby directed and empowered to adopt and promulgate a Uniform Statewide Building Code. Such building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

However, such Code shall not supersede the regulations of other state agencies which require and govern the functional design and operation of building related activities not covered by the Uniform Statewide Building Code including but not limited to (i) public water supply systems, (ii) waste water treatment and disposal systems, and (iii) solid waste facilities. Nor shall state agencies be prevented from requiring, pursuant to other state law, that buildings and equipment be maintained in accordance with provisions of the Uniform Statewide Building Code.

Such Code also shall supersede the provisions of local ordinances applicable to single-family residential construction that (a) regulate dwelling foundations or crawl spaces, (b) require the use of specific building materials or finishes in construction, or (c) require minimum surface area or numbers of windows; however, such Code shall not supersede proffered conditions accepted as a part of a rezoning application, conditions imposed upon the grant of special exceptions, special or conditional use permits or variances, conditions imposed upon a clustering of single-family homes and preservation of open space development through standards, conditions, and criteria established by a locality pursuant to subdivision 8 of § 15.2-2242 or § 15.2-2286.1, or land use requirements in airport or highway overlay districts, or historic districts created pursuant to § 15.2-2306, or local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program.

1972, c. 829; 1977, c. 613; 1979, c. 718; 1980, c. 104; 1982, c. 267; 2001, c. 525; 2002, c. 703; 2006, c. 903.

§ 36-98.01. Mechanics' lien agent included on building permit for residential property at request of applicant

In addition to any information required by the Uniform Statewide Building Code, a building permit issued for any one- or two-family residential dwelling unit shall at the time of issuance contain, at the request of the applicant, the name, mailing address, and telephone number of the mechanics' lien agent as defined in § 43-1. If the designation of a

mechanics' lien agent is not so requested by the applicant, the building permit shall at the time of issuance state that none has been designated with the words "None Designated."

1992, cc. 779, 787.

§ 36-98.1. State buildings; exception for certain assets owned by the Department of Transportation

A. The Building Code shall be applicable to all state-owned buildings and structures, and to all buildings and structures built on state-owned property, with the exception that §§ 2.2-1159 through 2.2-1161 shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.

Any state-owned building or structure, or building or structure built on state-owned property, for which preliminary plans were prepared or on which construction commenced after the initial effective date of the Uniform Statewide Building Code, shall remain subject to the provisions of the Uniform Statewide Building Code that were in effect at the time such plans were completed or such construction commenced. Subsequent reconstruction, renovation or demolition of such building or structure shall be subject to the pertinent provisions of the Building Code.

Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for any state-owned buildings or structures and for all buildings and structures built on state-owned property. The Department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It may provide for the (i) inspection of state-owned buildings or structures and for all buildings and structures built on state-owned property and (ii) enforcement of the Building Code and standards for access by the physically handicapped by delegating inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested. State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services rendered when such services are requested by the Department of General Services. The Department of General Services may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the Department of General Services shall provide the local building department with a written summary of its reasons for doing so.

B. Notwithstanding the provisions of subsection A and § 27-99, roadway tunnels and bridges owned by the Department of Transportation shall be exempt from the Building Code and the Statewide Fire Prevention Code Act (§ 27-94 et seq.). The Department of General Services shall not have jurisdiction over such roadway tunnels, bridges, and other limited access highways; provided, however, that the Department of General Services shall have jurisdiction over any occupied buildings within any Department of Transportation rights-of-way that are subject to the Building Code.

Roadway tunnels and bridges shall be designed, constructed, and operated to comply with fire safety standards based on nationally recognized model codes and standards to be developed by the Department of Transportation in consultation with the State Fire Marshal. Emergency response planning and activities related to the standards shall be developed by the Department of Transportation and coordinated with the appropriate local officials and emergency services providers. On an annual basis the Department of Transportation shall provide a report on the maintenance and operability of installed fire protection and detection systems in roadway tunnels and bridges to the State Fire Marshal.

C. Except as provided in subsection E of § 23.1-1016, and notwithstanding the provisions of subsection A, at the request of a public institution of higher education, the Department, as further set forth in this subsection, shall authorize that institution of higher education to contract with a building official of the locality in which the construction is taking place to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.). The Department shall publish administrative procedures that shall be followed in contracting with a building official of the locality. The authority granted to a public institution of higher education under this subsection to contract with a building official of the locality shall be subject to the institution meeting the conditions prescribed in subsection A of § 23.1-1002.

D. This section shall not apply to the nonhabitable structures, equipment, and wiring owned by a public service company, a certificated provider of telecommunications services, or a franchised cable operator that are built on rights-of-way owned or controlled by the Commonwealth Transportation Board.

1981, c. 325; 1982, c. 97; 1986, c. 133; 2005, cc. 341, 933, 945; 2010, c. 105; 2013, cc. 585, 646.

§ 36-98.2. Appeals from decision of Building Official regarding state-owned buildings

Appeals by the involved state agency from the decision of the Building Official for state-owned buildings shall be made directly to the State Building Code Technical Review Board.

1982, c. 97.

§ 36-98.3. Amusement devices

A. The Board shall have the power and duty to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices. "Amusement device" means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion, but excluding snow tubing parks and rides, ski terrain parks, ski slopes and ski trails, and (ii) passenger tramways. A "passenger tramway" means a device used to transport passengers uphill, and suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. Regulations promulgated hereunder shall include provisions for the following:

1. The issuance of certificates of inspection prior to the operation of an amusement device;

2. The demonstration of financial responsibility of the owner or operator of the amusement device prior to the operation of an amusement device;

3. Maintenance inspections of existing amusement devices;

4. Reporting of accidents resulting in serious injury or death;

5. Immediate investigative inspections following accidents involving an amusement device that result in serious injury or death;

6. Certification of amusement device inspectors;

7. Qualifications of amusement device operators;

8. Notification by amusement device owners or operators of an intent to operate at a location within the Commonwealth; and

9. A timely reconsideration of the decision of the local building department when an amusement device owner or operator is aggrieved by such a decision.

B. In promulgating regulations, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations. Where appropriate, the Board shall establish separate standards for mobile amusement devices and for amusement devices permanently affixed to a site.

C. To assist the Board in the administration of this section, the Board shall appoint an Amusement Device Technical Advisory Committee, which shall be composed of five members who, by virtue of their education, training or employment, have demonstrated adequate knowledge of amusement devices or the amusement industry. The Board shall determine the terms of the Amusement Device Technical Advisory Committee members. The Amusement Device Technical Advisory Committee shall recommend standards for the construction, maintenance, operation and inspection of amusement devices, including the qualifications of amusement device operators and the certification of inspectors, and otherwise perform advisory functions as the Board may require.

D. Inspections required by this section shall be performed by persons certified by the Board pursuant to subdivision 6 of § 36-137 as competent to inspect amusement devices. The provisions of § 36-105 notwithstanding, the local governing body shall enforce the regulations promulgated by the Board for existing amusement devices. Nothing in this section shall be construed to prohibit the local governing body from authorizing inspections to be performed by persons who are not employees of the local governing body, provided those inspectors are certified by the Board as provided herein. The

Board is authorized to conduct or cause to be conducted any inspection required by this section, provided that the person performing the inspection on behalf of the Board is certified by the Board as provided herein.

E. To the extent they are not superseded by the provisions of this section and the regulations promulgated hereunder, the provisions of this chapter and the Uniform Statewide Building Code shall apply to amusement devices.

1986, c. 427; 1991, c. 152; 2011, c. 546.

§ 36-98.4. Agritourism event buildings

The Board shall appoint an Agritourism Event Structure Technical Advisory Committee, consisting of nine members. The nine members shall be appointed one each from the following: Virginia Farm Bureau Federation, the Virginia Agribusiness Council, the Virginia Wineries Association, the Virginia Craft Brewers Guild, a craft beverage manufacturer, the Virginia Association of Counties, the Virginia Fire Prevention Association, the Virginia Fire Services Board, and the Virginia Building and Code Officials Association.

2022, c. 262.

§ 36-99. Provisions of Code; modifications

A. The Building Code shall prescribe building regulations to be complied with in the construction and rehabilitation of buildings and structures, and the equipment therein as defined in § 36-97, and shall prescribe regulations to ensure that such buildings and structures are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations, including procedures to be used by the local building department in the evaluation and granting of modifications for any provision of the Building Code, provided the spirit and functional intent of the Building Code are observed and public health, welfare and safety are assured. The provisions of the Building Code and modifications thereof shall be such as to protect the health, safety and welfare of the residents of the Commonwealth, provided that buildings and structures should be permitted to be constructed, rehabilitated and maintained at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the International Code Council and the National Fire Protection Association. Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in § 35.1-1 and licensed as such by the Board of Health pursuant to Chapter 2 (§ 35.1-11 et seq.) of Title 35.1. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the local building department, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

D. The Board, upon a finding that sufficient allegations exist regarding failures noted in several localities of performance standards by either building materials, methods, or design, may conduct hearings on such allegations if it determines that such alleged failures, if proven, would have an adverse impact on the health, safety, or welfare of the citizens of the Commonwealth. After at least 21 days' written notice, the Board shall convene a hearing to consider such allegations. Such notice shall be given to the known manufacturers of the subject building material and as many other interested parties, industry representatives, and trade groups as can reasonably be identified. Following the hearing, the Board, upon finding that (i) the current technical or administrative Code provisions allow use of or result in defective or deficient building materials, methods, or designs, and (ii) immediate action is necessary to protect the health, safety, and welfare of the citizens of the Commonwealth, may issue amended regulations establishing interim performance standards and Code provisions for the installation, application, and use of such building materials, methods or designs in the

Commonwealth. Such amended regulations shall become effective upon their publication in the Virginia Register of Regulations. Any amendments to regulations adopted pursuant to this subsection shall become effective upon their publication in the Virginia Register of Regulations and shall be effective for a period of 24 months or until adopted, modified, or repealed by the Board.

1972, c. 829; 1974, c. 433; 1975, c. 394; 1977, cc. 423, 613; 1978, c. 581; 1981, c. 2; 1982, c. 267; 1998, c. 755; 2000, c. 751; 2002, c. 555; 2003, cc. 436, 650, 901.

§ 36-99.01. Provisions related to rehabilitation of existing buildings

A. The General Assembly hereby declares that (i) there is an urgent need to improve the housing conditions of low and moderate income individuals and families, many of whom live in substandard housing, particularly in the older cities of the Commonwealth; (ii) there are large numbers of older residential buildings in the Commonwealth, both occupied and vacant, which are in urgent need of rehabilitation and which must be rehabilitated if the State's citizens are to be housed in decent, sound, and sanitary conditions; and (iii) the application of those building code requirements currently in force to housing rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

B. The General Assembly further declares that (i) there is an urgent need to improve the existing condition of many of the Commonwealth's stock of commercial properties, particularly in older cities; (ii) there are large numbers of older commercial buildings in the Commonwealth, both occupied and vacant, that are in urgent need of rehabilitation and that must be rehabilitated if the citizens of the Commonwealth are to be provided with decent, sound and sanitary work spaces; and (iii) the application of the existing building code to such rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

C. The Board is hereby directed and empowered to make such changes as are necessary to fulfill the intent of the General Assembly as expressed in subsections A and B, including, but not limited to amendments to the Building Code and adequate training of building officials, enforcement personnel, contractors, and design professionals throughout the Commonwealth.

2000, c. 35; 2002, c. 555.

§ 36-99.1. Repealed

Repealed by Acts 1994, c. 895, effective July 1, 1995.

§ 36-99.2. Standards for replacement glass

Any replacement glass installed in buildings constructed prior to the effective date of the Uniform Statewide Building Code shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation.

1976, c. 137.

§ 36-99.3. Smoke alarms and automatic sprinkler systems in institutions of higher education

A. Buildings at institutions of higher education that contain dormitories for sleeping purposes shall be provided with battery operated or AC powered smoke alarm devices installed therein in accordance with the Building Code. All dormitories at public institutions of higher education and private institutions of higher education shall have installed and use due diligence in maintaining in good working order such alarms regardless of when the building was constructed.

B. The Board of Housing and Community Development shall promulgate regulations pursuant to § 2.2-4011 establishing standards for automatic sprinkler systems throughout all buildings at private institutions of higher education and public institutions of higher education that are (i) more than 75 feet or more than six stories high and (ii) used, in whole or in part, as dormitories to house students. Such buildings shall be equipped with automatic sprinkler systems by September 1, 1999, regardless of when such buildings were constructed.

C. The chief administrative office of the institution of higher education shall obtain a certificate of compliance with the provisions of this section from the building official of the locality in which the institution of higher education is located or, in the case of state-owned buildings, from the Director of the Department of General Services.

D. The provisions of this section shall not apply to any dormitory at a military public institution of higher education that is patrolled 24 hours a day by military guards.

1982, c. 357; 1997, c. 584; 2018, cc. 41, 81.

§ 36-99.4. Smoke alarms in certain juvenile care facilities

Battery operated or AC powered smoke alarm devices shall be installed in all local and regional detention homes, group homes, and other residential care facilities for children or juveniles that are operated by or under the auspices of the Department of Juvenile Justice, regardless of when the building was constructed, in accordance with the provisions of the Building Code. Administrators of such homes and facilities shall be responsible for the installation and maintenance of the smoke alarm devices.

1984, c. 179; 1989, c. 733; 2018, cc. 41, 81.

§ 36-99.5. Smoke alarms for persons who are deaf or hard of hearing

Smoke alarms for persons who are deaf or hard of hearing shall be installed only in conformance with the provisions of the current Building Code and maintained in accordance with the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Building Code. Such alarms shall be provided by the landlord or proprietor, upon request by a tenant of a rental unit or a person living with such tenant who is deaf or hard of hearing as referenced by the Virginia Fair Housing Law (§ 36-96.1 et seq.), or upon request by an occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than 20 individuals;

2. All boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or

3. All residential rental dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke alarm in the tenant's unit in accordance with § 55.1-1227.

A hotel or motel shall have available no fewer than one such smoke alarm for each 70 units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than 35 units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke alarms for persons who are deaf or hard of hearing. Visual alarms shall be provided for all meeting rooms for which an advance request has been made.

The proprietor or landlord may require a refundable deposit for a smoke alarm, not to exceed the original cost or replacement cost, whichever is greater, of such smoke alarm. Rental fees shall not be increased as compensation for this requirement.

A landlord of a rental unit shall provide a reasonable accommodation to a person who is deaf or hard of hearing who requests installation of a smoke alarm that is appropriate for persons who are deaf or hard of hearing if such accommodation is appropriate in accordance with the Virginia Fair Housing Law (§ 36-96.1 et seq.).

1984, c. 753; 1988, c. 183; 2011, c. 766; 2018, cc. 41, 81; 2019, c. 288.

§ 36-99.5:1. Smoke alarms and other fire detection and suppression systems in assisted living facilities, adult day care centers and nursing homes and facilities

A. Battery operated or AC powered smoke alarm devices shall be installed in all assisted living facilities and adult day care centers licensed by the Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke alarms shall be determined by the Building Code.

The licensee shall obtain a certificate of compliance from the building official of the locality in which the facility or center is located, or in the case of state-owned buildings, from the Department of General Services.

The licensee shall maintain the smoke alarm devices in good working order.

B. The Board of Housing and Community Development shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing standards for requiring (i) smoke alarms and (ii) such other fire detection and suppression systems as deemed necessary by the Board to increase the safety of persons in assisted living facilities, residential dwelling units designed or developed and marketed to senior citizens, nursing homes, and nursing facilities. All nursing homes and nursing facilities that are already equipped with sprinkler systems shall comply with regulations relating to smoke alarms.

1988, c. 55; 1990, cc. 448, 703; 1992, c. 356; 1993, cc. 957, 993; 2004, c. 584; 2018, cc. 41, 81.

§ 36-99.6. Underground and aboveground storage tank inspections

A. The Board of Housing and Community Development shall incorporate, as part of the Building Code, regulations adopted and promulgated by the State Water Control Board governing the installation, repair, upgrade and closure of underground and aboveground storage tanks.

B. Inspections undertaken pursuant to such Building Code regulations shall be done by employees of the local building department or another individual authorized by the local building department.

1987, c. 528; 1992, c. 456; 1994, c. 256.

§ 36-99.6:1. Repealed

Repealed by Acts 1994, c. 256.

§ 36-99.6:2. Installation of in-building emergency communication equipment for emergency public safety personnel

The Board of Housing and Community Development shall promulgate regulations as part of the Building Code requiring such new commercial, industrial, and multifamily buildings as determined by the Board be (i) designed and constructed so that emergency public safety personnel may send and receive emergency communications from within those structures or (ii) equipped with emergency communications equipment so that emergency public safety personnel may send and receive emergency communications from within those structures.

For the purposes of this section:

"Emergency communications equipment" includes, but is not limited to, two-way radio communications, signal boosters, bi-directional amplifiers, radiating cable systems or internal multiple antenna, or any combination of the foregoing.

"Emergency public safety personnel" includes firefighters, emergency medical services personnel, law-enforcement officers, and other emergency public safety personnel routinely called upon to provide emergency assistance to members of the public in a wide variety of emergency situations, including, but not limited to, fires, medical emergencies, violent crimes, and terrorist attacks.

2003, c. 611.

§ 36-99.6:3. Regulation of HVAC facilities

The Board shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing standards for heating, ventilation, and air conditioning (HVAC) facilities in new, privately owned residential dwellings.

2004, c. 132.

§ 36-99.7. Asbestos inspection in buildings to be renovated or demolished; exceptions

A. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1985, to be renovated or demolished until the local building department receives certification from the owner or his agent that the affected portions of the building have been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503 and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M), and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.1101). Local educational agencies that are subject to the requirements established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR 763 and subsequent amendments thereto.

B. To meet the inspection requirements of subsection A except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by a statement that the materials to be repaired or replaced are assumed to contain friable asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor.

C. The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units, unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than thirty-five cubic feet off facility components where the length or area could not be measured previously.

D. An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).

1987, c. 656; 1988, c. 723; 1989, c. 398; 1990, c. 823; 1993, c. 660; 1996, c. 742; 1997, c. 166.

§ 36-99.8. Skirting

Manufactured homes installed or relocated pursuant to the Building Code shall have skirting installed within sixty days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of eighteen inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the Building Code.

As used in this section, "skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

1990, c. 593.

§ 36-99.9. Standards for fire suppression systems in certain facilities

The Board of Housing and Community Development shall promulgate regulations by October 1, 1990, in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, establishing standards for fire suppression systems in nursing facilities and nursing homes, regardless of when such facilities or institutions were constructed. In the development of these standards, the Board shall seek input from relevant state agencies.

Units consisting of certified long-term care beds described in this section and § 32.1-126.2 located on the ground floor of general hospitals shall be exempt from the requirements of this section.

1990, c. 804.

§ 36-99.9:1. Standards for fire suppression systems in hospitals

The Board of Housing and Community Development shall promulgate regulations, to be effective by October 1, 1995, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), establishing standards for automatic sprinkler systems in hospitals, regardless of when such facilities were constructed. In the development of these standards, the Board shall seek input from relevant state and local agencies as well as affected institutions.

For the purposes of this section and § 32.1-126.3, "automatic sprinkler system" means a device for suppressing fire in patient rooms and other areas of the hospital customarily used for patient care.

1995, c. 631.

§ 36-99.10. Repealed

Repealed by Acts 1994, c. 187.

§ 36-99.10:1. Standards for installation of acoustical treatment measures in certain buildings and structures

The Board of Housing and Community Development shall promulgate regulations by October 1, 1994, for installation of acoustical treatment measures for construction in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. Such regulations shall provide for implementation at the option of a local governing body pursuant to the provisions of § 15.2-2295.

1994, c. 745; 2002, c. 180.

§ 36-99.11. Identification of disabled parking spaces by above grade signage

A. All parking spaces reserved for the use of persons with disabilities shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of persons with disabilities. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the disabled within the meaning of this section.

B. All above grade disabled parking space signs shall have the bottom edge of the sign no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of the Uniform Statewide Building Code.

C. Building owners shall install above grade signs identifying all parking spaces reserved for the use of persons with disabilities in accordance with this section and the applicable provisions of the Uniform Statewide Building Code by January 1, 1993.

D. Effective July 1, 1998, all disabled parking signs shall include the following language: PENALTY, $100-500 Fine, TOW-AWAY ZONE. Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than four feet above the parking surface.

1992, cc. 753, 764; 1997, cc. 783, 904.

§ 36-100. Notice and hearings on adoption of Code, amendments and repeals

The adoption, amendment, or repeal of any Code provisions shall be exempt from the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, pursuant to subdivision A 12 of § 2.2-4006. Before the adoption, amendment, or repeal of any Code provisions, the Board shall hold at least one public hearing. In addition to the notice requirement contained therein, the Board shall notify in writing the building official or, where none, the local governing body of every city or county in the Commonwealth. At any such hearing all persons desiring to do so shall be afforded an opportunity to present their views.

1972, c. 829; 1977, c. 613; 1991, c. 49; 2006, c. 719; 2010, c. 65.

§ 36-101. Effective date of Code; when local codes may remain in effect

No Code provisions shall be made effective prior to January 1, 1973, or later than September 1, 1973; provided that the initial Building Code shall not become effective earlier than 180 days after the publication thereof.

It is further provided that where, in the opinion of the Review Board, local codes are in substantial conformity with the State Code the local code may, with the concurrence of the Review Board remain in effect for two years from the effective day of the State Code for transition to implementation of the State Code.

1972, c. 829.

§ 36-102. Modification, amendment or repeal of Code provisions

The Board may modify, amend or repeal any Code provisions from time to time as the public interest requires, after notice and hearing as provided in § 36-100 of this chapter. No such modification or amendment shall be made effective earlier than thirty days from the adoption thereof.

1972, c. 829; 1977, c. 613.

§ 36-103. Buildings, etc., existing or projected before effective date of Code

Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate as part of the Building Code, building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost to ensure the protection of the public health, safety and welfare. Subsequent reconstruction, renovation, repair or demolition of such buildings or structures shall be subject to the pertinent construction and rehabilitation provisions of the Building Code. The provisions of this section shall be applicable to equipment. However, building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the Building Code in effect at the time a building was constructed without meeting current Building Code requirements, provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with the Uniform Statewide Building Code.

1972, c. 829; 1976, c. 638; 1982, c. 267; 1986, c. 32; 2002, c. 555; 2003, c. 650.

§ 36-104. Code to be printed and furnished on request; true copy

The Department shall have printed from time to time and keep available in pamphlet form all Code provisions. Such pamphlets shall be furnished upon request to members of the public. A true copy of all such provisions adopted and in force shall be kept in the office of the Department, accessible to the public. The Department may charge a reasonable fee for distribution of the Building Code based on production and distribution costs.

1972, c. 829; 1974, c. 298; 1977, c. 613.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators; issuance of permits

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Any person aggrieved by the local building department's application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom.

For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event that such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town situated within their respective boundaries. Additionally, the local governing body of a county or municipality may enter into an agreement with the governing body of another county or municipality for the provision to such county or municipality's local building department of technical assistance with administration and enforcement of the Building Code.

B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than $2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. A building official may issue an annual permit for any construction regulated by the Building Code. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. With the exception of the levy imposed pursuant to § 36-137, any fees levied pursuant to this subsection shall be used only to support the functions of the local building department.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions.

3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may make an affidavit under oath before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the local building official or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

4. Transfer of ownership. If the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement action shall continue to be enforced against the owner.

5. Elevator, escalator, or related conveyance inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, escalators, or related conveyances, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.

6. A locality may require by ordinance that any landmark, building or structure that contributes to a district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board unless the

local maintenance code official consistent with the Uniform Statewide Building Code, Part III Maintenance, determines that it constitutes such a hazard that it shall be razed, demolished or moved.

For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to or is consistent with the historic or architectural qualities, historic associations, or values for which the district was established pursuant to § 15.2-2306, because it (i) was present during the period of significance, (ii) relates to the documented significance of the district, and (iii) possesses historic integrity or is capable of yielding important information about the period.

7. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an overtime rate for inspections conducted during the normal business hours established by the locality. With the exception of the levy imposed pursuant to § 36-137, any fees levied pursuant to this subdivision shall be used only to support the functions of the local building department. Nothing herein shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the maintenance code official for the locality.

D. Issuance of permits.

1. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a building permit as otherwise provided under this chapter; however, notwithstanding any provision of law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on the owner's property, such applicant shall not be denied a permit under the Building Code solely upon the basis that the property owner has financial obligations to the locality that constitute a lien on such property in favor of the locality. If such applicant is the property owner, in addition to payment of the fees for issuance of a building permit, the locality may require full payment of any and all financial obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For purposes of this subdivision, "property owner" means the owner of such property as reflected in the land records of the circuit court clerk where the property is located, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent.

2. In the event that a local building department denies an application for the issuance of a building permit, the local building department shall provide to the applicant a written explanation detailing the reasons for which the application was denied. The applicant may submit a revised application addressing the reasons for which the application was previously denied, and if the applicant does so, the local building department shall be encouraged, but not required, to limit its review of the revised application to only those portions of the application that were previously deemed inadequate and that the applicant has revised.

1972, c. 829; 1974, c. 433; 1977, cc. 423, 613; 1978, c. 578; 1981, c. 498; 1982, c. 267; 1992, c. 73; 1993, c. 328; 1994, cc. 214, 256, 574; 1995, cc. 95, 523, 702, 827; 1999, cc. 333, 341; 2001, c. 119; 2002, c. 720; 2003, c. 650; 2004, c. 851; 2006, c. 424; 2007, c. 291; 2009, cc. 181, 184, 551, 586; 2010, c. 63; 2012, cc. 494, 607; 2014, c. 354; 2018, c. 222; 2019, c. 698.

§ 36-105.01. Elevator inspections by contract

The inspection of elevators in existing buildings and the enforcement of the Building Code for elevators shall be in compliance with the regulations adopted by the Board. The building department may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership or corporation who has met the certification requirements established by the Board. The Board shall establish such qualifications and procedures as it deems necessary to certify an approved agency. Such qualifications and procedures shall be based upon nationally accepted standards.

1994, c. 574; 1999, cc. 333, 341.

§ 36-105.1. Inspection and review of plans of buildings under construction

Inspections of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the Uniform Statewide Building Code shall be the sole responsibility of the appropriate local building inspectors. Upon completion of such structures, responsibility for fire safety protection shall pass to the State Fire Marshal pursuant to the Statewide Fire Prevention Code in those localities which do not enforce the Statewide Fire Prevention Code (§ 27-94 et seq.).

1989, c. 258.

§ 36-105.1:1. Rental inspections; rental inspection districts; exemptions; penalties

A. For purposes of this section:

"Dwelling unit" means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

"Owner" means the person shown on the current real estate assessment books or current real estate assessment records.

"Residential rental dwelling unit" means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit which has its own cooking and sleeping areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

B. Localities may inspect residential rental dwelling units. The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with the Building Code and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided in subdivision B 3, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section, and

2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating, or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize one or more locality-wide rental inspection districts and a local governing body shall limit the boundaries of the proposed rental inspection districts to such areas of the locality that meet the criteria set out in this subsection, or

3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of the Building Code that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties contained in the enforcement authority granted to the building department by this section.

C. 1. Notification to owners of dwelling units. Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental dwelling units in the designated rental inspection district, or their

designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

2. Notification by owners of dwelling units to locality. The rental inspection ordinance may include a provision that requires the owners of dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to $50. For purposes of this subsection, notice sent by regular first class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

D. Initial inspection of dwelling units when rental inspection district is established. Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for in subsection C, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such property.

E. Provisions for initial and periodic inspections of multifamily dwelling units. If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10 percent of the dwelling units, of a multifamily development, which includes all of the multifamily buildings which are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce the Building Code, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in subsection H.

F. 1. Follow-up inspections. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under the Building Code to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants.

2. Periodic inspections. Except as provided in subdivision F 1, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

G. Exemptions from rental inspection ordinance.

1. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with the Building Code, provided that there are no violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided in subdivision F 2, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental

dwelling unit becomes in violation of the Building Code during the exemption period, the building department may revoke the exemption previously granted under this section.

2. The local governing body may exempt a residential rental unit otherwise subject to a rental inspection ordinance provided such unit is managed by (i) any person licensed under the provisions of § 54.1-2106.1; (ii) any (a) property manager or (b) managing agent of a landlord as defined in § 551-1200; (iii) any owner of a publicly traded entity that manages its own multifamily residential rental units; or (iv) any owner or managing agent who, in the determination of the local governing body, has achieved a satisfactory designation as a professional property manager.

H. A local governing body may establish a fee schedule for enforcement of the Building Code, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

I. The provisions of this section shall not, in any way, alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 12 (§ 55.1-1200 et seq.) or Chapter 14 (§ 55.1-1400 et seq.) of Title 55.1.

J. The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 to enforce the Building Code.

K. Unless otherwise provided in this section, penalties for violation of this section shall be the same as the penalties provided in the Building Code.

2004, c. 851; 2009, c. 663; 2016, c. 338.

§ 36-105.2. Expired

Expired.

§ 36-105.3. Security of certain records

Building Code officials shall institute procedures to ensure the safe storage and secure handling by local officials having access to or in the possession of engineering and construction drawings and plans containing critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.).

Further, information contained in engineering and construction drawings and plans for any single-family residential dwelling submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except to the applicant or the owner of the property upon the applicant's or owner's request.

2003, c. 891; 2017, c. 510; 2018, cc. 42, 92.

§ 36-105.4. Occupancy standards for residential dwelling units

The owner or managing agent of a residential dwelling unit may develop and implement occupancy standards restricting the maximum number of occupants permitted to occupy a dwelling unit to two persons per bedroom, which is presumed to be reasonable. For purposes of Chapter 5.1 (§ 36-96.1 et seq.), such occupancy standard is subject to the provisions of applicable state and federal laws and regulations. Under the Uniform Statewide Building Code, each bedroom shall contain at least 70 square feet of floor area, and each bedroom occupied by more than one person shall contain at least 50 square feet of floor area for each occupant. Reasonable occupancy standards of an owner or managing agent shall not be enforceable under the provisions of the Uniform Statewide Building Code.

2013, c. 526.

§ 36-105.5. Enforcement of Building Code on Indian reservations

A. Recognizing the unique relationship between the Commonwealth and certain of its state-recognized Indian tribes, and notwithstanding any other provision of law, neither the Commonwealth nor any locality therein is responsible for the enforcement of the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.) on any Indian reservation recognized by the Commonwealth whereupon a state-recognized Indian tribe has, by duly enacted tribal ordinance, adopted the Uniform Statewide Building Code and (i) assumed sole responsibility for existing buildings and new construction on the reservation and (ii) for purposes of enforcing the ordinance, retained firms or individuals to function as the building official on such reservation.

B. Nothing in this section shall be construed to confer or infer responsibility or liability on any party for any action undertaken prior to July 1, 2015.

2015, c. 135.

§ 36-106. Violation a misdemeanor; civil penalty

A. It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions. Any such violation shall be deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than $2,500. In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense committed within less than five years after a first offense under this chapter shall be punished by a fine of not less than $1,000 nor more than $2,500. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under this chapter shall be punished by a fine of not less than $500 nor more than $2,500. Any person convicted of a third or subsequent offense involving the same property committed within 10 years of an offense under this chapter after having been at least twice previously convicted shall be punished by confinement in jail for not more than 10 days and a fine of not less than $2,500 nor more than $5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within 10 years of an offense under this chapter shall be suspended.

B. Violations of any provision of the Building Code, adopted and promulgated pursuant to § 36-103, that results in a dwelling not being a safe, decent and sanitary dwelling, as defined in § 25.1-400, in a locality where the local governing body has taken official action to enforce such provisions, shall be deemed a misdemeanor and any owner or any other person, firm, or corporation convicted of such a violation shall be punished by a fine of not more than $2,500. In addition, each day the violation continues after conviction or the expiration of the court-ordered abatement period shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense, committed within less than five years after a first offense under this chapter shall be punished by confinement in jail for not more than five days and a fine of not less than $1,000 nor more than $2,500, either or both. Provided, however, that the provision for confinement in jail shall not be applicable to any person, firm, or corporation, when such violation involves a multiple-family dwelling unit. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under this chapter shall be punished by a fine of not less than $500 nor more than $2,500. Any person convicted of a third or subsequent offense involving the same property, committed within 10 years of an offense under this chapter after having been at least twice previously convicted, shall be punished by confinement in jail for not more than 10 days and a fine of not less than $2,500 nor more than $5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within 10 years of an offense under this chapter shall be suspended.

C. Any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the Code which are not abated, or otherwise remedied through hazard control, promptly after receipt of notice of violation from the local enforcement officer.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than $100 for the initial summons and not more than $350 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $4,000. Designation of a particular Code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a misdemeanor.

Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the violator and a representative of the locality shall agree in writing to terms of abatement or remediation of the violation within six months after the date of payment of the civil penalty.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

If the violation concerns a residential unit, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court shall order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate, or otherwise remedy through hazard control, the violation within six months of the date of the assessment of the civil penalty.

If the violation concerns a nonresidential building or structure, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court may order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Any such violator so ordered shall abate, or otherwise remedy through hazard control, the violation within the time specified by the court.

D. Any owner or any other person, firm or corporation violating any Code provisions relating to lead hazard controls that poses a hazard to the health of pregnant women and children under the age of six years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than $2,500. If the court convicts pursuant to this subsection and sets a time by which such hazard must be controlled, each day the hazard remains uncontrolled after the time set for the lead hazard control has expired shall constitute a separate violation of the Uniform Statewide Building Code.

The landlord shall maintain the painted surfaces of the dwelling unit in compliance with the International Property Maintenance Code of the Uniform Statewide Building Code. The landlord's failure to do so shall be enforceable in accordance with the Uniform Statewide Building Code and shall entitle the tenant to terminate the rental agreement.

Termination of the rental agreement or any other action in retaliation against the tenant after written notification of (i) a lead hazard in the dwelling unit or (ii) that a child of the tenant, who is an authorized occupant in the dwelling unit, has an elevated blood lead level, shall constitute retaliatory conduct in violation of § 55.1-1258.

E. Nothing in this section shall be construed to prohibit a local enforcement officer from issuing a summons or a ticket for violation of any Code provision to the lessor or sublessor of a residential dwelling unit, provided a copy of the notice is served on the owner.

F. Any prosecution under this section shall be commenced within the period provided for in § 19.2-8.

1972, c. 829; 1975, c. 367; 1991, c. 655; 1992, cc. 435, 650; 1993, c. 788; 1994, c. 342; 1995, c. 494; 1998, c. 664; 1999, cc. 251, 362, 392, 1014; 2000, c. 68; 2006, c. 746; 2007, cc. 290, 760; 2010, cc. 87, 94; 2011, cc. 118, 143; 2013, c. 529.

§ 36-107. Employment of personnel for administration of chapter

Subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, the Director may employ such permanent and temporary clerical, technical and other assistants as are necessary or advisable for the proper administration of the provision of this chapter.

1972, c. 829; 1974, c. 668; 1977, c. 613.

§ 36-107.1. Sale of residential structure with lead-based paint levels exceeding Code standards; penalty

Whenever any property owner has been notified by local building officials or representatives of local health departments that any residential premises has levels of lead-based paint in violation of this chapter, such property owner shall notify prospective purchasers in writing of the presence of unacceptable levels of lead-based paint in such premises and the requirements concerning the removal of the same. Such notification shall include a copy of any notice the property owner received from local building officials or representatives of local health departments advising of the presence of unacceptable levels of lead-based paint in such premises.

The notice required herein shall be provided to prospective purchasers prior to the signing of a purchase or sales agreement or, if there is no purchase or sales agreement, prior to the signing of a deed. The requirements shall not apply to purchase and sales agreements or deeds signed prior to July 1, 1991. Transactions in which sellers have accepted written offers prior to July 1, 1991, but have not signed a purchase or sales agreement or a deed prior to July 1, 1991, shall be subject to the notice requirements.

Any person who fails to comply with the provisions of this section shall be liable for all damages caused by his failure to comply and shall, in addition, be liable for a civil penalty not to exceed $1,000.

1991, c. 266.

Article 2. State Building Code Technical Review Board

§ 36-108. Board continued; members

There is hereby continued, in the Department, the State Building Code Technical Review Board, consisting of 14 members, appointed by the Governor subject to confirmation by the General Assembly. The members shall include one member who is a registered architect, selected from a slate presented by the Virginia Society of the American Institute of Architects; one member who is a professional engineer in private practice, selected from a slate presented by the Virginia Society of Professional Engineers; one member who is a residential builder, selected from a slate presented by the Home Builders Association of Virginia; one member who is a general contractor, selected from a slate presented by the Virginia Branch, Associated General Contractors of America; two members who have had experience in the field of enforcement of building regulations, selected from a slate presented by the Virginia Building and Code Officials Association; one member who is employed by a public agency as a fire prevention officer, selected from a slate presented by the Virginia Fire Chiefs Association; one member whose primary occupation is commercial or retail construction or operation and maintenance, selected from a slate presented by the Virginia chapters of Building Owners and Managers Association, International; one member whose primary occupation is residential, multifamily housing construction or operation and maintenance, selected from a slate presented by the Virginia chapters of the National Apartment Association; one member who is an electrical contractor who has held a Class A license for at least 10 years; one member who is a plumbing contractor who has held a Class A license for at least 10 years and one member who is a heating and cooling contractor who has held a Class A license for at least 10 years, both of whom are selected from a combined slate presented by the Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America; and two members from the Commonwealth at large who may be members of local governing bodies. The members shall serve at the pleasure of the Governor.

1972, c. 829; 1974, c. 668; 1976, c. 484; 1977, cc. 92, 613; 1993, c. 626; 1997, c. 860; 2003, c. 950.

§ 36-109. Officers; secretary

The Review Board, under rules adopted by itself, shall elect one of its members as chairman, for a term of two years, and may elect one of its members as vice-chairman. The Review Board may also elect a secretary, who may be a nonmember.

1972, c. 829.

§ 36-110. Repealed

Repealed by Acts 1980, c. 728.

§ 36-111. Oath and bonds

Before entering upon the discharge of his duties, each member of the Review Board shall take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein and shall be bonded in accordance with § 2.2-1840, conditioned upon the faithful discharge of his duties.

1972, c. 829; 1974, c. 668; 1977, c. 613; 2021, Sp. Sess. I, c. 152.

§ 36-112. Meetings

The Review Board shall meet at the call of the chairman, or at the written request of at least three of its members; provided that it shall act within thirty days following receipt of any appeal made under the provisions of this chapter.

1972, c. 829.

§ 36-113. Offices

The Review Board shall be furnished adequate space and quarters in the suite of offices of the Department, and such Board's main office shall be therein.

1972, c. 829; 1974, c. 668; 1977, c. 613.

§ 36-114. Board to hear appeals

The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the Virginia Amusement Device Regulations adopted pursuant to § 36-98.3, the Fire Prevention Code adopted under the Statewide Fire Prevention Code Act (§ 27-94 et seq.), and rules and regulations implementing the Industrialized Building Safety Law (§ 36-70 et seq.), and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that an informal conference pursuant to § 2.2-4019 shall not be required.

1972, c. 829; 1977, c. 423; 1986, cc. 37, 429; 1994, c. 406; 2003, c. 650; 2010, c. 63.

§ 36-115. Subpoenas; witnesses; designation of subordinates

In any matter before it on appeal for hearing and determination, the Review Board, or its designated subordinates, may compel the attendance of all needed witnesses in like manner as a circuit court, save the Review Board shall not have the power of imprisonment. In taking evidence, the chairman or any member of the Review Board, or its designated subordinates, shall have the power to administer oaths to witnesses. Where a designated subordinate of the Review Board presides over hearings on appeals, such subordinate shall submit recommended findings and a decision to the Review Board pursuant to § 2.2-4020.

1972, c. 829; 1977, c. 423; 1996, c. 620.

§ 36-116. Repealed

Repealed by Acts 1977, c. 613.

§ 36-117. Record of decisions

A record of all decisions of the Review Board, properly indexed, shall be kept in the office of such Board. Such record shall be open to public inspection at all times during business hours.

1972, c. 829.

§ 36-118. Interpretation of Code; recommendation of modifications

The Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any of such provisions. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.

1972, c. 829; 1977, c. 613; 1986, c. 429.

§ 36-119. Rules and regulations under § 36-73 not superseded

This chapter shall not amend, supersede, or repeal the rules and regulations prescribing standards to be complied with, in industrialized building units and mobile homes promulgated under § 36-73.

1972, c. 829.

§ 36-119.1. Existing buildings

This chapter shall not supersede provisions of the Fire Prevention Code promulgated by the Board under § 27-97, that prescribe standards to be complied with in existing buildings or structures, provided that such regulations shall not impose requirements that are more restrictive than those of the Uniform Statewide Building Code under which the buildings or structures were constructed. Subsequent alteration, enlargement, rehabilitation, repair, or conversion of the occupancy classification of such buildings and structures shall be subject to the construction and rehabilitation provisions of the Building Code.

1986, c. 429; 1988, c. 199; 2002, c. 555; 2003, c. 650.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

7/21/2022

Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government

Chapter 22. Planning, Subdivision of Land and Zoning

Article 1. General Provisions

§ 15.2-2200. Declaration of legislative intent

This chapter is intended to encourage localities to improve the public health, safety, convenience, and welfare of their citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry, and business be recognized in future growth; that the concerns of military installations be recognized and taken into account in consideration of future development of areas immediately surrounding installations and that where practical, installation commanders shall be consulted on such matters by local officials; that residential areas be provided with healthy surroundings for family life; that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.

Code 1950, §§ 15-891.1, 15-900, 15-916, 15-961; 1950, pp. 487, 889; 1956, c. 497; 1962, c. 407, § 15.1-427; 1975, c. 641; 1981, c. 418; 1996, cc. 585, 600; 1997, c. 587; 2013, cc. 149, 213.

§ 15.2-2201. Definitions

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258. Nothing in this definition, section, nor any ordinance adopted pursuant to § 15.2-2240 shall preclude different owners of adjacent parcels from entering into a valid and enforceable boundary line agreement with one another so long as such agreement is only used to resolve a bona fide property line dispute, the boundary adjustment does not move by more than 250 feet from the center of the current platted line or alter either parcel's resultant acreage by more than five percent of the smaller parcel size, and such agreement does not create an additional lot, alter the existing boundary lines of localities, result in greater street frontage, or interfere with a recorded easement, and such agreement shall not result in any nonconformity with local ordinances and health department regulations. Notice shall be provided to the zoning administrator of the locality in which the parcels are located for review. For any property affected by this definition, any division of land subject to a partition suit by virtue of order or decree by a court of competent jurisdiction shall take precedence over the requirements of Article 6 (§ 15.2-2240 et seq.) and the minimum lot area, width, or frontage requirements in the zoning ordinance so long as the lot or parcel resulting from such order or decree does not vary from minimum lot area, width, or frontage requirements

by more than 20 percent. A copy of the final decree shall be provided to the zoning administrator of the locality in which the property is located.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Working waterfront" means an area or structure on, over, or adjacent to navigable waters that provides access to the water and is used for water-dependent commercial, industrial, or governmental activities, including commercial and recreational fishing; tourism; aquaculture; boat and ship building, repair, and services; seafood processing and sales; transportation; shipping; marine construction; and military activities.

"Working waterfront development area" means an area containing one or more working waterfronts having economic, cultural, or historic public value of such significance as to warrant development and reparation.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

Code 1950, § 15-961.3; 1962, c. 407, § 15.1-430; 1964, c. 547; 1966, c. 344; 1975, c. 641; 1976, c. 642; 1977, c. 566; 1978, c. 320; 1987, c. 8; 1989, c. 384; 1990, c. 685; 1993, c. 770; 1995, c. 603; 1997, c. 587; 2008, cc. 635, 718; 2011, c. 237; 2012, c. 554; 2013, cc. 149, 213; 2015, c. 597; 2017, c. 216; 2022, c. 271.

§ 15.2-2202. Duties of state agencies; electric utilities

A. The Department of Environmental Quality shall distribute a copy of the environmental impact report submitted to the Department for every major state project pursuant to regulations promulgated under § 10.1-1191 to the chief administrative officer of every locality in which each project is proposed to be located. The purpose of the distribution is to enable the locality to evaluate the proposed project for environmental impact, consistency with the locality's comprehensive plan, local ordinances adopted pursuant to this chapter, and other applicable law and to provide the locality with an opportunity to comment. The Department shall distribute the reports to localities, solicit their comments, and consider their responses in substantially the same manner as the Department solicits and receives comments from state agencies.

B. In addition to the information supplied under subsection A, every department, board, bureau, commission, or other agency of the Commonwealth which is responsible for the construction, operation, or maintenance of public facilities within any locality shall, upon the request of the local planning commission having authority to prepare a comprehensive plan, furnish reasonable information requested by the local planning commission relative to the master plans of the state agency which may affect the locality's comprehensive plan. Each state agency shall collaborate and cooperate with the local planning commission, when requested, in the preparation of the comprehensive plan to the end that the local comprehensive plan will coordinate the interests and responsibilities of all concerned. The state agency shall notify the chief administrative officer of the locality when updates to its land use plans are completed and available.

C. Every state agency responsible for the construction, operation or maintenance of public facilities within the Commonwealth shall send a notice addressed to the chief administrative officer of every locality in which the agency intends to undertake a capital project involving new construction costing at least $500,000. The notice shall occur at the initiation of the environmental impact report process. This notice shall include a project description and a point of contact with contact information for the project. A notice shall also be given during the planning phase of the project and prior to preparation of construction and site plans and shall inform localities that preliminary construction and site plans will be available for distribution, upon the request of the locality. Agencies shall not be required to give such notice prior to acquisition of property. The purpose of the notice and distribution is to enable the locality to evaluate the project for consistency with local ordinances other than building codes and to provide the locality with an opportunity to submit comments to the agency during the planning phase of a project. Upon receipt of a request from a locality, the state

agency shall transmit a copy of the plans to the locality for comment or conduct at least one public meeting in the locality to solicit public input during the planning phase of the project.

D. Every institution of higher education responsible for the construction, operation or maintenance of public facilities within the Commonwealth shall send a notice addressed to the chief administrative officer of every locality in which the institution intends to undertake a capital project involving new construction costing at least $500,000. The notice shall occur at the initiation of the environmental impact report process. This notice shall include a project description and a point of contact with contact information for the project. A notice shall also be given during the planning phase of the project and prior to preparation of construction and site plans and shall inform the locality that preliminary construction and site plans will be available for distribution, upon request of the locality. Institutions shall not be required to give such notice prior to acquisition of property. The purpose of the notice and distribution is to enable the locality to evaluate the project for consistency with local ordinances other than building codes and to provide the locality with an opportunity to submit comments to the agency during the planning phase of a project. Upon receipt of a request from a locality, the institution shall transmit a copy of the plans to the locality for comment or conduct at least one public meeting in the locality to solicit public input during the planning phase of the project.

E. Every electric utility that is responsible for the construction, operation, and maintenance of electric transmission lines of 150 kilovolts or more shall furnish reasonable information requested by the local planning commission having authority to prepare a comprehensive plan within the utility's certificated service area relative to any electric transmission line of 150 kilovolts or more that may affect the locality's comprehensive plan. If the locality seeks to include the designation of corridors or routes for electric transmission lines of 150 kilovolts or more in its comprehensive plan, the local planning commission shall give the electric utility a reasonable opportunity for consultation about such corridors or routes. The electric utility shall notify the chief administrative officer of every locality in which the electric utility plans to undertake construction of any electric transmission line of 150 kilovolts or more, prior to the filing of any application for approval of such construction with the State Corporation Commission, of its intention to file any such application and shall give the locality a reasonable opportunity for consultation about such line.

F. Nothing in this section shall be construed to require any state agency or electric utility to duplicate any submission required to be made by the agency or the electric utility to a locality under any other provision of law.

G. Nothing herein shall be deemed to abridge the authority of any state agency or the State Corporation Commission regarding the facilities now or hereafter coming under its jurisdiction. However, failure of any state agency to strictly comply with subsection C will justify entry of an injunction on behalf of the locality.

H. The provisions of this section shall not apply to highway, transit or other projects, as provided in subsection B of § 10.1-1188.

I. The provisions of this section shall not apply to the entering of any option by any state agency or electric utility for any projects listed in subsection C, D or E.

1993, c. 786, § 15.1-428.1; 1997, c. 587; 2001, c. 281; 2007, c. 761; 2011, c. 699; 2022, c. 480.

§ 15.2-2203. Existing planning commissions and boards of zoning appeals; validation of plans previously adopted

Upon the effective date of this chapter, planning commissions, by whatever name designated, and boards of zoning appeals heretofore established shall continue to operate as though created under the terms of this chapter. All actions lawfully taken by such commissions and boards are hereby validated and continued in effect until amended or repealed in accordance with this chapter.

The adoption of a comprehensive or master plan or any general development plans under the authority of prior acts is hereby validated and shall continue in effect until amended under the provisions of this chapter.

Code 1950, § 15-961.2; 1962, c. 407, § 15.1-429; 1975, c. 641; 1997, c. 587.

§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth in this subsection. If a joint hearing is held, then public notice as set forth in this subsection need be given only by the governing body. As used in this subsection, "two successive weeks" means that such notice shall be published at least twice in such newspaper, with not less than six days elapsing between the first and second publication. In any instance in which a locality has submitted a correct and timely notice request to such newspaper and the newspaper fails to publish the notice, or publishes the notice incorrectly, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels that lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the local commission to give written notice to the owner, owners or their agent of any parcel involved.

The governing body may provide that, in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.

Whenever the notices required hereby are sent by an agency, department or division of the local governing body, or their representative, such notices may be sent by first class mail; however, a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.

D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning map classification, or (iii) an application for special exception for a change in use involves any parcel of land located within 3,000 feet of a boundary of a military base, military installation, military airport, excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 30 days before the hearing to the commander of the military base, military installation, military airport, or owner of such public-use airport, and the notice shall advise the military commander or owner of such public-use airport of the opportunity to submit comments or recommendations.

E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure to advertise or give notice as may be required by this chapter shall be filed within 30 days of such decision with the circuit court having jurisdiction of the land affected by the decision. However, any litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

F. Notwithstanding any contrary provision of law, general or special, the City of Richmond may cause such notice to be published in any newspaper of general circulation in the city.

G. When a proposed comprehensive plan or amendment of an existing plan designates or alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written notice shall also be given by the local planning commission, or its representative, at least 10 days before the hearing to each electric utility with a certificated service territory that includes all or any part of such designated electric transmission corridors or routes.

H. When any applicant requesting a written order, requirement, decision, or determination from the zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of the real property subject to the written order, requirement, decision or determination, written notice shall be given to the owner of the property within 10 days of the receipt of such request. Such written notice shall be given by the zoning administrator or other administrative officer or, at the direction of the administrator or officer, the requesting applicant shall be required to give the owner such notice and to provide satisfactory evidence to the zoning administrator or other administrative officer that the notice has been given. Written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this subsection.

This subsection shall not apply to inquiries from the governing body, planning commission, or employees of the locality made in the normal course of business.

Code 1950, § 15-961.4; 1962, c. 407, § 15.1-431; 1964, c. 632; 1968, cc. 354, 714; 1973, cc. 117, 334; 1974, cc. 100, 570; 1975, c. 641; 1976, c. 642; 1977, c. 65; 1982, c. 291; 1990, c. 61; 1992, cc. 353, 757; 1993, cc. 128, 734; 1994, c. 774; 1995, c. 178; 1996, cc. 613, 667; 1997, c. 587; 2001, c. 406; 2002, c. 634; 2004, cc. 539, 799; 2005, c. 514; 2007, cc. 761, 813; 2011, c. 457; 2012, c. 548; 2013, cc. 149, 213; 2022, c. 478.

§ 15.2-2205. Additional notice of planning or zoning matters

Any locality may give, in addition to any specific notice required by law, notice by direct mail or any other means of any planning or zoning matter it deems appropriate.

1980, c. 545, § 15.1-33.1; 1981, c. 266; 1997, c. 587.

§ 15.2-2206. When locality may require applicant to give notice; how given

Any locality may by ordinance require that a person applying to the local governing body, local planning commission or board of zoning appeals pursuant to this chapter be responsible for all required notices. The locality shall require that notice be given as provided by § 15.2-2204.

The locality may provide that, in the case of a condominium or of a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessee's association, respectively, in lieu of each individual unit owner.

The applicant may rely upon records of the local real estate assessor's office to ascertain the names of persons entitled to notice.

A certification of notice and a listing of the persons to whom notice has been sent shall be supplied by the applicant as required by the local governing body at least five days prior to the first hearing.

The governing body shall allow any person entitled to notice to waive such right in writing.

Nothing herein shall be construed so as to affect the validity of any ordinance or amendment adopted prior to July 1, 1992.

1992, c. 517, § 15.1-431.1; 1997, c. 587.

§ 15.2-2207. Public notice of juvenile residential care facilities in certain localities

In any locality without an applicable zoning ordinance, the local governing body may provide by ordinance that any party desiring to establish a public or private detention home, group home or other residential care facility for children in need of services or for delinquent or alleged delinquent youth must first provide public notice and participate in a public hearing in accordance with § 15.2-2204.

1994, c. 372, § 15.1-503.4; 1997, c. 587.

§ 15.2-2208. Restraining violations of chapter

A. Any violation or attempted violation of this chapter, or of any regulation adopted hereunder may be restrained, corrected, or abated as the case may be by injunction or other appropriate proceeding.

B. At any time after the filing of an injunction or other appropriate proceeding to restrain, correct, or abate a zoning ordinance violation and where the owner of the real property is a party to such proceeding, the zoning administrator or governing body may record a memorandum of lis pendens pursuant to § 8.01-268. Any memorandum of lis pendens admitted to record in an action to enforce a zoning ordinance shall expire after 180 days. If the local government has initiated an enforcement proceeding against the owner of the real property and such owner subsequently transfers the ownership of the real property to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement proceeding shall continue to be enforced against the owner.

Code 1950, §§ 15-840, 15-851, 15-969; 1962, c. 407, § 15.1-499; 1997, c. 587; 2008, c. 583.

§ 15.2-2208.1. Damages for unconstitutional grant or denial by locality of certain permits and approvals

A. Notwithstanding any other provision of law, general or special, any applicant aggrieved by the grant or denial by a locality of any approval or permit, however described or delineated, including a special exception, special use permit, conditional use permit, rezoning, site plan, plan of development, and subdivision plan, where such grant included, or denial was based upon, an unconstitutional condition pursuant to the United States Constitution or the Constitution of Virginia, shall be entitled to an award of compensatory damages and to an order remanding the matter to the locality with

a direction to grant or issue such permits or approvals without the unconstitutional condition and may be entitled to reasonable attorney fees and court costs.

B. In any proceeding, once an unconstitutional condition has been proven by the aggrieved applicant to have been a factor in the grant or denial of the approval or permit, the court shall presume, absent clear and convincing evidence to the contrary, that such applicant's acceptance of or refusal to accept the unconstitutional condition was the controlling basis for such impermissible grant or denial provided only that the applicant objected to the condition in writing prior to such grant or denial.

C. Any action brought pursuant to this section shall be filed with the circuit court having jurisdiction of the land affected or the greater part thereof, and the court shall hear and determine the case as soon as practical, provided that such action is filed within the time limit set forth in subsection C or D of § 15.2-2259, subsection D or E of § 15.2-2260, or subsection F of § 15.2-2285, as may be applicable.

2014, cc. 671, 717.

§ 15.2-2209. Civil penalties for violations of zoning ordinance

Notwithstanding subdivision A 5 of § 15.2-2286, any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the zoning ordinance. The schedule of offenses shall not include any zoning violation resulting in injury to any persons, and the existence of a civil penalty shall not preclude action by the zoning administrator under subdivision A 4 of § 15.2-2286 or action by the governing body under § 15.2-2208.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than $200 for the initial summons and not more than $500 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $5,000. Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor, provided, however, that when such civil penalties total $5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

The zoning administrator or his deputy may issue a civil summons as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with the zoning ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than six months of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

No provision herein shall be construed to allow the imposition of civil penalties (i) for activities related to land development or (ii) for violation of any provision of a local zoning ordinance relating to the posting of signs on public property or public rights-of-way.

1985, c. 417, § 15.1-499.1; 1986, c. 97; 1987, cc. 78, 99; 1988, cc. 513, 813, 869, 895; 1989, c. 566; 1990, cc. 473, 495; 1992, c. 298; 1993, c. 823; 1994, c. 342; 1995, c. 494; 1996, c. 421; 1997, c. 587; 2003, c. 192; 2006, c. 248; 2008, c. 727.

§ 15.2-2209.1. Extension of approvals to address housing crisis

A. Notwithstanding the time limits for validity set out in § 15.2-2260 or 15.2-2261, or the provisions of subsection F of § 15.2-2260, any subdivision plat valid under § 15.2-2260 and outstanding as of January 1, 2017, and any recorded plat or final site plan valid under § 15.2-2261 and outstanding as of January 1, 2017, shall remain valid until July 1, 2020, or such later date provided for by the terms of the locality's approval, local ordinance, resolution or regulation, or for a longer period as agreed to by the locality. Any other plan or permit associated with such plat or site plan extended by this subsection shall likewise be extended for the same time period.

B. Notwithstanding any other provision of this chapter, for any valid special exception, special use permit, or conditional use permit outstanding as of January 1, 2017, and related to new residential or commercial development, any deadline in the exception permit, or in the local zoning ordinance that requires the landowner or developer to commence the project or to incur significant expenses related to improvements for the project within a certain time, shall be extended until July 1, 2020, or longer as agreed to by the locality. The provisions of this subsection shall not apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit, or other agreement or zoning action be terminated or ended by a certain date or within a set number of years.

C. Notwithstanding any other provision of this chapter, for any rezoning action approved pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303, valid and outstanding as of January 1, 2017, and related to new residential or commercial development, any proffered condition that requires the landowner or developer to incur significant expenses upon an event related to a stage or level of development shall be extended until July 1, 2020, or longer as agreed to by the locality. However, the extensions in this subsection shall not apply (i) to land or right-of-way dedications pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303, (ii) when completion of the event related to the stage or level of development has occurred, or (iii) to events required to occur on a specified date certain or within a specified time period. Any proffered condition included in a special exception, special use permit, or conditional use permit shall only be extended if it satisfies the provisions of this subsection.

D. The extension of validity provided in subsection A and the extension of certain deadlines as provided in subsection B shall not be effective unless any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the proposed development are continued in force; however, if the locality has enacted a bonding moratorium or deferral option, the performance bonds and agreements or other financial guarantees of completion may be waived or modified by the locality, in which case the extension of validity provided in subsection A and the extension of certain deadlines provided in subsection B shall apply. The landowner or developer must comply with the terms of any bonding moratorium or deferral agreement with the locality in order for the extensions referred to in this subsection to be effective.

2009, c. 196; 2011, c. 272; 2012, c. 508; 2017, c. 660.

§ 15.2-2209.1:1. Extension of approvals to address the COVID-19 pandemic

A. Notwithstanding any time limits for validity set out in § 15.2-2260 or 15.2-2261, any subdivision plat valid under § 15.2-2260 and outstanding as of July 1, 2020, and any recorded plat or final site plan valid under § 15.2-2261 and outstanding as of July 1, 2020, shall remain valid until July 1, 2023, or such later date as may be provided for by the terms of the locality's approval, local ordinance, resolution, or regulation. Any other plan or permit associated with such plat or site plan extended by this subsection is similarly extended for the same time period.

B. Notwithstanding any other provision of this chapter, for any valid special exception, special use permit, or conditional use permit, or any modifications thereto, outstanding as of July 1, 2020, any deadline in the exception permit, or in the local zoning ordinance that requires the landowner or developer to commence the project or incur significant expenses related to improvements for the project within a certain time, is extended until July 1, 2023, or such longer period as may be agreed to by the locality.

C. Notwithstanding any other provision of this chapter, for any rezoning approved pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303 and valid and outstanding as of July 1, 2020, any proffered condition that requires the landowner or developer to incur significant expenses upon the occurrence of an event related to a stage or level of development is extended until July 1, 2023, or longer as may be agreed to by the locality. However, the extensions in this subsection do not apply (i) to proffered dedications of land or rights-of-way pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303 or (ii) when completion of the event related to the stage or level of development has already occurred.

D. The extension of validity provided in subsection A and the extension of deadlines as provided in subsection B will be effective only if any unreleased performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the proposed development are continued in force. However, if the locality has enacted a bonding moratorium or deferral program, the performance bonds and agreements or other financial guarantees of completion may be waived or modified by the locality, in which case the provisions of subsections A and B apply. The landowner or developer must comply with the terms of any bonding moratorium or deferral agreement with the locality in order for the extensions referred to in this subsection to be effective.

2020, Sp. Sess. I, c. 40; 2022, cc. 178, 179.

§ 15.2-2209.2. Public infrastructure maintenance bonds

In order to protect existing public infrastructure, the City of Charlottesville may by ordinance require public infrastructure maintenance bonds from developers and property owners in conjunction with the construction of single-family and two-family homes in instances where the provisions of a subdivision ordinance are not applicable and all required performance and maintenance bonds have been released. Such maintenance bonds shall not exceed an amount reasonably necessary to maintain and repair publicly owned streets, sidewalks, and infrastructure depicted or provided for in the approved plan, plat, permit application, or similar document for which such bond is applicable, on site or immediately adjacent to the construction, and shall not be used for the purpose of repairing damage to infrastructure that preexisted the construction, unless otherwise agreed upon by the developer, property owner, and the locality. The maximum bond shall not exceed $5,000 and shall only be required at the time of issuance of a certificate of occupancy. The ordinance shall make provision for the inspection of bonded improvements within five business days of completion and the release of any performance guarantee within five business days of such inspection.

2011, cc. 692, 711.

Article 2. Local Planning Commissions

§ 15.2-2210. Creation of local planning commissions; participation in planning district commissions or joint local commissions

Every locality shall by resolution or ordinance create a local planning commission in order to promote the orderly development of the locality and its environs. In accomplishing the objectives of § 15.2-2200 the local planning commissions shall serve primarily in an advisory capacity to the governing bodies.

Any locality may participate in a planning district commission in accordance with Chapter 42 (§ 15.2-4200 et seq.) of this title or a joint local commission in accordance with § 15.2-2219.

1975, c. 641, § 15.1-427.1; 1997, c. 587.

§ 15.2-2211. Cooperation of local planning commissions and other agencies

The planning commission of any locality may cooperate with local planning commissions or legislative and administrative bodies and officials of other localities so as to coordinate planning and development among the localities. The planning commission of any locality shall consult with the installation commander of any military installation that will be affected by potential development within the locality so as to reasonably protect the military installation against any adverse effects that might be caused by the development. Planning commissions may appoint committees and may adopt rules as needed to effect such cooperation. Planning commissions may also cooperate with state and federal officials, departments and agencies. Planning commissions may request from such departments and agencies, and such

departments and agencies of the Commonwealth shall furnish, such reasonable information which may affect the planning and development of the locality.

Code 1950, § 15-961.1; 1962, c. 407, § 15.1-428; 1975, c. 641; 1997, c. 587; 2013, cc. 149, 213.

§ 15.2-2212. Qualifications, appointment, removal, terms and compensation of members of local planning commissions

A local planning commission shall consist of not less than five nor more than fifteen members, appointed by the governing body, all of whom shall be residents of the locality, qualified by knowledge and experience to make decisions on questions of community growth and development; provided, that at least one-half of the members so appointed shall be owners of real property. The local governing body may require each member of the commission to take an oath of office.

One member of the commission may be a member of the governing body of the locality, and one member may be a member of the administrative branch of government of the locality. The term of each of these two members shall be coextensive with the term of office to which he has been elected or appointed, unless the governing body, at the first regular meeting each year, appoints others to serve as their representatives. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years, three years, and four years, divided equally or as nearly equal as possible between the membership. Subsequent appointments shall be for terms of four years each. The local governing bodies may establish different terms of office for initial and subsequent appointments including terms of office that are concurrent with those of the appointing governing body. Vacancies shall be filled by appointment for the unexpired term only.

Members may be removed for malfeasance in office. Notwithstanding the foregoing provision, a member of a local planning commission may be removed from office by the local governing body without limitation in the event that the commission member is absent from any three consecutive meetings of the commission, or is absent from any four meetings of the commission within any 12-month period. In either such event, a successor shall be appointed by the governing body for the unexpired portion of the term of the member who has been removed.

The local governing body may provide for compensation to commission members for their services, reimbursement for actual expenses incurred, or both.

Code 1950, §§ 15-901, 15-916, 15-963; 1956, cc. 282, 497; 1960, c. 309; 1962, c. 407, § 15.1-437; 1973, c. 160; 1974, c. 521; 1986, c. 208; 1988, c. 256; 1997, c. 587; 2006, c. 687.

§ 15.2-2213. Advisory members

A member of a local planning commission may, with the consent of both governing bodies, serve as an advisory member of the local planning commission of a contiguous locality.

Code 1950, § 15-963.1; 1962, c. 407, § 15.1-438; 1997, c. 587.

§ 15.2-2214. Meetings

The local planning commission shall fix the time for holding regular meetings. The commission, by resolution adopted at a regular meeting, may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting shall be conducted at the continued meeting and no further advertisement is required. The commission shall cause a copy of such resolution to be inserted in a newspaper having general circulation in the locality at least seven days prior to the first meeting held pursuant to the adopted schedule.

Commissions shall meet at least every two months. However, in any locality with a population of not more than 7,500, the commission shall be required to meet at least once each year.

Special meetings of the commission may be called by the chairman or by two members upon written request to the secretary. The secretary shall mail to all members, at least five days in advance of a special meeting, a written notice fixing the time and place of the meeting and the purpose thereof.

Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a written waiver of notice.

Code 1950, § 15-963.2; 1962, c. 407, § 15.1-439; 1990, c. 664; 1997, c. 587; 2003, c. 403.

§ 15.2-2215. Quorum majority vote

A majority of the members shall constitute a quorum and no action of the local planning commission shall be valid unless authorized by a majority vote of those present and voting.

Code 1950, § 15-963.3; 1962, c. 407, § 15.1-440; 1974, c. 99; 1975, c. 641; 1997, c. 587.

§ 15.2-2216. Facilities for holding of meetings and preservation of documents; appropriations for expenses

The governing body may provide the local planning commission with facilities for the holding of meetings and the preservation of plans, maps, documents and accounts, and may appropriate funds needed to defray the expenses of the commission.

Code 1950, § 15-963.4; 1962, c. 407, § 15.1-441; 1997, c. 587.

§ 15.2-2217. Officers, employees and consultants; expenditures; rules and records; special surveys

The local planning commission shall elect from the appointed members a chairman and a vice-chairman, whose terms shall be for one year. If authorized by the governing body the commission may (i) create and fill such other offices as it deems necessary; (ii) appoint such employees and staff as it deems necessary for its work; and (iii) contract with consultants for such services as it requires. The expenditures of the commission, exclusive of gifts or grants, shall be within the amounts appropriated for such purpose by the governing body.

The commission shall adopt rules for the transaction of business and shall keep a record of its transactions which shall be a public record. Upon request of the commission, the governing body or other public officials may, from time to time, for the purpose of special surveys under the direction of the commission, assign or detail to it any members of the staffs of county or municipal administrative departments, or such governing body or other public official may direct any such department employee to make for the commission special surveys or studies requested by the local commission.

Code 1950, § 15-963.5; 1962, c. 407, § 15.1-442; 1997, c. 587.

§ 15.2-2218. County planning commission serving as commission of town

The governing body of any town may designate, with the consent of the governing body of a contiguous county, by ordinance, the county planning commission as the local planning commission of the town.

A county commission designated as a town commission shall have all the powers and duties granted under this chapter to a local planning commission.

Any town designating a county commission as its local planning commission may contract annually to pay the county a proportionate part of the expenses properly chargeable for the planning service rendered the town, and any such payments may be appropriated to the county planning commission in addition to any funds budgeted for planning purposes.

Code 1950, §§ 15-900, 15-903, 15-963.6; 1950, p. 487; 1962, c. 407, § 15.1-443; 1997, c. 587.

§ 15.2-2219. Joint local planning commissions

Any one or more adjoining or adjacent counties or municipalities including any municipality within any such county may by agreement provide for a joint local planning commission for any two or more of such counties and

municipalities. The agreement shall provide for the number of members of the commission and how they shall be appointed, in what proportion the expenses of the commission shall be borne by the participating localities, and any other matters pertinent to the operation of the commission as the joint local planning commission for the localities. Any commission so created shall have, as to each participating locality, the powers and duties granted to and imposed upon local planning commissions under this chapter.

Code 1950, §§ 15-900, 15-903, 15-963.6; 1950, p. 487; 1962, c. 407, § 15.1-443; 1997, c. 587.

§ 15.2-2220. Duplicate planning commission authorized for certain local governments

The Cities of Chesapeake and Hampton may by ordinance establish a duplicate planning commission solely for the purpose of considering matters arising from the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). Sections 15.2-2210 through 15.2-2222 shall apply to the commission, mutatis mutandis.

The procedure, timing requirements and appeal to the circuit court set forth in §§ 15.2-2258 through 15.2-2261 shall apply to the considerations of this commission, mutatis mutandis.

To distinguish the planning commission authorized by this section from planning commissions required by § 15.2-2210, the commission established hereunder shall have the words "Chesapeake Bay Preservation" in its title.

The governing body of a city that establishes a commission pursuant to this section, in its sole discretion by ordinance, may abolish the duplicate planning commission.

1993, c. 738, § 15.1-502.1; 1997, c. 587; 2007, c. 813.

§ 15.2-2221. Duties of commissions

To effectuate this chapter, the local planning commission shall:

1. Exercise general supervision of, and make regulations for, the administration of its affairs;

2. Prescribe rules pertaining to its investigations and hearings;

3. Supervise its fiscal affairs and responsibilities, under rules and regulations as prescribed by the governing body;

4. Keep a complete record of its proceedings; and be responsible for the custody and preservation of its papers and documents;

5. Make recommendations and an annual report to the governing body concerning the operation of the commission and the status of planning within its jurisdiction;

6. Prepare, publish and distribute reports, ordinances and other material relating to its activities;

7. Prepare and submit an annual budget in the manner prescribed by the governing body of the county or municipality; and

8. If deemed advisable, establish an advisory committee or committees.

Code 1950, § 15-963.7; 1962, c. 407, § 15.1-444; 1997, c. 587.

§ 15.2-2222. Expenditures; gifts and donations

The local planning commission may expend, under regular local procedure as provided by law, sums appropriated to it for its purposes and activities.

A locality may accept gifts and donations for commission purposes. Any moneys so accepted shall be deposited with the appropriate governing body in a special nonreverting commission fund to be available for expenditure by the commission for the purpose designated by the donor. The disbursing officer of the locality may issue warrants against such special fund only upon vouchers signed by the chairman and the secretary of the commission.

Code 1950, §§ 15-905, 15-917, 15-963.8; 1962, c. 407, § 15.1-445; 1997, c. 587.

§ 15.2-2222.1. Coordination of state and local transportation planning

A. 1. Prior to adoption of any comprehensive plan pursuant to § 15.2-2223, any part of a comprehensive plan pursuant to § 15.2-2228, or any amendment to any comprehensive plan as described in § 15.2-2229, the locality shall submit such plan or amendment to the Department of Transportation for review and comment if the plan or amendment will substantially affect transportation on state-controlled highways as defined by regulations promulgated by the Department. The Department's comments on the proposed plan or amendment shall relate to plans and capacities for construction of transportation facilities affected by the proposal.

2. If the submitting locality is located within Planning District 8, the Department of Transportation shall also determine the extent to which the proposed plan or amendment will increase traffic congestion or, to the extent feasible, reduce the mobility of citizens in the event of a homeland security emergency and shall include such information as part of its comments on the proposed plan or amendment. In making such determination, the Department shall specify by name and location any transportation facility within the scope of the review specified in subdivision 1 having a functional classification of minor arterial or higher for which an increase in traffic volume is expected to exceed the capacity of the facility as a result of the proposed plan or amendment. Such information shall be provided concurrently to the submitting locality and the Northern Virginia Transportation Authority. Further, to the extent that such information is readily available, the Department shall also include in its comments an assessment of the measures and estimate of the costs necessary to mitigate or ameliorate the congestion or reduction in mobility attributable to the proposed plan or amendment.

3. Within 30 days of receipt of such proposed plan or amendment, the Department may request, and the locality shall agree to, a meeting between the Department and the local planning commission or other agent to discuss the plan or amendment, which discussions shall continue as long as the participants may deem them useful. The Department shall make written comments within 90 days after receipt of the plan or amendment, or by such later deadline as may be agreed to by the parties in the discussions.

B. Upon submission to, or initiation by, a locality of a proposed rezoning under § 15.2-2286, 15.2-2297, 15.2-2298, or 15.2-2303, the locality shall submit the proposal to the Department of Transportation within 10 business days of receipt thereof if the proposal will substantially affect transportation on state-controlled highways. Such application shall include a traffic impact statement if required by local ordinance or pursuant to regulations promulgated by the Department. Within 45 days of its receipt of such traffic impact statement, the Department shall either (i) provide written comment on the proposed rezoning to the locality or (ii) schedule a meeting, to be held within 60 days of its receipt of the proposal, with the local planning commission or other agent and the rezoning applicant to discuss potential modifications to the proposal to address any concerns or deficiencies. The Department's comments on the proposed rezoning shall be based upon the comprehensive plan, regulations and guidelines of the Department, engineering and design considerations, any adopted regional or statewide plans, and short-term and long-term traffic impacts on and off site. If the locality is in Planning District 8, the Department's review shall specify by name and location any transportation facility within the scope of the review specified in subdivision A 1 having a functional classification of minor arterial or higher for which an increase in traffic volume is expected to exceed the capacity of the facility as a result of the proposed plan or amendment. The Department shall complete its initial review of the rezoning proposal within 45 days, and its final review within 120 days, after it receives the rezoning proposal from the locality. Notwithstanding the foregoing provisions of this subsection, such review by the Department shall be of a more limited nature and scope in cases of rezoning a property consistent with a local comprehensive plan that has already been reviewed by the Department as provided in this section.

C. If a locality has not received written comments within the timeframes specified in subsection B, the locality may assume that the Department has no comments.

D. The review requirements set forth in this section shall be supplemental to, and shall not affect, any requirement for review by the Department of Transportation or the locality under any other provision of law. Nothing in this section shall be deemed to prohibit any additional consultations concerning land development or transportation facilities that may occur between the Department and localities as a result of existing or future administrative practice or procedure, or by mutual agreement.

E. The Department shall impose fees and charges for the review of applications, plans and plats pursuant to subsections A and B, and such fees and charges shall not exceed $1,000 for each review. However, no fee shall be charged to a locality or other public agency. Furthermore, no fee shall be charged by the Department to a citizens' organization or neighborhood association that proposes comprehensive plan amendments through its local planning commission or local governing body.

2006, cc. 527, 563; 2007, c. 792; 2010, c. 121; 2011, cc. 647, 888; 2012, c. 770; 2014, c. 766; 2016, c. 370; 2017, c. 536.

Article 3. The Comprehensive Plan

§ 15.2-2223. Comprehensive plan to be prepared and adopted; scope and purpose

A. The local planning commission shall prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction and every governing body shall adopt a comprehensive plan for the territory under its jurisdiction.

In the preparation of a comprehensive plan, the commission shall make careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities.

The comprehensive plan shall be general in nature, in that it shall designate the general or approximate location, character, and extent of each feature, including any road improvement and any transportation improvement, shown on the plan and shall indicate where existing lands or facilities are proposed to be extended, widened, removed, relocated, vacated, narrowed, abandoned, or changed in use as the case may be.

B. 1. As part of the comprehensive plan, each locality shall develop a transportation plan that designates a system of transportation infrastructure needs and recommendations that include the designation of new and expanded transportation facilities and that support the planned development of the territory covered by the plan and shall include, as appropriate, but not be limited to, roadways, bicycle accommodations, pedestrian accommodations, railways, bridges, waterways, airports, ports, and public transportation facilities. The plan shall recognize and differentiate among a hierarchy of roads such as expressways, arterials, and collectors. In developing the plan, the locality shall take into consideration how to align transportation infrastructure and facilities with affordable, accessible housing and community services that are located within the territory in order to facilitate community integration of the elderly and persons with disabilities. The Virginia Department of Transportation shall, upon request, provide localities with technical assistance in preparing such transportation plan.

2. The transportation plan shall include a map that shall show road and transportation improvements, including the cost estimates of such road and transportation improvements from the Virginia Department of Transportation, taking into account the current and future needs of residents in the locality while considering the current and future needs of the planning district within which the locality is situated.

3. The transportation plan, and any amendment thereto pursuant to § 15.2-2229, shall be consistent with the Commonwealth Transportation Board's Statewide Transportation Plan developed pursuant to § 33.2-353, the Six-Year Improvement Program adopted pursuant to subsection B of § 33.2-214, and the location of routes to be followed by roads comprising systems of state highways pursuant to subsection A of § 33.2-208. The locality shall consult with the Virginia Department of Transportation to assure such consistency is achieved. The transportation plan need reflect only those changes in the annual update of the Six-Year Improvement Program that are deemed to be significant new, expanded, or relocated roadways.

4. Prior to the adoption of the transportation plan or any amendment to the transportation plan, the locality shall submit such plan or amendment to the Department for review and comment. The Department shall conduct its review and provide written comments to the locality on the consistency of the transportation plan or any amendment to the provisions of subdivision 1. The Department shall provide such written comments to the locality within 90 days of

receipt of the plan or amendment, or such other shorter period of time as may be otherwise agreed upon by the Department and the locality.

5. The locality shall submit a copy of the adopted transportation plan or any amendment to the transportation plan to the Department for informational purposes. If the Department determines that the transportation plan or amendment is not consistent with the provisions of subdivision 1, the Department shall notify the Commonwealth Transportation Board so that the Board may take appropriate action in accordance with subsection F of § 33.2-214.

6. If the adopted transportation plan designates corridors planned to be served by mass transit, as defined in § 33.2-100, a portion of its allocation from (i) the Northern Virginia Transportation Authority distribution specified in subdivision B 1 of § 33.2-2510, (ii) the commercial and industrial real property tax revenue specified in § 58.1-3221.3, and (iii) the secondary system road construction program, as described in Article 5 (§ 33.2-351 et seq.) of Chapter 3 of Title 33.2, may be used for the purpose of utility undergrounding in the planned corridor, if the locality matches 100 percent of the state allocation.

7. Each locality's amendments or updates to its transportation plan as required by subdivisions 2 through 5 shall be made on or before its ongoing scheduled date for updating its transportation plan.

C. The comprehensive plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the locality's long-range recommendations for the general development of the territory covered by the plan. It may include, but need not be limited to:

1. The designation of areas for various types of public and private development and use, such as different kinds of residential, including age-restricted, housing; business; industrial; agricultural; mineral resources; conservation; active and passive recreation; public service; flood plain and drainage; and other areas;

2. The designation of a system of community service facilities such as parks, sports playing fields, forests, schools, playgrounds, public buildings and institutions, hospitals, nursing homes, assisted living facilities, community centers, waterworks, sewage disposal or waste disposal areas, and the like;

3. The designation of historical areas and areas for urban renewal or other treatment;

4. The designation of areas for the implementation of reasonable measures to provide for the continued availability, quality, and sustainability of groundwater and surface water;

5. A capital improvements program, a subdivision ordinance, a zoning ordinance and zoning district maps, mineral resource district maps and agricultural and forestal district maps, where applicable;

6. The location of existing or proposed recycling centers;

7. The location of military bases, military installations, and military airports and their adjacent safety areas; and

8. The designation of corridors or routes for electric transmission lines of 150 kilovolts or more.

D. The comprehensive plan shall include the designation of areas and implementation of measures for the construction, rehabilitation and maintenance of affordable housing, which is sufficient to meet the current and future needs of residents of all levels of income in the locality while considering the current and future needs of the planning district within which the locality is situated.

E. The comprehensive plan shall consider strategies to provide broadband infrastructure that is sufficient to meet the current and future needs of residents and businesses in the locality. To this end, local planning commissions may consult with and receive technical assistance from the Center for Innovative Technology, among other resources.

1975, c. 641, § 15.1-446.1; 1976, c. 650; 1977, c. 228; 1988, c. 268; 1989, c. 532; 1990, c. 19; 1993, cc. 116, 758; 1996, cc. 585, 600; 1997, c. 587; 2003, c. 811; 2004, cc. 691, 799; 2005, cc. 466, 699; 2006, cc. 527, 563, 564; 2007, c. 761; 2012, cc. 729, 733; 2013, cc. 561, 585, 646, 656; 2014, cc. 397, 443; 2018, cc. 420, 691, 796, 828.

§ 15.2-2223.1. Comprehensive plan to include urban development areas

A. For purposes of this section:

"Commercial" means property devoted to usual and customary business purposes for the sale of goods and services and includes, but is not limited to, retail operations, hotels, motels and offices. "Commercial" does not include residential dwelling units, including apartments and condominiums, or agricultural or forestal production, or manufacturing, processing, assembling, storing, warehousing, or distributing.

"Commission" means the Commission on Local Government.

"Developable acreage," solely for the purposes of calculating density within the urban development area, means land that is not included in (i) existing parks, rights-of-way of arterial and collector streets, railways, and public utilities and (ii) other existing public lands and facilities.

"Population growth" means the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census. In computing its population growth, a locality may exclude the inmate population of any new or expanded correctional facility that opened within the time period between the two censuses.

"Urban development area" means an area designated by a locality that is (i) appropriate for higher density development due to its proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and (ii) to the extent feasible, to be used for redevelopment or infill development.

B. Any locality may amend its comprehensive plan to incorporate one or more urban development areas.

1. Urban development areas are areas that may be appropriate for development at a density on the developable acreage of at least four single-family residences, six townhouses, or 12 apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least 0.4 per acre for commercial development, any proportional combination thereof, or any other combination or arrangement that is adopted by a locality in meeting the intent of this section.

2. The urban development areas designated by a locality may be sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years, which may include phasing of development within the urban development areas. Where an urban development area in a county with the urban county executive form of government includes planned or existing rail transit, the planning horizon may be for an ensuing period of at least 10 but not more than 40 years. Future residential and commercial growth shall be based on official estimates of either the Weldon Cooper Center for Public Service of the University of Virginia, the Virginia Employment Commission, the United States Bureau of the Census, or other official government projections required for federal transportation planning purposes.

3. The boundaries and size of each urban development area shall be reexamined and, if necessary, revised every five years in conjunction with the review of the comprehensive plan and in accordance with the most recent available population growth estimates and projections.

4. The boundaries of each urban development area shall be identified in the locality's comprehensive plan and shall be shown on future land use maps contained in such comprehensive plan.

5. Urban development areas, if designated, shall incorporate principles of traditional neighborhood design, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) mixed-use neighborhoods, including mixed housing types, with affordable housing to meet the projected family income distributions of future residential growth, (vi) reduction of front and side yard building setbacks, and (vii) reduction of subdivision street widths and turning radii at subdivision street intersections.

6. The comprehensive plan shall describe any financial and other incentives for development in the urban development areas.

7. A portion of one or more urban development areas may be designated as a receiving area for any transfer of development rights program established by the locality.

C. No locality that has amended its comprehensive plan in accordance with this section shall limit or prohibit development pursuant to existing zoning or shall refuse to consider any application for rezoning based solely on the fact that the property is located outside the urban development area.

D. Localities shall consult with adjacent localities, as well as the relevant planning district commission and metropolitan planning organization, in establishing the appropriate size and location of urban development areas to promote orderly and efficient development of their region.

E. Any county that amends its comprehensive plan pursuant to subsection B may designate one or more urban development areas in any incorporated town within such county, if the council of the town has also amended its comprehensive plan to designate the same areas as urban development areas with at least the same density designated by the county. However, if a town has established an urban development area within its corporate boundaries, the county within which the town is located shall not include the town's projected population and commercial growth when initially determining or reexamining the size and boundary of any other urban development area within the county.

F. To the extent possible, federal, state and local transportation, housing, water and sewer facility, economic development, and other public infrastructure funding for new and expanded facilities shall be directed to designated urban development areas or to such similar areas that accommodate growth in a manner consistent with this section.

2007, c. 896; 2009, c. 327; 2010, cc. 465, 528; 2011, c. 561; 2012, cc. 192, 518, 805, 836.

§ 15.2-2223.2. Comprehensive plan to include coastal resource management guidance

Beginning in 2013, any locality in Tidewater Virginia, as defined in § 62.1-44.15:68, shall incorporate the guidance developed by the Virginia Institute of Marine Science pursuant to subdivision 9 of § 28.2-1100 into the next scheduled review of its comprehensive plan. The Department of Conservation and Recreation, Virginia Marine Resources Commission, and the Virginia Institute of Marine Science shall provide technical assistance to any such locality upon request.

2011, c. 885.

§ 15.2-2223.3. Comprehensive plan shall incorporate strategies to combat projected sea-level rise and recurrent flooding

Beginning July 1, 2015, any locality included in the Hampton Roads Planning District Commission shall incorporate into the next scheduled and all subsequent reviews of its comprehensive plan strategies to combat projected relative sea-level rise and recurrent flooding. Such review shall be coordinated with the other localities in the Hampton Roads Planning District Commission. The Department of Conservation and Recreation, the Department of Emergency Management, the Marine Resources Commission, Old Dominion University, and the Virginia Institute of Marine Science shall provide technical assistance to any such locality upon request. Where federal regulations as effective July 1, 2015 require a local hazard mitigation plan for participation in the Federal Emergency Management Agency (FEMA) National Flood Insurance Program, such a plan may also be incorporated into the comprehensive plan. For a locality not participating in the FEMA Community Rating System, the comprehensive plan may include an action plan and time frame for such participation.

2015, c. 186.

§ 15.2-2223.4. Comprehensive plan shall provide for transit-oriented development

Beginning July 1, 2020, each city with a population greater than 20,000 and each county with a population greater than 100,000 shall consider incorporating into the next scheduled and all subsequent reviews of its comprehensive plan strategies to promote transit-oriented development for the purpose of reducing greenhouse gas emissions through coordinated transportation, housing, and land use planning. Such strategies may include (i) locating new housing development, including low-income, affordable housing, in closer proximity to public transit options; (ii) prioritizing transit options with reduced overall carbon emissions; (iii) increasing development density in certain areas; (iv) reducing,

modifying, or waiving local parking requirements or ratios; or (v) other strategies designed to reduce overall carbon emissions in the locality.

2020, c. 14; 2021, Sp. Sess. I, c. 412.

§ 15.2-2223.5. Comprehensive plan shall address manufactured housing

During an amendment of a locality's comprehensive plan after July 1, 2021, the locality shall incorporate into its comprehensive plan strategies to promote manufactured housing as a source of affordable housing. Such strategies may include (i) the preservation of existing manufactured housing communities, (ii) the creation of new manufactured home communities, and (iii) the creation of new manufactured home subdivisions.

2021, Sp. Sess. I, cc. 91, 92.

§ 15.2-2224. Surveys and studies to be made in preparation of plan; implementation of plan

A. In the preparation of a comprehensive plan, the local planning commission shall survey and study such matters as the following:

1. Use of land, preservation of agricultural and forestal land, production of food and fiber, characteristics and conditions of existing development, trends of growth or changes, natural resources, historic areas, groundwater and surface water availability, quality, and sustainability, geologic factors, population factors, employment, environmental and economic factors, existing public facilities, drainage, flood control and flood damage prevention measures, dam break inundation zones and potential impacts to downstream properties to the extent that information concerning such information exists and is available to the local planning authority, the transmission of electricity, broadband infrastructure, road improvements, and any estimated cost thereof, transportation facilities, transportation improvements, and any cost thereof, the need for affordable housing in both the locality and planning district within which it is situated, and any other matters relating to the subject matter and general purposes of the comprehensive plan.

However, if a locality chooses not to survey and study historic areas, then the locality shall include historic areas in the comprehensive plan, if such areas are identified and surveyed by the Department of Historic Resources. Furthermore, if a locality chooses not to survey and study mineral resources, then the locality shall include mineral resources in the comprehensive plan, if such areas are identified and surveyed by the Department of Energy. The requirement to study the production of food and fiber shall apply only to those plans adopted on or after January 1, 1981.

2. Probable future economic and population growth of the territory and requirements therefor.

B. The comprehensive plan shall recommend methods of implementation and shall include a current map of the area covered by the comprehensive plan. Unless otherwise required by this chapter, the methods of implementation may include but need not be limited to:

1. An official map;

2. A capital improvements program;

3. A subdivision ordinance;

4. A zoning ordinance and zoning district maps;

5. A mineral resource map;

6. A recreation and sports resource map; and

7. A map of dam break inundation zones.

Code 1950, § 15-964.1; 1962, c. 407, § 15.1-447; 1975, c. 641; 1977, c. 228; 1980, c. 322; 1981, c. 418; 1988, c. 438; 1990, c. 97; 1991, c. 280; 1993, cc. 758, 770; 1996, cc. 585, 600; 1997, c. 587; 2006, c. 564; 2007, c. 761; 2008, c. 491; 2018, cc. 420, 691; 2021, Sp. Sess. I, c. 532.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 15.2-2225. Notice and hearing on plan; recommendation by local planning commission to governing body; posting of plan on website

Prior to the recommendation of a comprehensive plan or any part thereof, the local planning commission shall (i) post the comprehensive plan or part thereof that is to be considered for recommendation on a website that is maintained by the commission or on any other website on which the commission generally posts information, and that is available to the public or that clearly describes how the public may access information regarding the plan or part thereof being considered for recommendation, (ii) give notice in accordance with § 15.2-2204, and (iii) hold a public hearing on the plan. After the public hearing, the commission may approve, amend and approve, or disapprove the plan. Upon approval, the commission shall by resolution recommend the plan, or part thereof, to the governing body and a copy shall be certified to the governing body. Any comprehensive plan or part thereof approved by the commission pursuant to this section shall be posted on a website that is maintained by the commission or on any other website on which the commission generally posts information, and that is available to the public or that clearly describes how the public may access information regarding the plan or part thereof approved by the commission and certified to the governing body. Inadvertent failure to post information on a website in accordance with this section shall not invalidate action taken by the local planning commission following notice and public hearing as required herein.

Code 1950, §§ 15-908, 15-921, 15-922, 15-964.2, 15-964.3; 1958, c. 389; 1962, c. 407, §§ 15.1-448, 15.1-449; 1968, c. 735; 1975, c. 641; 1976, c. 642; 1997, c. 587; 2009, c. 605.

§ 15.2-2226. Adoption or disapproval of plan by governing body

After certification of the plan or part thereof, the governing body shall post the comprehensive plan or part thereof certified by the local planning commission on a website that is maintained by the governing body or on any other website on which the governing body generally posts information, and that is available to the public or that clearly describes how the public may access information regarding the plan or part thereof being considered for adoption. After a public hearing with notice as required by § 15.2-2204, the governing body shall proceed to a consideration of the plan or part thereof and shall approve and adopt, amend and adopt, or disapprove the plan. In acting on the plan or part thereof, or any amendments to the plan, the governing body shall act within 90 days of the local planning commission's recommending resolution; however, if a comprehensive plan amendment is initiated by the locality for more than 25 parcels, the governing body shall act within 150 days of the local planning commission's recommending resolution. Any comprehensive plan or part thereof adopted by the governing body pursuant to this section shall be posted on a website that is maintained by the local governing body or on any other website on which the governing body generally posts information, and that is available to the public or that clearly describes how the public may access information regarding the plan or part thereof adopted by the local governing body. Inadvertent failure to post information on a website in accordance with this section shall not invalidate action taken by the governing body following notice and public hearing as required herein.

Code 1950, § 15-964.4; 1962, c. 407, § 15.1-450; 1975, c. 641; 1976, c. 642; 1997, c. 587; 2000, c. 893; 2009, c. 605; 2020, cc. 132, 760.

§ 15.2-2227. Return of plan to local planning commission; resubmission

If the governing body disapproves the plan, then it shall be returned to the local planning commission for its reconsideration, with a written statement of the reasons for its disapproval.

The commission shall have sixty days in which to reconsider the plan and resubmit it, with any changes, to the governing body.

Code 1950, § 15-964.5; 1962, c. 407, § 15.1-451; 1997, c. 587.

§ 15.2-2228. Adoption of parts of plan

As the work of preparing the comprehensive plan progresses, the local planning commission may, from time to time, recommend, and the governing body approve and adopt, parts thereof. Any such part shall cover one or more major

sections or divisions of the locality or one or more functional matters.

Code 1950, §§ 15-906, 15-921, 15-964.6; 1958, c. 389; 1962, c. 407, § 15.1-452; 1997, c. 587.

§ 15.2-2229. Amendments

After the adoption of a comprehensive plan, all amendments to it shall be recommended, and approved and adopted, respectively, as required by § 15.2-2204. If the governing body desires an amendment, it may prepare such amendment and refer it to the local planning commission for public hearing or direct the local planning commission to prepare an amendment and submit it to public hearing within 60 days or such longer timeframe as may be specified after written request by the governing body. In acting on any amendments to the plan, the governing body shall act within 90 days of the local planning commission's recommending resolution; however, if a comprehensive plan amendment is initiated by the locality for more than 25 parcels, the governing body shall act within 150 days of the local planning commission's recommending resolution. If the local planning commission fails to make a recommendation on the amendment within the aforesaid timeframe, the governing body may conduct a public hearing, which shall be advertised as required by § 15.2-2204.

Code 1950, §§ 15-908, 15-921, 15-964.7; 1958, c. 389; 1962, c. 407, § 15.1-453; 1975, c. 641; 1997, c. 587; 2000, c. 893; 2010, c. 821; 2020, cc. 132, 760.

§ 15.2-2230. Plan to be reviewed at least once every five years

At least once every five years the comprehensive plan shall be reviewed by the local planning commission to determine whether it is advisable to amend the plan.

Code 1950, § 15-964.8; 1962, c. 407, § 15.1-454; 1975, c. 641; 1997, c. 587.

§ 15.2-2230.1. Public facilities study

In addition to reviewing the comprehensive plan, the planning commission may make a study of the public facilities, including existing facilities, which would be needed if the comprehensive plan is fully implemented. The study may include estimations of the annual prospective operating costs for such facilities and any revenues, including tax revenues, that may be generated by such facilities. For purposes of the study, public facilities may include but need not be limited to water and sewer lines and treatment plants, schools, public safety facilities, streets and highways. The planning commission may forward the study to the local governing body or any other local, regional, state or federal agency that the planning commission believes might benefit from its findings. The study shall also be forwarded to any utility companies or franchised cable operators that may be impacted by such public facilities. The utility companies, the franchised cable operators, and the locality shall cooperate and coordinate in the relocation of such utilities and cable lines as may be appropriate to avoid unnecessary delays in the construction of public facilities and capital projects by the affected localities, consistent with the service obligations of the utility companies and franchised cable operators. For purposes of this section, the term "utility company" shall not include a municipal utility that operates outside its locality's boundaries.

1998, c. 609; 2012, c. 553.

§ 15.2-2231. Inclusion of incorporated towns in county plan; inclusion of adjacent unincorporated territory in municipal plan

Any county plan may include planning of incorporated towns to the extent to which, in the county local planning commission's judgment, it is related to planning of the unincorporated territory of the county as a whole. However, the plan shall not be considered as a comprehensive plan for any incorporated town unless recommended by the town commission, if any, and adopted by the governing body of the town.

Any municipal plan may include the planning of adjacent unincorporated territory to the extent to which, in the municipal local planning commission's judgment, it is related to the planning of the incorporated territory of the municipality. However, the plan shall not be considered as a comprehensive plan for such unincorporated territory unless recommended by the county commission and approved and adopted by the governing body of the county.

Code 1950, §§ 15-922, 15-964.9; 1962, c. 407, § 15.1-455; 1997, c. 587.

§ 15.2-2232. Legal status of plan

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. Following the adoption of the Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.2-353 and written notification to the affected local governments, each local government through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of corridors of statewide significance within its boundaries.

B. The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within 60 days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within 10 days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within 60 days from its filing. A majority vote of the governing body shall overrule the commission.

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless such work involves a change in location or extent of a street or public area.

D. Any public area, facility, park or use as set forth in subsection A which is identified within, but not the entire subject of, a submission under either § 15.2-2258 for subdivision or subdivision A 8 of § 15.2-2286 for development or both may be deemed a feature already shown on the adopted master plan, and, therefore, excepted from the requirement for submittal to and approval by the commission or the governing body, provided that the governing body has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public area, facility, park or use or has approved it through acceptance of a proffer made pursuant to § 15.2-2303.

E. Approval and funding of a public telecommunications facility on or before July 1, 2012, by the Virginia Public Broadcasting Board pursuant to Article 12 (§ 2.2-2426 et seq.) of Chapter 24 of Title 2.2 or after July 1, 2012, by the Board of Education pursuant to § 22.1-20.1 shall be deemed to satisfy the requirements of this section and local zoning ordinances with respect to such facility with the exception of television and radio towers and structures not necessary to house electronic apparatus. The exemption provided for in this subsection shall not apply to facilities existing or approved by the Virginia Public Telecommunications Board prior to July 1, 1990. The Board of Education shall notify the governing body of the locality in advance of any meeting where approval of any such facility shall be acted upon.

F. On any application for a telecommunications facility, the commission's decision shall comply with the requirements of the Federal Telecommunications Act of 1996. Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within 90 days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than 60 additional days. If the commission has not acted on the

application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission.

G. A proposed telecommunications tower or a facility constructed by an entity organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 shall be deemed to be substantially in accord with the comprehensive plan and commission approval shall not be required if the proposed telecommunications tower or facility is located in a zoning district that allows such telecommunications towers or facilities by right.

H. A solar facility subject to subsection A shall be deemed to be substantially in accord with the comprehensive plan if (i) such proposed solar facility is located in a zoning district that allows such solar facilities by right; (ii) such proposed solar facility is designed to serve the electricity or thermal needs of the property upon which such facility is located, or will be owned or operated by an eligible customer-generator or eligible agricultural customer-generator under § 56-594 or 56-594.01 or by a small agricultural generator under § 56-594.2; or (iii) the locality waives the requirement that solar facilities be reviewed for substantial accord with the comprehensive plan. All other solar facilities shall be reviewed for substantial accord with the comprehensive plan in accordance with this section. However, a locality may allow for a substantial accord review for such solar facilities to be advertised and approved concurrently in a public hearing process with a rezoning, special exception, or other approval process.

Code 1950, §§ 15-909, 15-923, 15-964.10; 1958, c. 389; 1960, c. 567; 1962, c. 407, § 15.1-456; 1964, c. 528; 1966, c. 596; 1968, c. 290; 1975, c. 641; 1976, c. 291; 1978, c. 584; 1982, c. 39; 1987, c. 312; 1989, c. 532; 1990, c. 633; 1997, cc. 587, 858; 1998, c. 683; 2007, c. 801; 2009, cc. 670, 690; 2012, cc. 803, 835; 2016, c. 613; 2018, cc. 175, 318; 2020, c. 665; 2022, c. 181.

Article 4. The Official Map

§ 15.2-2233. Maps to be prepared in localities; what map shall show

In localities where no official map exists, or where an existing official map is incomplete, the local planning commission may make, or cause to be made, a map showing the location of any:

1. Legally established public street, alley, walkway, waterway, and public area of the locality; and

2. Future or proposed public street, alley, walkway, waterway and public area.

No future or proposed street or street line, waterway, nor public area, shall be shown on an official map unless and until the centerline of the street, the course of the waterway, or the metes and bounds of the public area, have been fixed or determined in relation to known, fixed and permanent monuments by a physical survey or aerial photographic survey thereof. In addition to the centerline of each street, the map shall indicate the width of the right-of-way thereof. Local planning commissions are hereby empowered to make or cause to be made the surveys required herein.

After adoption by the governing body of an official map, the local governing body may acquire in any way permitted by law property which is or may be needed for the construction of any street, alley, walkway, waterway or public area shown on the map. When an application for a building permit is made to a locality for an area shown on the official map as a future or proposed right-of-way, the locality shall have sixty days to either grant or deny the building permit. If the permit is denied for the sole purpose of acquiring the property, the locality has 120 days from the date of denial to acquire the property, either through negotiation or by filing condemnation proceedings. If the locality has not acted within the 120 day period, the building permit shall be issued to the applicant provided all other requirements of law have been met.

Code 1950, § 15-965; 1962, c. 407, § 15.1-458; 1976, c. 619; 1988, c. 436; 1995, c. 264; 1997, c. 587.

§ 15.2-2234. Adoption; filing in office of clerk of court

After the official map has been prepared and recommended by the local planning commission it shall be certified by the commission to the governing body of the locality. The governing body may then approve and adopt the map by a majority vote of its membership and publish it as the official map of the locality. No official map shall be adopted by the

governing body or have any effect until approved by ordinance duly passed by the governing body of the locality after a public hearing, preceded by public notice as required by § 15.2-2204.

Within thirty days after adoption of the official map the governing body shall cause it to be filed in the office of the clerk of the circuit court.

Code 1950, § 15-965.1; 1962, c. 407, § 15.1-459; 1997, c. 587.

§ 15.2-2235. Additions and modifications

The governing body may by ordinance make, from time to time, other additions to or modifications of the official map by placing thereon the location of any proposed street, street widening, street vacation, waterway, impounding structures and their dam break inundation zones, or public area in accordance with the procedures applicable to the locality.

Prior to making any such additions or modifications to the official map, the governing body shall refer the additions or modifications to the local planning commission for its consideration. The commission shall take action on the proposed additions or modifications within sixty days and report its recommendations to the governing body.

Upon receipt of the report of the commission, the governing body shall hold a public hearing on the proposed addition or modification to the official map and shall give notice of the hearing in accordance with § 15.2-2204. All such reports of the commission, when delivered to the governing body, shall be available for public inspection.

Any ordinance embodying additions to or modifications of the official map shall be adopted by at least the vote required for original adoption of the official map. After the public hearing and the final passage of such ordinance, the additions or modifications shall become a part of the official map of the locality. All changes, additions or modifications of the official map shall be filed with the clerk of the court as provided in § 15.2-2234.

Code 1950, § 15-965.2; 1962, c. 407, § 15.1-460; 1988, c. 436; 1997, c. 587; 2008, c. 491.

§ 15.2-2236. Periodic review and readoption

The official map and any additions thereto or modifications thereof shall be reviewed within five years from the date of adoption or readoption of the map by the governing body. The procedure by the local planning commission and the governing body in connection with the review shall conform to that prescribed as to original adoption of the map. Neither the official map nor any additions thereto or modifications thereof shall be of any force or effect for more than five years after adoption or readoption of the map unless readopted by the governing body.

Code 1950, § 15-965; 1962, c. 407, § 15.1-461; 1997, c. 587.

§ 15.2-2237. Consultation with Commonwealth Transportation Board; copies of map and ordinance to be sent to Commonwealth Transportation Board

During the preparation of an official map the local planning commission shall consult with the Commonwealth Transportation Board or its local representative as to any streets under the jurisdiction of the Board, and prior to recommendation of the map to the governing body it shall submit the map to the Board for comment. Any recommendations of the Board, not incorporated in the official map, shall be forwarded to the governing body when the map is recommended by the commission. When any locality has adopted an official map in accordance with the terms of this chapter a certified copy of the map and ordinance adopting it shall be sent to the Board.

Code 1950, § 15-965.4; 1962, c. 407, § 15.1-462; 1988, c. 436; 1997, c. 587.

§ 15.2-2238. Authority of counties under Article 2 (§ 33.2-705 et seq.) of Chapter 7 not affected

The provisions of this article shall not affect the exercise of the authority contained in Article 2 (§ 33.2-705 et seq.) of Chapter 7 by counties that have withdrawn their roads from the secondary state highway system.

Code 1950, § 15-965.5; 1962, c. 407, § 15.1-463; 1997, c. 587.

Article 5. Capital Improvement Programs

§ 15.2-2239. Local planning commissions to prepare and submit annually capital improvement programs to governing body or official charged with preparation of budget

A local planning commission may, and at the direction of the governing body shall, prepare and revise annually a capital improvement program based on the comprehensive plan of the locality for a period not to exceed the ensuing five years. The commission shall submit the program annually to the governing body, or to the chief administrative officer or other official charged with preparation of the budget for the locality, at such time as it or he shall direct. The capital improvement program shall include the commission's recommendations, and estimates of cost of the facilities and life cycle costs, including any road improvement and any transportation improvement the locality chooses to include in its capital improvement plan and as provided for in the comprehensive plan, and the means of financing them, to be undertaken in the ensuing fiscal year and in a period not to exceed the next four years, as the basis of the capital budget for the locality. In the preparation of its capital budget recommendations, the commission shall consult with the chief administrative officer or other executive head of the government of the locality, the heads of departments and interested citizens and organizations and shall hold such public hearings as it deems necessary.

Localities may use value engineering for any capital project. For purposes of this section, "value engineering" has the same meaning as that in § 2.2-1133.

Code 1950, § 15-966; 1962, c. 407, § 15.1-464; 1975, c. 641; 1976, c. 650; 1996, c. 553; 1997, c. 587; 2006, c. 565; 2011, c. 658.

Article 6. Land Subdivision and Development

§ 15.2-2240. Localities to adopt ordinances regulating subdivision and development of land

The governing body of every locality shall adopt an ordinance to assure the orderly subdivision of land and its development.

Code 1950, §§ 15-781, 15-967; 1950, p. 183; 1962, c. 407, § 15.1-465; 1975, c. 641; 1997, c. 587.

§ 15.2-2241. Mandatory provisions of a subdivision ordinance

A. A subdivision ordinance shall include reasonable regulations and provisions that apply to or provide:

1. For plat details which shall meet the standard for plats as adopted under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.);

2. For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage, including, for ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such streets with existing or planned streets in existing or future adjacent or contiguous to adjacent subdivisions;

3. For adequate provisions for drainage and flood control, for adequate provisions related to the failure of impounding structures and impacts within dam break inundation zones, and other public purposes, and for light and air, and for identifying soil characteristics;

4. For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other public utilities or other community facilities are to be installed;

5. For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use, and maintained by the locality, the Commonwealth, or other public agency, and for the provision of other site-related improvements required by local ordinances for vehicular ingress and egress, including traffic signalization and control, for public access streets, for structures necessary to ensure stability of critical slopes, and for storm water

management facilities, financed or to be financed in whole or in part by private funds only if the owner or developer (i) certifies to the governing body that the construction costs have been paid to the person constructing such facilities or, at the option of the local governing body, presents evidence satisfactory to the governing body that the time for recordation of any mechanics lien has expired or evidence that any debt for said construction that may be due and owing is contested and further provides indemnity with adequate surety in an amount deemed sufficient by the governing body or its designated administrative agency; (ii) furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or property bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned; or (iii) furnishes to the governing body a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form. The amount of such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall not exceed 10 percent of the estimated construction costs. If the owner or developer defaults on construction of such facilities, and such facilities are constructed by the surety or with funding from the aforesaid check, cash escrow, bond or letter of credit, the locality shall be entitled to retain or collect the allowance for administrative costs to the extent the costs of such construction do not exceed the total of the originally estimated costs of construction and the allowance for administrative costs. "Such facilities," as used in this section, means those facilities specifically provided for in this section.

If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary subdivision plat and furnishes to the governing body a certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the locality, the Commonwealth, or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary subdivision plat for a period of five years from the recordation date of any section, or for such longer period as the local commission or other agent may, at the approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development, subject to the terms and conditions of this subsection and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded. In the event a governing body of a county, wherein the highway system is maintained by the Department of Transportation, has accepted the dedication of a road for public use and such road due to factors other than its quality of construction is not acceptable into the secondary system of state highways, then such governing body may, if so provided by its subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and indemnifying bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body or its designated administrative agency may accept a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways and assume the subdivider's or developer's liability for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably open for public usage.

As used in this section, "designated administrative agency" means the planning commission of the locality or an agent designated by the governing body of the locality for such purpose as set forth in §§ 15.2-2258 through 15.2-2261;

6. For conveyance of common or shared easements to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone and electric service to the proposed subdivision. Once a developer conveys an easement that will permit electric, cable or telephone service to be furnished to a subdivision, the developer shall, within 30 days after written request by a cable television operator or telephone service provider, grant an easement to that cable television operator or telephone service provider for the purpose of providing cable television and communications services to that subdivision, which easement shall be geographically coextensive with the electric service easement, or if only a telephone or cable service easement has been granted, then geographically coextensive with that telephone or cable service easement; however, the developer and franchised cable

television operator or telephone service provider may mutually agree on an alternate location for an easement. If the final subdivision plat is recorded and does not include conveyance of a common or shared easement as provided herein, the local planning commission or agent designated by the governing body to review and act on submitted subdivision plats shall not be responsible to enforce the requirements of this subdivision;

7. For monuments of specific types to be installed establishing street and property lines;

8. That unless a plat is filed for recordation within six months after final approval thereof or such longer period as may be approved by the governing body, such approval shall be withdrawn and the plat marked void and returned to the approving official; however, in any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit with surety approved by the governing body or its designated administrative agency, or where the developer has furnished surety to the governing body or its designated administrative agency by certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the time for plat recordation shall be extended to one year after final approval or to the time limit specified in the surety agreement approved by the governing body or its designated administrative agency, whichever is greater;

9. For the administration and enforcement of such ordinance, not inconsistent with provisions contained in this chapter, and specifically for the imposition of reasonable fees and charges for the review of plats and plans, and for the inspection of facilities required by any such ordinance to be installed; such fees and charges shall in no instance exceed an amount commensurate with the services rendered taking into consideration the time, skill and administrator's expense involved. All such charges heretofore made are hereby validated;

10. For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner in accordance with the provisions of § 15.2-2244; and

11. For the periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the governing body under this section in accordance with the provisions of § 15.2-2245.

B. No locality shall require that any certified check, cash escrow, bond, letter of credit or other performance guarantee furnished pursuant to this chapter apply to, or include the cost of, any facility or improvement unless such facility or improvement is shown or described on the approved plat or plan of the project for which such guarantee is being furnished. Furthermore, the terms, conditions, and specifications contained in any agreement, contract, performance agreement, or similar document, however described or delineated, between a locality or its governing body and an owner or developer of property entered into pursuant to this chapter in conjunction with any performance guarantee, as described in this subsection, shall be limited to those items depicted or provided for in the approved plan, plat, permit application, or similar document for which such performance guarantee is applicable.

Code 1950, §§ 15-781, 15-967.1; 1950, p. 183; 1962, c. 407, § 15.1-466; 1970, c. 436; 1973, cc. 169, 480; 1975, c. 641; 1976, c. 270; 1978, cc. 429, 439, 440; 1979, cc. 183, 188, 395; 1980, cc. 379, 381; 1981, c. 348; 1983, cc. 167, 609; 1984, c. 111; 1985, cc. 422, 455; 1986, c. 54; 1987, c. 717; 1988, cc. 279, 735; 1989, cc. 332, 393, 403, 495; 1990, cc. 170, 176, 287, 708, 973; 1991, cc. 30, 47, 288, 538; 1992, c. 380; 1993, cc. 836, 846, 864; 1994, c. 421; 1995, cc. 386, 388, 389, 452, 457, 474; 1996, cc. 77, 325, 452, 456; 1997, cc. 587, 737; 2002, c. 517; 2004, c. 952; 2006, c. 670; 2008, cc. 491, 718; 2009, cc. 193, 194; 2010, cc. 149, 766; 2011, c. 512; 2012, c. 468.

§ 15.2-2241.1. Bonding requirements for the acceptance of dedication for public use of certain facilities

Notwithstanding the provisions of § 15.2-2241, provided the developer and the governing body have agreed on the delineation of sections within a proposed development, the developer shall not be required to furnish to the governing body a certified check, cash escrow, bond or letter of credit in the amount of the estimated cost of construction of facilities to be dedicated for public use within each section of the development until such time as construction plans are submitted for the section in which such facilities are to be located.

2007, c. 420.

§ 15.2-2241.2. Bonding provisions for decommissioning of solar energy equipment, facilities, or devices

A. As used in this section, unless the context requires a different meaning:

"Decommission" means the removal and proper disposal of solar energy equipment, facilities, or devices on real property that has been determined by the locality to be subject to § 15.2-2232 and therefore subject to this section. "Decommission" includes the reasonable restoration of the real property upon which such solar equipment, facilities, or devices are located, including (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices.

"Solar energy equipment, facilities, or devices" means any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight.

B. As part of the local legislative approval process or as a condition of approval of a site plan, a locality shall require an owner, lessee, or developer of real property subject to this section to enter into a written agreement to decommission solar energy equipment, facilities, or devices upon the following terms and conditions: (i) if the party that enters into such written agreement with the locality defaults in the obligation to decommission such equipment, facilities, or devices in the timeframe set out in such agreement, the locality has the right to enter the real property of the record title owner of such property without further consent of such owner and to engage in decommissioning, and (ii) such owner, lessee, or developer provides financial assurance of such performance to the locality in the form of certified funds, cash escrow, bond, letter of credit, or parent guarantee, based upon an estimate of a professional engineer licensed in the Commonwealth, who is engaged by the applicant, with experience in preparing decommissioning estimates and approved by the locality; such estimate shall not exceed the total of the projected cost of decommissioning, which may include the net salvage value of such equipment, facilities, or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.

2019, cc. 743, 744.

§ 15.2-2242. Optional provisions of a subdivision ordinance

A subdivision ordinance may include:

1. Provisions for variations in or exceptions to the general regulations of the subdivision ordinance in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship.

2. A requirement (i) for the furnishing of a preliminary opinion from the applicable health official regarding the suitability of a subdivision for installation of subsurface sewage disposal systems where such method of sewage disposal is to be utilized in the development of a subdivision and (ii) that all buildings constructed on lots resulting from subdivision of a larger tract that abuts or adjoins a public water or sewer system or main shall be connected to that public water or sewer system or main subject to the provisions of § 15.2-2121.

3. A requirement that, in the event streets in a subdivision will not be constructed to meet the standards necessary for inclusion in the secondary system of state highways or for state street maintenance moneys paid to municipalities, the subdivision plat and all approved deeds of subdivision, or similar instruments, must contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained by the Department of Transportation or the localities enacting the ordinances. Grantors of any subdivision lots to which such statement applies must include the statement on each deed of conveyance thereof. However, localities in their ordinances may establish minimum standards for construction of streets that will not be built to state standards.

For streets constructed or to be constructed, as provided for in this subsection, a subdivision ordinance may require that the same procedure be followed as that set forth in provision 5 of § 15.2-2241. Further, the subdivision ordinance may provide that the developer's financial commitment shall continue until such time as the local government releases such financial commitment in accordance with provision 11 of § 15.2-2241.

4. Reasonable provision for the voluntary funding of off-site road improvements and reimbursements of advances by the governing body. If a subdivider or developer makes an advance of payments for or construction of reasonable and necessary road improvements located outside the property limits of the land owned or controlled by him, the need for which is substantially generated and reasonably required by the construction or improvement of his subdivision or development, and such advance is accepted, the governing body may agree to reimburse the subdivider or developer from such funds as the governing body may make available for such purpose from time to time for the cost of such

advance together with interest, which shall be excludable from gross income for federal income tax purposes, at a rate equal to the rate of interest on bonds most recently issued by the governing body on the following terms and conditions:

a. The governing body shall determine or confirm that the road improvements were substantially generated and reasonably required by the construction or improvement of the subdivision or development and shall determine or confirm the cost thereof, on the basis of a study or studies conducted by qualified traffic engineers and approved and accepted by the subdivider or developer.

b. The governing body shall prepare, or cause to be prepared, a report accepted and approved by the subdivider or developer, indicating the governmental services required to be furnished to the subdivision or development and an estimate of the annual cost thereof for the period during which the reimbursement is to be made to the subdivider or developer.

c. The governing body may make annual reimbursements to the subdivider or developer from funds made available for such purpose from time to time, including but not limited to real estate taxes assessed and collected against the land and improvements on the property included in the subdivision or development in amounts equal to the amount by which such real estate taxes exceed the annual cost of providing reasonable and necessary governmental services to such subdivision or development.

5. In Arlington County, Fairfax County, Loudoun County, and Prince William County, in any town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford County, or in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Hampton, Manassas, Manassas Park, and Portsmouth, provisions for payment by a subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road improvements, located outside the property limits of the land owned or controlled by him but serving an area having related traffic needs to which his subdivision or development will contribute, to reimburse an initial subdivider or developer who has advanced such costs or constructed such road improvements. Such ordinance may apply to road improvements constructed after July 1, 1988, in Fairfax County; in Arlington County, Loudoun County, and Prince William County, in any town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford County, or in the Cities of Alexandria, Chesapeake, Fairfax, Falls Church, Hampton, Manassas, Manassas Park, and Portsmouth, such ordinance may only apply to road improvements constructed after the effective date of such ordinance.

Such provisions shall provide for the adoption of a pro rata reimbursement plan which shall include reasonable standards to identify the area having related traffic needs, to determine the total estimated or actual cost of road improvements required to adequately serve the area when fully developed in accordance with the comprehensive plan or as required by proffered conditions, and to determine the proportionate share of such costs to be reimbursed by each subsequent subdivider or developer within the area, with interest (i) at the legal rate or (ii) at an inflation rate prescribed by a generally accepted index of road construction costs, whichever is less.

For any subdivision ordinance adopted pursuant to provision 5 of this section after February 1, 1993, no such payment shall be assessed or imposed upon a subsequent developer or subdivider if (i) prior to the adoption of a pro rata reimbursement plan the subsequent subdivider or developer has proffered conditions pursuant to § 15.2-2303 for offsite road improvements and such proffered conditions have been accepted by the locality, (ii) the locality has assessed or imposed an impact fee on the subsequent development or subdivision pursuant to Article 8 (§ 15.2-2317 et seq.) of Chapter 22, or (iii) the subsequent subdivider or developer has received final site plan, subdivision plan, or plan of development approval from the locality prior to the adoption of a pro rata reimbursement plan for the area having related traffic needs.

The amount of the costs to be reimbursed by a subsequent developer or subdivider shall be determined before or at the time the site plan or subdivision is approved. The ordinance shall specify that such costs are to be collected at the time of the issuance of a temporary or final certificate of occupancy or functional use and occupancy within the development, whichever shall come first. The ordinance also may provide that the required reimbursement may be paid (i) in lump sum, (ii) by agreement of the parties on installment at a reasonable rate of interest or rate of inflation, whichever is less, for a fixed number of years, or (iii) on such terms as otherwise agreed to by the initial and subsequent subdividers and developers.

Such ordinance provisions may provide that no certificate of occupancy shall be issued to a subsequent developer or subdivider until (i) the initial developer certifies to the locality that the subsequent developer has made the required reimbursement directly to him as provided above or (ii) the subsequent developer has deposited the reimbursement amount with the locality for transfer forthwith to the initial developer.

6. Provisions for establishing and maintaining access to solar energy to encourage the use of solar heating and cooling devices in new subdivisions. The provisions shall be applicable to a new subdivision only when so requested by the subdivider.

7. Provisions, in any town with a population between 14,500 and 15,000, granting authority to the governing body, in its discretion, to use funds escrowed pursuant to provision 5 of § 15.2-2241 for improvements similar to but other than those for which the funds were escrowed, if the governing body (i) obtains the written consent of the owner or developer who submitted the escrowed funds; (ii) finds that the facilities for which funds are escrowed are not immediately required; (iii) releases the owner or developer from liability for the construction or for the future cost of constructing those improvements for which the funds were escrowed; and (iv) accepts liability for future construction of these improvements. If such town fails to locate such owner or developer after making a reasonable attempt to do so, the town may proceed as if such consent had been granted. In addition, the escrowed funds to be used for such other improvement may only come from an escrow that does not exceed a principal amount of $30,000 plus any accrued interest and shall have been escrowed for at least five years.

8. Provisions for clustering of single-family dwellings and preservation of open space developments, which provisions shall comply with the requirements and procedures set forth in § 15.2-2286.1.

9. Provisions requiring that where a lot being subdivided or developed fronts on an existing street, and adjacent property on either side has an existing sidewalk or when the provision of a sidewalk, the need for which is substantially generated and reasonably required by the proposed development, is in accordance with the locality's adopted comprehensive plan, a locality may require the dedication of land for, and construction of, a sidewalk on the property being subdivided or developed. Nothing in this paragraph shall alter in any way any authority of localities or the Department of Transportation to require sidewalks on any newly constructed street or highway.

10. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

11. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

12. Provisions, in any town located in the Northern Virginia Transportation District, granting authority to the governing body to require the dedication of land for sidewalk, curb, and gutter improvements on the property being subdivided or developed if the property is designated for such improvements on the locality's adopted pedestrian plan.

Code 1950, §§ 15-781, 15-967.1; 1950, p. 183; 1962, c. 407, § 15.1-466; 1970, c. 436; 1973, cc. 169, 480; 1975, c. 641; 1976, c. 270; 1978, cc. 429, 439, 440; 1979, cc. 183, 188, 395; 1980, cc. 379, 381; 1981, c. 348; 1983, cc. 167, 609; 1984, c. 111; 1985, cc. 422, 455; 1986, c. 54; 1987, c. 717; 1988, cc. 279, 735; 1989, cc. 332, 393, 403, 495; 1990, cc. 170, 176, 287, 708, 973; 1991, cc. 30, 47, 288, 538; 1992, c. 380; 1993, cc. 836, 846, 864; 1994, c. 421; 1995, cc. 386, 388, 389, 452, 457, 474; 1996, cc. 77, 325, 452, 456; 1997, c. 587; 2000, cc. 652, 711; 2002, c. 703; 2005, c. 567; 2006, cc. 421, 514, 533, 903; 2007, c. 813; 2014, c. 619; 2018, c. 550; 2019, cc. 461, 462.

§ 15.2-2243. Payment by subdivider of the pro rata share of the cost of certain facilities

A. A locality may provide in its subdivision ordinance for payment by a subdivider or developer of land of the pro rata share of the cost of providing reasonable and necessary sewerage, water, and drainage facilities, located outside the property limits of the land owned or controlled by the subdivider or developer but necessitated or required, at least in part, by the construction or improvement of the subdivision or development; however, no such payment shall be required until such time as the governing body or a designated department or agency thereof has established a general sewer, water, and drainage improvement program for an area having related and common sewer, water, and drainage conditions and within which the land owned or controlled by the subdivider or developer is located or the governing body has committed itself by ordinance to the establishment of such a program. Such regulations or ordinance shall set forth and establish reasonable standards to determine the proportionate share of total estimated cost of ultimate sewerage, water, and drainage facilities required to adequately serve a related and common area, when and if fully developed in accord with the adopted comprehensive plan, that shall be borne by each subdivider or developer within the area. Such share shall be limited to the amount necessary to protect water quality based upon the pollutant loading caused by the subdivision or development or to the proportion of such total estimated cost which the increased sewage flow, water flow, and/or increased volume and velocity of storm water runoff to be actually caused by the subdivision or development bears to total estimated volume and velocity of such sewage, water, and/or runoff from such area in its fully developed state. In calculating the pollutant loading caused by the subdivision or development or the volume and velocity of storm water runoff, the governing body shall take into account the effect of all on-site storm water facilities or best management practices constructed or required to be constructed by the subdivider or developer and give appropriate credit therefor.

B. A locality that has adopted an ordinance pursuant to subsection A may also provide in its subdivision ordinance that, when adequate water, sewerage, or drainage facilities are not available to serve a proposed subdivision or development, the subdivider or developer of the property may be permitted to install reasonable and necessary water, sewerage, and drainage facilities, located on or outside the property limits of the land owned or controlled by the subdivider or developer but necessitated or required, at least in part, by the utility needs of the development or subdivision, including reasonably anticipated capacity, extensions, or maintenance considerations of a utility service plan for the service area. The ordinance shall provide that such subdivider or developer shall be entitled to reimbursement of a portion of its costs by any subsequent subdivider or developer that utilizes the installed water, sewerage or drainage facilities or from connection fees paid for lots within its development, and the ordinance may limit the duration of the reimbursements. The locality is authorized to administer by ordinance and by adopted reasonable policies and procedures standards for installation of such water, sewerage, and drainage facilities and parameters for pro rata reimbursement or connection or capacity fee reimbursement. The provisions of this subsection shall not be deemed to limit the authority of (i) localities that have not adopted an ordinance pursuant to subsection A or (ii) authorities established pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) to establish policies for reimbursement or credits from connection fees or to other utility fund sources to subdividers and developers constructing water, sewerage, or drainage facilities.

C. Each payment pursuant to subsection A received shall be expended only for necessary engineering and related studies and the construction of those facilities identified in the established sewer, water, and drainage program; however, in lieu of such payment the governing body may provide for the posting of a personal, corporate or property bond, cash escrow, or other method of performance guarantee satisfactory to it conditioned on payment at commencement of such studies or construction. The payments received shall be kept in a separate account for each of the individual improvement programs until such time as they are expended for the improvement program. All bonds, payments, cash escrows, or other performance guarantees hereunder shall be released and used, with any interest earned, as a tax credit on the real estate taxes on the property if construction of the facilities identified in the established water, sewer, and drainage programs is not commenced within 12 years from the date of the posting of the bond, payment, cash escrow, or other performance guarantee.

D. Any funds collected for pro rata programs under this section prior to July 1, 1990, shall continue to be held in separate, interest bearing accounts for the project or projects for which the funds were collected and any interest from such accounts shall continue to accrue to the benefit of the subdivider or developer until such time as the project or projects are completed or until such time as a general sewer and drainage improvement program is established to replace a prior sewer and drainage improvement program. If such a general improvement program is established, the governing body of any locality may abolish any remaining separate accounts and require the transfer of the assets therein into a separate fund for the support of each of the established sewer, water, and drainage programs. Upon the transfer of such assets, subdividers and developers who had met the terms of any existing agreements made under a previous pro rata

program shall receive any outstanding interest which has accrued up to the date of transfer, and such subdividers and developers shall be released from any further obligation under those existing agreements. All bonds, payments, cash escrows, or other performance guarantees hereunder shall be released and used, with any interest earned, as a tax credit on the real estate taxes on the property if construction of the facilities identified in the established water, sewer, and drainage programs is not commenced within 12 years from the date of the posting of the bond, payment, cash escrow, or other performance guarantee.

Code 1950, §§ 15-781, 15-967.1; 1950, p. 183; 1962, c. 407, § 15.1-466; 1970, c. 436; 1973, cc. 169, 480; 1975, c. 641; 1976, c. 270; 1978, cc. 429, 439, 440; 1979, cc. 183, 188, 395; 1980, cc. 379, 381; 1981, c. 348; 1983, cc. 167, 609; 1984, c. 111; 1985, cc. 422, 455; 1986, c. 54; 1987, c. 717; 1988, cc. 279, 735; 1989, cc. 332, 393, 403, 495; 1990, cc. 170, 176, 287, 708, 973; 1991, cc. 30, 47, 288, 538; 1992, c. 380; 1993, cc. 836, 846, 864; 1994, c. 421; 1995, cc. 386, 388, 389, 452, 457, 474; 1996, cc. 77, 325, 452, 456; 1997, c. 587; 2001, c. 704; 2020, c. 820; 2022, c. 629.

§ 15.2-2243.1. Payment by developer or subdivider

A. If the Department of Conservation and Recreation determines that a plan of development proposed by a developer or subdivider is wholly or partially within a dam break inundation zone and would change the spillway design flood standards of an impounding structure pursuant to § 10.1-606.3, a locality shall require, prior to its final approval of a subdivision or development, that a developer or subdivider of land submit an engineering study in conformance with the Virginia Soil and Water Conservation Board's standards under the Virginia Dam Safety Act (§ 10.1-604 et seq.) and the Virginia Impounding Structure Regulations (4VAC50-20). The study shall provide a contract-ready cost estimate for conducting the upgrades. The Department of Conservation and Recreation shall verify that the study conforms to the Board's standards. Following receipt of a study, the Department shall have 15 days to determine whether the study is complete. The Department shall notify the developer or subdivider of any specific deficiencies that cause the study to be determined to be incomplete. Following a determination that a submission is complete, the Department shall notify the developer or subdivider of its approval or denial within 45 days. Any decision shall be communicated in writing and shall state the reasons for any disapproval.

B. Following the completion of the engineering studies in accordance with subsection A, and prior to any development within the dam break inundation zone, a locality shall require that a developer or subdivider of land pay 50 percent of the contract-ready costs for necessary upgrades to an impounding structure attributable to the development or subdivision, together with administrative fees not to exceed one percent of the total amount of payment required or $1,000, whichever is less. Necessary upgrades shall not include costs associated with routine operation, maintenance, and repair, nor shall necessary upgrades include repairs or upgrades to the impounding structure not made necessary by the proposed development or subdivision.

C. Where a payment under subsection B is required, such payment shall be made by the developer or subdivider in accordance with the following provisions:

1. A locality may elect to receive such payment. Upon receipt, payments shall be kept in a separate account by the locality for each individual improvement project until such time as they are expended for the improvement project; however, any funds not committed by the dam owner within six years of the time of deposit shall be refunded to the developer or subdivider. The locality may issue an extension of up to an additional four years for the use of the funds if the dam owner shows that sufficient progress is being made to justify the extension and the extension is approved by the Virginia Soil and Water Conservation Board prior to the expiration of the six-year period. Should the locality be unable to locate the developer or subdivider following a period of 12 months and the exercise of due diligence, the funds shall be deposited in the Dam Safety, Flood Prevention and Protection Assistance Fund for the provision of grants and loans. Any locality maintaining an account in accordance with this section may charge an administrative fee, not to exceed one percent of the total amount of payment received or $1,000, whichever is less.

2. If the locality elects not to receive such payment, any payments shall be made to the Dam Safety, Flood Prevention and Protection Assistance Fund pursuant to § 10.1-603.19:1. The funds shall be held by the Virginia Resources Authority for each improvement project until such time as they are expended for the improvement project; however, any funds not committed by the dam owner within six years of the time of deposit shall be refunded to the developer or subdivider. The Board may issue an extension of up to an additional four years for the use of the funds if the dam owner shows that sufficient progress is being made. Should the Department of Conservation and Recreation be unable to locate the

developer or subdivider following a period of 12 months and the exercise of due diligence, the funds shall be deposited in the Dam Safety, Flood Prevention and Protection Assistance Fund for the provision of grants and loans. The Virginia Resources Authority shall not have any liability for the completion of any project associated with the moneys they manage in the Dam Safety, Flood Prevention and Protection Assistance Fund.

D. No locality shall be required to assume financial responsibility for upgrades except as an owner of an impounding structure.

E. The owner of the impounding structure shall retain all liability associated with upgrades in accordance with § 10.1-613.4.

2008, c. 491.

§ 15.2-2244. Provisions for subdivision of a lot for conveyance to a family member

A. In any county a subdivision ordinance shall provide for reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner, including the family member's spouse, subject only to any express requirement contained in the Code of Virginia and to any requirement imposed by the local governing body that all lots of less than five acres have reasonable right-of-way of not less than 10 feet or more than 20 feet providing ingress and egress to a dedicated recorded public street or thoroughfare. Only one such division shall be allowed per family member, and shall not be for the purpose of circumventing this section. For the purpose of this subsection, a member of the immediate family is defined as any person who is a natural or legally defined offspring, stepchild, spouse, sibling, grandchild, grandparent, or parent of the owner. In addition, any such locality may include aunts, uncles, nieces and nephews in its definition of immediate family.

B. Notwithstanding subsection A, in a county having the urban county executive form of government, a subdivision ordinance shall provide for reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family of the property owner, subject only to any express requirement contained in the Code of Virginia and to any requirement imposed by the local governing body that all lots of less than five acres have frontage of not less than 10 feet or more than 20 feet on a dedicated recorded public street or thoroughfare. Only one such division shall be allowed per family member, and the division shall not be for the purpose of circumventing a local subdivision ordinance. For the purpose of this subsection, a member of the immediate family is defined as any person who is a natural or legally defined offspring or parent of the owner.

C. Notwithstanding subsections A and B, a subdivision ordinance may include reasonable provisions permitting divisions of lots or parcels for the purpose of sale or gift to a member of the immediate family of the property owner in (i) any county or city which has had population growth of 10 percent or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census; (ii) any city or county adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county. Such divisions shall be subject to all requirements of the Code of Virginia and to any requirements imposed by the local governing body.

Code 1950, §§ 15-781, 15-967.1; 1950, p. 183; 1962, c. 407, § 15.1-466; 1970, c. 436; 1973, cc. 169, 480; 1975, c. 641; 1976, c. 270; 1978, cc. 429, 439, 440; 1979, cc. 183, 188, 395; 1980, cc. 379, 381; 1981, c. 348; 1983, cc. 167, 609; 1984, c. 111; 1985, cc. 422, 455; 1986, c. 54; 1987, c. 717; 1988, cc. 279, 735; 1989, cc. 332, 393, 403, 495; 1990, cc. 170, 176, 287, 708, 973; 1991, cc. 30, 47, 288, 538; 1992, c. 380; 1993, cc. 836, 846, 864; 1994, c. 421; 1995, cc. 386, 388, 389, 452, 457, 474; 1996, cc. 77, 325, 452, 456; 1997, cc. 587, 718; 1998, c. 457; 2008, cc. 340, 717; 2009, cc. 283, 465; 2010, c. 216.

§ 15.2-2244.1. Additional method for subdivision of a lot for conveyance to a family member

In addition to § 15.2-2244, a locality may include in its subdivision ordinance provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family, as defined in § 15.2-2244, of the property owner, if (i) the property has been owned for at least 15 consecutive years by the current owner or member of the immediate family and (ii) the property owner agrees to place a restrictive covenant on the subdivided property that would prohibit the transfer of the property to a nonmember of the immediate family for a period of 15 years. Notwithstanding the provisions of clause (ii), a locality may reduce or provide exceptions to the period of years

prescribed in such clause when changed circumstances so require. Upon such modification of a restrictive covenant, a locality shall execute a writing reflecting such modification, which writing shall be recorded in accordance with § 17.1-227. The locality may require that the subdivided lot is no more than one acre and otherwise meets any other express requirement contained in the Code of Virginia or imposed by the local governing body.

2006, c. 456; 2007, c. 856.

§ 15.2-2244.2. Subdivision of a lot of property held in trust for a family member

In addition to §§ 15.2-2244 and 15.2-2244.1, a locality may include in its subdivision ordinance provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family, as defined in § 15.2-2244, of beneficiaries of a trust, of land held in trust. All trust beneficiaries must (i) be immediate family members as defined in § 15.2-2244, (ii) agree that the property should be subdivided, and (iii) agree to place a restrictive covenant on the subdivided property that would prohibit the transfer of the property to a nonmember of the immediate family for a period of 15 years. Notwithstanding the provisions of clause (iii), a locality may reduce or provide exceptions to the period of years prescribed in such clause when changed circumstances so require. Upon such modification of a restrictive covenant, a locality shall execute a writing reflecting such modification, which writing shall be recorded in accordance with § 17.1-227. The locality may require that the subdivided lot is no more than one acre and otherwise meets any other express requirement contained in the Code of Virginia or imposed by the local governing body.

2011, c. 141.

§ 15.2-2245. Provisions for periodic partial and final release of certain performance guarantees

A. A subdivision ordinance shall provide for the periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the governing body under this article within thirty days after receipt of written notice by the subdivider or developer of completion of part or all of any public facilities required to be constructed hereunder unless the governing body or its designated administrative agency notifies the subdivider or developer in writing of nonreceipt of approval by an applicable state agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty-day period. Any inspection of such public facilities shall be based solely upon conformance with the terms and conditions of the performance agreement and the approved design plan and specifications for the facilities for which the performance guarantee is applicable, and shall not include the approval of any person other than an employee of the governing body, its administrative agency, the Virginia Department of Transportation or other political subdivision or a person who has contracted with the governing body, its administrative agency, the Virginia Department of Transportation or other political subdivision.

B. If no such action is taken by the governing body or administrative agency within the time specified above, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such thirty-day period and there is an additional request in writing sent by certified mail return receipt to the chief administrative officer of such governing body. The governing body or its designated administrative agency shall act within ten working days of receipt of the request; then if no action is taken the request shall be deemed approved and final release granted to the subdivider or developer.

C. After receipt of the written notices required above, if the governing body or administrative agency takes no action within the times specified above and the subdivider or developer files suit in the local circuit court to obtain partial or final release of a bond, escrow, letter of credit, or other performance guarantee, as the case may be, the circuit court, upon finding the governing body or its administrative agency was without good cause in failing to act, shall award such subdivider or developer his reasonable costs and attorneys' fees.

D. No governing body or administrative agency shall refuse to make a periodic partial or final release of a bond, escrow, letter of credit, or other performance guarantee for any reason not directly related to the specified defects or deficiencies in construction of the public facilities covered by said bond, escrow, letter of credit or other performance guarantee.

E. Upon written request by the subdivider or developer, the governing body or its designated administrative agency shall be required to make periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative amount equal to no less than ninety percent of the original amount for which the bond, escrow, letter of credit, or other performance guarantee was taken, and may make partial releases to such lower amounts as may be

authorized by the governing body or its designated administrative agency based upon the percentage of public facilities completed and approved by the governing body, local administrative agency, or state agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty percent of the public facilities covered by any bond, escrow, letter of credit, or other performance guarantee. The governing body or administrative agency shall not be required to execute more than three periodic partial releases in any twelve-month period. Upon final completion and acceptance of the public facilities, the governing body or administrative agency shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the subdivider or developer. For the purpose of final release, the term "acceptance" means: when the public facility is accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority which is responsible for maintaining and operating such public facility upon acceptance.

F. For the purposes of this section, a certificate of partial or final completion of such public facilities from either a duly licensed professional engineer or land surveyor, as defined in and limited to § 54.1-400, or from a department or agency designated by the locality may be accepted without requiring further inspection of such public facilities.

Code 1950, §§ 15-781, 15-967.1; 1950, p. 183; 1962, c. 407, § 15.1-466; 1970, c. 436; 1973, cc. 169, 480; 1975, c. 641; 1976, c. 270; 1978, cc. 429, 439, 440; 1979, cc. 183, 188, 395; 1980, cc. 379, 381; 1981, c. 348; 1983, cc. 167, 609; 1984, c. 111; 1985, cc. 422, 455; 1986, c. 54; 1987, c. 717; 1988, cc. 279, 735; 1989, cc. 332, 393, 403, 495; 1990, cc. 170, 176, 287, 708, 973; 1991, cc. 30, 47, 288, 538; 1992, c. 380; 1993, cc. 836, 846, 864; 1994, c. 421; 1995, cc. 386, 388, 389, 452, 457, 474; 1996, cc. 77, 325, 452, 456; 1997, c. 587; 2002, c. 779.

§ 15.2-2245.1. Stormwater management ponds; removal of trees

A locality shall not require, but may permit, the removal of trees to create stormwater management ponds or facilities if the minimum adequate outfall requirements and the requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) can otherwise be met.

1998, c. 221.

§ 15.2-2246. Site plans submitted in accordance with zoning ordinance

Site plans or plans of development which are required to be submitted and approved in accordance with subdivision A 8 of § 15.2-2286 shall be subject to the provisions of §§ 15.2-2241 through 15.2-2245, mutatis mutandis.

Code 1950, §§ 15-781, 15-967.1; 1950, p. 183; 1962, c. 407, § 15.1-466; 1970, c. 436; 1973, cc. 169, 480; 1975, c. 641; 1976, c. 270; 1978, cc. 429, 439, 440; 1979, cc. 183, 188, 395; 1980, cc. 379, 381; 1981, c. 348; 1983, cc. 167, 609; 1984, c. 111; 1985, cc. 422, 455; 1986, c. 54; 1987, c. 717; 1988, cc. 279, 735; 1989, cc. 332, 393, 403, 495; 1990, cc. 170, 176, 287, 708, 973; 1991, cc. 30, 47, 288, 538; 1992, c. 380; 1993, cc. 836, 846, 864; 1994, c. 421; 1995, cc. 386, 388, 389, 452, 457, 474; 1996, cc. 77, 325, 452, 456; 1997, c. 587.

§ 15.2-2247. Applicability of subdivision ordinance to manufactured homes

Any locality may designate by ordinance the areas within its jurisdiction in which manufactured homes may be located or manufactured home parks may be established, notwithstanding the absence of a zoning ordinance in such locality. Such ordinance may also apply to any of the provisions of §§ 15.2-2241 through 15.2-2245 in the regulation and governing of the location, establishment, and operation of manufactured homes or manufactured home parks. The ordinance may apply to any park or portion thereof licensed as a campground pursuant to Title 35.1 of this Code. In the event of irreconcilable conflict between the ordinance and state law, the state law shall supersede the ordinance.

1980, c. 539, § 15.1-466.1; 1981, c. 467; 1997, c. 587; 1999, c. 77.

§ 15.2-2248. Application of certain municipal subdivision regulations beyond corporate limits of municipality

The subdivision regulations adopted by a municipality within the counties of Giles, Clarke, Culpeper, Loudoun or Mecklenburg shall apply within the corporate limits and may apply beyond, if the municipal ordinance so provides, within the distance therefrom set out below:

1. Within a distance of five miles from the corporate limits of cities having a population of one hundred thousand or more;

2. Within a distance of three miles from the corporate limits of cities having a population of less than one hundred thousand; and

3. Within a distance of two miles from the corporate limits of incorporated towns.

Where the corporate limits of two municipalities are closer together than the sum of the distances from their respective corporate limits as above set forth, the dividing line of jurisdiction shall be halfway between the limits of the overlapping boundaries.

The foregoing distances may be modified by mutual agreement between the governing bodies concerned, depending upon their respective areas of interest, provided such modified limits bear a reasonable relationship to natural geographic considerations or to the comprehensive plans for the area. Any such modification shall be set forth in the respective subdivision ordinances, by map or description or both.

No such regulations or amendments thereto shall be finally adopted by any such municipality until the governing body of the county in which such area is located shall have been duly notified in writing by the governing body of the municipality or its designated agent of such proposed regulations, and requested to review and approve or disapprove the same; and if such county fail to notify the governing body of such municipality of its disapproval of such plan within forty-five days after the giving of such notice, such plan shall be considered approved. Provided, however, that in any county which has a duly appointed planning commission, the governing body or the council shall send a copy of such proposed regulations or amendments thereof to such commission which shall review and recommend approval or disapproval of the same. The county commission shall not take any such action until notice has been given and a hearing held as prescribed by § 15.2-2204. Such hearing shall be held by the county commission within sixty days after the giving of notice by the municipality or its agent. Such commission shall forthwith after such hearing make its recommendations to the governing body of the county which shall within thirty days after such hearing notify the municipality of its approval or disapproval of such regulations and no regulations effective beyond the corporate limits shall be finally adopted by the municipality until notification by the governing body of the county, except that if the county fails to notify the governing body of the municipality of its disapproval of such regulations within ninety days after copy of the regulations or amendments thereof are received by the county commission, the regulations shall be deemed to have been approved.

Code 1950, §§ 15-786, 15-967.2; 1954, c. 584; 1962, c. 407, § 15.1-467; 1975, c. 641; 1977, c. 524; 1979, c. 251; 1980, c. 47; 1997, c. 587.

§ 15.2-2249. Application of county subdivision regulations in area subject to municipal jurisdiction

The subdivision regulations adopted by the counties of Giles, Clarke, Culpeper, Loudoun or Mecklenburg shall apply in all the unincorporated territory of the county; provided, that no such regulations to be effective in the area of the county subject to municipal jurisdiction shall be finally adopted by the county until the governing body of the municipality shall have been notified in writing of such proposed regulations, and requested to review and approve or disapprove the same, and if such municipality fails to notify the governing body of the county of its disapproval of such regulations within forty-five days after the giving of such notice, the same shall be considered approved; and provided further, that if the municipality has a duly appointed planning commission, the governing body of the county or its agent shall give such notice to such commission as is required to be given the county planning commission by § 15.2-2248, and the provisions of that section shall apply, mutatis mutandis, to the actions of such commission and the governing bodies of the county and city, respectively.

Code 1950, §§ 15-787, 15-967.3; 1962, c. 407, § 15.1-468; 1979, c. 251; 1980, c. 47; 1982, c. 293, § 15.1-466.01; 1997, c. 587.

§ 15.2-2250. Disagreement between county and municipality as to regulations

When a disagreement arises between the counties of Giles, Clarke, Culpeper, Loudoun or Mecklenburg and a municipality as to what regulations should be adopted for the area, and such difference cannot be amicably settled, then

after ten days' prior written notice by either to the other, either or both parties may petition the circuit court for the county wherein the area or a major part thereof lies to decide what regulations are to be adopted. The court shall hear the matter and enter an appropriate order.

Code 1950, §§ 15-788, 15-967.4; 1962, c. 407, § 15.1-469; 1979, c. 251; 1980, c. 47; 1997, c. 587.

§ 15.2-2251. Local planning commission shall prepare and recommend ordinance; notice and hearing on ordinance

In every locality the local planning commission shall prepare and recommend the subdivision ordinance and transmit it to the governing body. The governing body of every locality shall approve and adopt a subdivision ordinance only after notice has been published, and a public hearing held, in accordance with § 15.2-2204.

Code 1950, §§ 15-782, 15-967.5; 1962, c. 407, § 15.1-470; 1975, c. 641; 1997, c. 587.

§ 15.2-2252. Filing and recording of ordinance and amendments thereto

When a subdivision ordinance has been adopted, or amended, a certified copy of the ordinance and any and all amendments thereto shall be filed in the office of an official of the locality, designated in the ordinance, and in the clerk's office of the circuit court for each locality in which the ordinance is applicable.

Code 1950, §§ 15-783, 15-967.6; 1962, c. 407, § 15.1-471; 1975, c. 641; 1997, c. 587.

§ 15.2-2253. Preparation and adoption of amendments to ordinance

A local planning commission on its own initiative may or at the request of the governing body of the locality shall prepare and recommend amendments to the subdivision ordinance. The procedure for amendments shall be the same as for the preparation and recommendation and approval and adoption of the original ordinance; provided that no amendment shall be adopted by the governing body of a locality without a reference of the proposed amendment to the commission for recommendation, nor until sixty days after such reference, if no recommendation is made by the commission.

Code 1950, § 15-967.7; 1962, c. 407, § 15.1-472; 1975, c. 641; 1997, c. 587.

§ 15.2-2254. Statutory provisions effective after ordinance adopted

After the adoption of a subdivision ordinance in accordance with this chapter, the following provisions shall be effective in the territory to which the ordinance applies:

1. No person shall subdivide land without making and recording a plat of the subdivision and without fully complying with the provisions of this article and of the subdivision ordinance.

2. No plat of any subdivision shall be recorded unless and until it has been submitted to and approved by the local planning commission or by the governing body or its duly authorized agent, of the locality wherein the land to be subdivided is located; or by the commissions, governing bodies or agents, as the case may be, of each locality having a subdivision ordinance, in which any part of the land lies.

3. No person shall sell or transfer any land of a subdivision, before a plat has been duly approved and recorded as provided herein, unless the subdivision was lawfully created prior to the adoption of a subdivision ordinance applicable thereto. However, nothing herein contained shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.

4. Any person violating the foregoing provisions of this section shall be subject to a fine of not more than $500 for each lot or parcel of land so subdivided, transferred or sold and shall be required to comply with all provisions of this article and the subdivision ordinance. The description of the lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties or remedies herein provided.

5. No clerk of any court shall file or record a plat of a subdivision required by this article to be recorded until the plat has been approved as required herein. The penalties provided by § 17.1-223 shall apply to any failure to comply with the provisions of this subsection.

Code 1950, §§ 15-784, 15-785, 15-794.1, 15-967.8; 1962, c. 407, § 15.1-473; 1975, c. 641; 1997, c. 587; 2003, c. 408.

§ 15.2-2255. Administration and enforcement of regulations

The administration and enforcement of subdivision regulations insofar as they pertain to public improvements as authorized in §§ 15.2-2241 through 15.2-2245 shall be vested in the governing body of the locality in which the improvements are or will be located.

Except as provided above, the governing body shall be responsible for administering and enforcing the provisions of the subdivision regulations through its local planning commission or otherwise.

Code 1950, §§ 15-788.1, 15-967.9; 1962, c. 407, § 15.1-474; 1975, c. 641; 1997, c. 587.

§ 15.2-2256. Procedure to account for fees for common improvements

Upon a verified petition signed by the owners, other than the original subdivider, of ten percent of the lots in any subdivision, the board of directors or other governing body of the subdivision charged with collection of fees and the maintenance of common improvements shall render an annual report with a statement of account of all fees collected and the disposition of all funds derived from any fees assessed for the maintenance of common improvements to the lot owners. The board of directors or other governing body of the subdivision may charge the lot owners for the actual cost of copying the annual report.

1987, c. 501, § 15.1-474.1; 1997, c. 587.

§ 15.2-2257. Procedure to modify certain covenants in Shenandoah County

Upon a verified petition signed by the owners, other than the original subdivider, of 10 percent of the lots in any subdivision previously recorded, the circuit court for Shenandoah County, in which such subdivision lies, shall have authority to conduct a hearing and modify any and all covenant provisions of any previously recorded deed of dedication or other document relating to road maintenance fees as to any roads located within the subdivision. Upon receipt of the petition, the court shall, if all owners of lots within such subdivision are not before the court, enter an order of publication under the provisions of subdivision A 3 of § 8.01-316, making the owners of all lots not owned by petitioners parties to the cause, which shall then be docketed and set for trial on the chancery side of the court. Should the court, after hearing evidence and argument of counsel, find that the streets and roads in the subdivision require maintenance in excess of that provided for with the road maintenance funds specified in the covenants to permit emergency vehicles ready access to the residents of the subdivision to ensure the public health, safety, and welfare, the court may increase the fees required for road maintenance to the extent reasonably necessary to permit emergency vehicles ready access to the residents of the subdivision. The funds collected shall be accounted for as provided in § 15.2-2256. Nothing herein shall be construed to prohibit the members of a subdivision association from proceeding under the provisions of § 55.1-1825 or subsection C of § 55.1-2305, as applicable.

1987, c. 501, § 15.1- 474.2; 1997, c. 587; 1998, c. 623; 2019, c. 632.

§ 15.2-2258. Plat of proposed subdivision and site plans to be submitted for approval

Whenever the owner or proprietor of any tract of land located within any territory to which a subdivision ordinance applies desires to subdivide the tract, he shall submit a plat of the proposed subdivision to the planning commission of the locality, or an agent designated by the governing body thereof for such purpose. When any part of the land proposed for subdivision lies in a drainage district such fact shall be set forth on the plat of the proposed subdivision. When any part of the land proposed for subdivision lies in a mapped dam break inundation zone such fact shall be set forth on the plat of the proposed subdivision. When any grave, object or structure marking a place of burial is located on the land proposed for subdivision, such grave, object or structure shall be identified on any plans or site plans required by this article. When the land involved lies wholly or partly within an area subject to the joint control of more than one locality, the plat shall be submitted to the planning commission or other designated agent of the locality in which the tract of land

is located. Site plans or plans of development required by subdivision A 8 of § 15.2-2286 shall also be subject to the provisions of §§ 15.2-2258 through 15.2-2261, mutatis mutandis.

Code 1950, §§ 15-789, 15-967.10; 1952, c. 333; 1962, c. 407, § 15.1-475; 1964, c. 498; 1975, c. 641; 1977, c. 10; 1978, c. 283; 1979, c. 111; 1980, c. 73; 1986, c. 483; 1989, cc. 471, 495; 1990, c. 171; 1992, c. 843; 1993, c. 846; 1996, c. 353; 1997, c. 587; 2008, c. 491.

§ 15.2-2259. Local planning commission to act on proposed plat

A. 1. Except as otherwise provided in subdivisions 2 and 3, the local planning commission or other agent shall act on any proposed plat within 60 days after it has been officially submitted for approval by either approving or disapproving the plat in writing, and giving with the latter specific reasons therefor. The Commission or agent shall thoroughly review the plat and shall make a good faith effort to identify all deficiencies, if any, with the initial submission. However, if approval of a feature or features of the plat by a state agency or public authority authorized by state law is necessary, the commission or agent shall forward the plat to the appropriate state agency or agencies for review within 10 business days of receipt of such plat. The state agency shall respond in accord with the requirements set forth in § 15.2-2222.1, which shall extend the time for action by the local planning commission or other agent, as set forth in subsection B. Specific reasons for disapproval shall be contained either in a separate document or on the plat itself. The reasons for disapproval shall identify deficiencies in the plat that cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify modifications or corrections as will permit approval of the plat. The local planning commission or other agent shall act on any proposed plat that it has previously disapproved within 45 days after the plat has been modified, corrected and resubmitted for approval.

2. The approval of plats, site plans, and plans of development solely involving parcels of commercial real estate by a local planning commission or other agent shall be governed by subdivision 3 and subsections B, C, and D. For the purposes of this section, the term "commercial" means all real property used for commercial or industrial uses.

3. The local planning commission or other agent shall act on any proposed plat, site plan or plan of development within 60 days after it has been officially submitted for approval by either approving or disapproving the plat in writing, and giving with the latter specific reasons therefor. The local planning commission or other agent shall not delay the official submission of any proposed plat, site plan, or plan of development by requiring presubmission conferences, meetings, or reviews. The Commission or agent shall thoroughly review the plat or plan and shall in good faith identify, to the greatest extent practicable, all deficiencies, if any, with the initial submission. However, if approval of a feature or features of the plat or plan by a state agency or public authority authorized by state law is necessary, the commission or agent shall forward the plat or plan to the appropriate state agency or agencies for review within 10 business days of receipt of such plat or plan. The state agency shall respond in accord with the requirements set forth in § 15.2-2222.1, which shall extend the time for action by the local planning commission or other agent, as set forth in subsection B. Specific reasons for disapproval shall be contained either in a separate document or on the plat or plan itself. The reasons for disapproval shall identify deficiencies in the plat or plan that caused the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall identify, to the greatest extent practicable, modifications or corrections that will permit approval of the plat or plan.

In the review of a resubmitted proposed plat, site plan or plan of development that has been previously disapproved, the local planning commission or other agent shall consider only deficiencies it had identified in its review of the initial submission of the plat or plan that have not been corrected in such resubmission and any deficiencies that arise as a result of the corrections made to address deficiencies identified in the initial submission. In the review of the resubmission of a plat or plan, the local planning commission or other agent shall identify all deficiencies with the proposed plat or plan that caused the disapproval by reference to specific duly adopted ordinances, regulations or policies and shall identify modifications or corrections that will permit approval of the plat or plan. Upon the second resubmission of such disapproved plat or plan, the local planning commission or other agent's review shall be limited solely to the previously identified deficiencies that caused its disapproval.

The local planning commission or other agent shall act on any proposed plat, site plan or plan of development that it has previously disapproved within 45 days after the plat or plan has been modified, corrected and resubmitted for approval. The failure of a local planning commission or other agent to approve or disapprove a resubmitted plat or plan within the time periods required by this section shall cause the plat or plan to be deemed approved.

Notwithstanding the approval or deemed approval of any proposed plat, site plan or plan of development, any deficiency in any proposed plat or plan, that if left uncorrected, would violate local, state or federal law, regulations, mandatory Department of Transportation engineering and safety requirements, and other mandatory engineering and safety requirements, shall not be considered, treated or deemed as having been approved by the local planning commission or other agent. Should any resubmission include a material revision of infrastructure or physical improvements from the earlier submission or if a material revision in the resubmission creates a new required review by the Virginia Department of Transportation or by a state agency or public authority authorized by state law, then the local planning commission or other agent's review shall not be limited to only the previously identified deficiencies identified in the prior submittals and may consider deficiencies initially appearing in the resubmission because of such material revision.

B. Any state agency or public authority authorized by state law making a review of a plat forwarded to it under this article, including, without limitation, the Virginia Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.), shall complete its review within 45 days of receipt of the plat upon first submission and within 45 days for any proposed plat that has previously been disapproved, provided, however, that the time periods set forth in § 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow use of public rights-of-way dedicated for public street purposes for placement of utilities by permit when practical and shall not unreasonably deny plat approval. If a state agency or public authority authorized by state law does not approve the plat, it shall comply with the requirements, and be subject to the restrictions, set forth in subsection A, with the exception of the time period therein specified. Upon receipt of the approvals from all state agencies and other agencies, the local agent shall act upon a plat within 35 days.

C. If the commission or other agent fails to approve or disapprove the plat within 60 days after it has been officially submitted for approval, or within 45 days after it has been officially resubmitted after a previous disapproval or within 35 days of receipt of any agency response pursuant to subsection B, the subdivider, after 10-days' written notice to the commission, or agent, may petition the circuit court for the locality in which the land involved, or the major part thereof, is located, to decide whether the plat should or should not be approved. The court shall give the petition priority on the civil docket, hear the matter expeditiously in accordance with the procedures prescribed in Article 2 (§ 8.01-644 et seq.) of Chapter 25 of Title 8.01 and make and enter an order with respect thereto as it deems proper, which may include directing approval of the plat.

D. If a commission or other agent disapproves a plat and the subdivider contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the case as soon as may be, provided that his appeal is filed with the circuit court within 60 days of the written disapproval by the commission or other agent.

Code 1950, §§ 15-789, 15-967.10; 1952, c. 333; 1962, c. 407, § 15.1-475; 1964, c. 498; 1975, c. 641; 1977, c. 10; 1978, c. 283; 1979, c. 111; 1980, c. 73; 1986, c. 483; 1989, cc. 471, 495; 1990, c. 171; 1992, c. 843; 1993, c. 846; 1996, c. 353; 1997, c. 587; 2003, c. 716; 2007, c. 202; 2008, c. 855; 2015, c. 420; 2018, c. 670.

§ 15.2-2260. Localities may provide for submission of preliminary subdivision plats; how long valid

A. Nothing in this article shall be deemed to prohibit the local governing body from providing in its ordinance for the mandatory submission of preliminary subdivision plats for tentative approval for plats involving more than 50 lots, provided that any such ordinance provides for the submission of a preliminary subdivision plat for tentative approval at the option of the landowner for plats involving 50 or fewer lots. The local planning commission, or an agent designated by the commission or by the governing body to review preliminary subdivision plats shall complete action on the preliminary subdivision plats within 60 days of submission. However, if approval of a feature or features of the preliminary subdivision plat by a state agency or public authority authorized by state law is necessary, the commission or agent shall forward the preliminary subdivision plat to the appropriate state agency or agencies for review within 10 business days of receipt of such preliminary subdivision plat.

B. Any state agency or public authority authorized by state law making a review of a preliminary subdivision plat forwarded to it under this section, including, without limitation, the Virginia Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.), shall complete its review within 45 days of receipt of the preliminary subdivision plat upon first submission and within 45 days for any proposed plat that has previously been

disapproved, provided, however, that the time period set forth in § 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow use of public rights-of-way for public street purposes for placement of utilities by permit when practical and shall not unreasonably deny plat approval. If a state agency or public authority authorized by state law does not approve the plat, it shall comply with the requirements, and be subject to the restrictions, set forth in subsection A of § 15.2-2259 with the exception of the time period therein specified. Upon receipt of the approvals from all state agencies, the local agent shall act upon a preliminary subdivision plat within 35 days.

C. If a commission has the responsibility of review of preliminary subdivision plats and conducts a public hearing, it shall act on the plat within 45 days after receiving approval from all state agencies. If the local agent or commission does not approve the preliminary subdivision plat, the local agent or commission shall set forth in writing the reasons for such denial and shall state what corrections or modifications will permit approval by such agent or commission. With regard to plats involving commercial property, as that term is defined in subdivision A 2 of § 15.2-2259, the review process for such plats shall be the same as provided in subdivisions A 2 and A 3 of § 15.2-2259. However, no commission or agent shall be required to approve a preliminary subdivision plat in less than 60 days from the date of its original submission to the commission or agent, and all actions on preliminary subdivision plats shall be completed by the agent or commission and, if necessary, state agencies, within a total of 90 days of submission to the local agent or commission.

D. If the commission or other agent fails to approve or disapprove the preliminary subdivision plat within 90 days after it has been officially submitted for approval, the subdivider after 10 days' written notice to the commission, or agent, may petition the circuit court for the locality in which the land involved, or the major part thereof, is located to enter an order with respect thereto as it deems proper, which may include directing approval of the plat.

E. If a commission or other agent disapproves a preliminary subdivision plat and the subdivider contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the case as soon as may be, provided that his appeal is filed with the circuit court within 60 days of the written disapproval by the commission or other agent.

F. Once a preliminary subdivision plat is approved, it shall be valid for a period of five years, provided the subdivider (i) submits a final subdivision plat for all or a portion of the property within one year of such approval or such longer period as may be prescribed by local ordinance, and (ii) thereafter diligently pursues approval of the final subdivision plat. "Diligent pursuit of approval" means that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted final subdivision plat or modifications thereto. However, no sooner than three years following such preliminary subdivision plat approval, and upon 90 days' written notice by certified mail to the subdivider, the commission or other agent may revoke such approval upon a specific finding of facts that the subdivider has not diligently pursued approval of the final subdivision plat.

G. Once an approved final subdivision plat for all or a portion of the property is recorded pursuant to § 15.2-2261, the underlying preliminary plat shall remain valid for a period of five years from the date of the latest recorded plat of subdivision for the property. The five year period of validity shall extend from the date of the last recorded plat.

Code 1950, §§ 15-789, 15-967.10; 1952, c. 333; 1962, c. 407, § 15.1-475; 1964, c. 498; 1975, c. 641; 1977, c. 10; 1978, c. 283; 1979, c. 111; 1980, c. 73; 1986, c. 483; 1989, cc. 471, 495; 1990, c. 171; 1992, c. 843; 1993, c. 846; 1996, c. 353; 1997, c. 587; 2002, c. 530; 2006, c. 461; 2007, c. 202; 2008, cc. 426, 718, 855; 2009, c. 194; 2014, c. 393.

§ 15.2-2261. Recorded plats or final site plans to be valid for not less than five years

A. An approved final subdivision plat which has been recorded or an approved final site plan, hereinafter referred to as "recorded plat or final site plan," shall be valid for a period of not less than five years from the date of approval thereof or for such longer period as the local planning commission or other agent may, at the time of approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development. A site plan shall be deemed final once it has been reviewed and approved by the locality if the only requirements remaining to be satisfied in order to obtain a building permit are the posting of any bonds and escrows or the submission of any other administrative documents, agreements, deposits, or fees required by the locality in order to obtain the permit. However, any fees that are customarily due and owing at the time of the agency review of the site plan shall be paid in a timely manner.

B. 1. Upon application of the subdivider or developer filed prior to expiration of a recorded plat or final site plan, the local planning commission or other agent may grant one or more extensions of such approval for additional periods as the commission or other agent may, at the time the extension is granted, determine to be reasonable, taking into consideration the size and phasing of the proposed development, the laws, ordinances and regulations in effect at the time of the request for an extension.

2. If the commission or other agent denies an extension requested as provided herein and the subdivider or developer contends that such denial was not properly based on the ordinance applicable thereto, the foregoing considerations for granting an extension, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of land subject to the recorded plat or final site plan, provided that such appeal is filed with the circuit court within sixty days of the written denial by the commission or other agency.

C. For so long as the final site plan remains valid in accordance with the provisions of this section, or in the case of a recorded plat for five years after approval, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy or plan adopted subsequent to the date of approval of the recorded plat or final site plan shall adversely affect the right of the subdivider or developer or his successor in interest to commence and complete an approved development in accordance with the lawful terms of the recorded plat or site plan unless the change or amendment is required to comply with state law or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety or welfare.

D. Application for minor modifications to recorded plats or final site plans made during the periods of validity of such plats or plans established in accordance with this section shall not constitute a waiver of the provisions hereof nor shall the approval of minor modifications extend the period of validity of such plats or plans.

E. The provisions of this section shall be applicable to all recorded plats and final site plans valid on or after January 1, 1992. Nothing contained in this section shall be construed to affect (i) any litigation concerning the validity of a site plan pending prior to January 1, 1992, or any such litigation nonsuited and thereafter refiled; (ii) the authority of a governing body to impose valid conditions upon approval of any special use permit, conditional use permit or special exception; (iii) the application to individual lots on recorded plats or parcels of land subject to final site plans, to the greatest extent possible, of the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.); or (iv) the application to individual lots on recorded plats or parcels of land subject to final site plans of the provisions of any local ordinance adopted to comply with the requirements of the federal Clean Water Act, Section 402 (p.) of the Stormwater Program and regulations promulgated thereunder by the Environmental Protection Agency.

F. An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), or a recorded plat dedicating real property to the local jurisdiction or public body that has been accepted by such grantee, shall remain valid for an indefinite period of time unless and until any portion of the property is subject to a vacation action as set forth in §§ 15.2-2270 through 15.2-2278.

Code 1950, §§ 15-789, 15-967.10; 1952, c. 333; 1962, c. 407, § 15.1-475; 1964, c. 498; 1975, c. 641; 1977, c. 10; 1978, c. 283; 1979, c. 111; 1980, c. 73; 1986, c. 483; 1989, cc. 471, 495; 1990, c. 171; 1992, c. 843; 1993, c. 846; 1996, c. 353; 1997, c. 587; 2008, c. 426; 2013, c. 509; 2020, c. 138.

§ 15.2-2261.1. Recorded plat or final site plans; conflicting zoning conditions

If the provisions of a recorded plat or final site plan, which was specifically determined by the governing body and not its designee, to be in accordance with the zoning conditions previously approved pursuant to §§ 15.2-2296 through 15.2-2303, conflict with any underlying zoning conditions of such previous rezoning approval, the provisions of the recorded plat or final site plan shall control, and the zoning amendment notice requirements of § 15.2-2204 shall be deemed to have been satisfied.

2002, c. 551.

§ 15.2-2262. Requisites of plat

Every subdivision plat which is intended for recording shall be prepared by a certified professional engineer or land surveyor, who shall endorse upon each plat a certificate signed by him setting forth the source of title of the owner of the land subdivided and the place of record of the last instrument in the chain of title. When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon the plat. However, nothing herein shall be deemed to prohibit the preparation of preliminary studies, plans or plats of a proposed subdivision by the owner of the land, city planners, land planners, architects, landscape architects or others having training or experience in subdivision planning or design.

Code 1950, §§ 15-790, 15-967.11; 1962, c. 407, § 15.1-476; 1997, c. 587.

§ 15.2-2263. Expedited land development review procedure

A. The Counties of Hanover, Loudoun, Montgomery, Prince William, and Roanoke, and the Town of Leesburg, may establish, by ordinance, a separate processing procedure for the review of preliminary and final subdivision and site plans and other development plans certified by licensed professional engineers, licensed architects, licensed land surveyors, and landscape architects who are also licensed pursuant to § 54.1-408 and recommended for submission by persons who have received special training in the locality's land development ordinances and regulations. The purpose of the separate review procedure is to provide a procedure to expedite the locality's review of certain qualified land development plans. If a separate procedure is established, the locality shall establish within the adopted ordinance the criteria for qualification of persons and whose work is eligible to use the separate procedure as well as a procedure for determining if the qualifications are met by persons applying to use the separate procedure. Persons who satisfy the criteria of subsection B below shall qualify as plans examiners. Plans reviewed and recommended for submission by plans examiners and certified by the appropriately licensed professional engineer, licensed architect, licensed land surveyor, or landscape architect shall qualify for the separate processing procedure.

B. The qualifications of those persons who may participate in this program shall include, but not be limited to, the following:

1. A bachelor of science degree in engineering, architecture, landscape architecture or related science or equivalent experience or a licensed land surveyor pursuant to § 54.1-408.

2. Successful completion of an educational program specified by the locality.

3. A minimum of two years of land development engineering design experience acceptable to the locality.

4. Attendance at continuing educational courses specified by the locality.

5. Consistent preparation and submission of plans which meet all applicable ordinances and regulations.

C. If an expedited review procedure is adopted by the board of supervisors or town council pursuant to the authority granted by this section, the board of supervisors or town council shall establish an advisory plans examiner board, which shall make recommendations to the board of supervisors or town council on the general operation of the program, on the general qualifications of those who may participate in the expedited processing procedure, on initial and continuing educational programs needed to qualify and maintain qualification for such a program and on the general administration and operation of the program. In addition, the plans examiner board shall submit recommendations to the board of supervisors or town council as to those persons who meet the established qualifications for participation in the program, and the plans examiner board shall submit recommendations as to whether those persons who have previously qualified to participate in the program should be disqualified, suspended or otherwise disciplined. The plans examiner board shall consist of six members who shall be appointed by the board of supervisors or town council for staggered four-year terms. Initial terms may be less than four years so as to provide for staggered terms. The plans examiner board shall consist of three persons in private practice as licensed professional engineers or licensed land surveyors pursuant to § 54.1-408, at least one of whom shall be a licensed land surveyor; one person employed by the government of the locality; one person employed by the Virginia Department of Transportation who shall serve as a nonvoting advisory member; and one citizen member. All members of the board who serve as licensed engineers or as licensed surveyors must maintain their professional license as a condition of holding office and shall have at least two years of experience in land development procedures of the locality. The citizen member of the board shall meet the qualifications provided in § 54.1-107 and,

notwithstanding the proscription of clause (i) of § 54.1-107, shall have training as an engineer or surveyor and may be currently licensed or practicing his profession.

D. The expedited land development program shall include an educational program conducted under the auspices of a public institution of higher education. The instructors in the educational program shall consist of persons in the private and public sectors who are qualified to prepare land development plans. The educational program shall include the comprehensive and detailed study of local ordinances and regulations relating to plans and how they are applied.

E. The separate processing system may include a review of selected or random aspects of plans rather than a detailed review of all aspects; however, it shall also include a periodic detailed review of plans prepared by persons who qualify for the system.

F. In no event shall this section relieve persons who prepare and submit plans of the responsibilities and obligations that they would otherwise have with regard to the preparation of plans, nor shall it relieve the locality of its obligation to review other plans in the time periods and manner prescribed by law.

1991, c. 444, § 15.1-501.1; 1997, c. 587; 2007, c. 813; 2009, cc. 214, 309, 518.

§ 15.2-2264. Statement of consent to subdivision; execution; acknowledgment and recordation; notice to commissioner of the revenue or board of real estate assessors

Every plat, or deed of dedication to which the plat is attached, shall contain in addition to the professional engineer's or land surveyor's certificate a statement as follows: "The platting or dedication of the following described land (here insert a correct description of the land subdivided) is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any." The statement shall be signed and duly acknowledged before an officer authorized to take acknowledgment of deeds. When thus executed and acknowledged, the plat, subject to the provisions herein, shall be filed and recorded in the office of the clerk of the circuit court for the lands contained in the plat, and indexed in the general index to deeds under the names of the owners of lands signing the statement, and under the name of the subdivision. Owners shall notify the appropriate commissioner of the revenue of improvements to real property situated in platted subdivisions.

Code 1950, §§ 15-791, 15-967.12; 1954, c. 421; 1962, c. 407, § 15.1-477; 1992, c. 581; 1997, c. 587.

§ 15.2-2265. Recordation of approved plat as transfer of streets, termination of easements and rights-of-way, etc

The recordation of an approved plat shall operate to transfer, in fee simple, to the respective localities in which the land lies the portion of the premises platted as is on the plat set apart for streets, alleys or other public use and to transfer to the locality any easement indicated on the plat to create a public right of passage over the land. The recordation of such plat shall operate to transfer to the locality, or to such association or public authority as the locality may provide, such easements shown on the plat for the conveyance of stormwater, domestic water and sewage, including the installation and maintenance of any facilities utilized for such purposes, as the locality may require. Nothing contained in this article shall affect any right of a subdivider of land heretofore validly reserved. The clerk shall index in the name of all the owners of property affected by the recordation in the grantor's index any plat recorded under this section. Nothing in this section shall obligate the locality, association or authority to install or maintain such facilities unless otherwise agreed to by the locality, association or authority.

When the authorized officials of a locality within which land is located, approve in accordance with the subdivision ordinances of the locality a plat or replat of land therein, then upon the recording of the plat or replat in the circuit court clerk's office, all rights-of-way, easements or other interest of the locality in the land included on the plat or replat, except as shown thereon, shall be terminated and extinguished, except that an interest acquired by the locality by condemnation, by purchase for valuable consideration and evidenced by a separate instrument of record, or streets, alleys or easements for public passage subject to the provisions of § 15.2-2271 or 15.2-2272 shall not be affected thereby. All public easements, except those for public passage, easements containing improvements, those that contain private utility facilities, common or shared easements for the use of franchised cable operators and public service corporations, may be relocated by recordation of plat or replat signed by the owner of the real property, approved by an authorized official of a locality, regardless of the manner of acquisition or the type of instrument used to dedicate the original easement. In the

event the purpose of the easement is to convey stormwater drainage from a public roadway, the entity responsible for the operation of the roadway shall first determine that the relocation does not threaten either the integrity of the roadway or public passage. The clerk shall index the locality as grantor of any easement or portion thereof terminated and extinguished under this section.

Code 1950, §§ 15-792, 15-967.13; 1958, c. 460; 1962, c. 407, § 15.1-478; 1964, c. 564; 1974, c. 530; 1978, c. 590; 1995, cc. 431, 662; 1997, c. 587; 2000, c. 165; 2005, c. 937.

§ 15.2-2266. Validation of certain plats recorded before January 1, 1975

Any subdivision plat recorded prior to January 1, 1975, if otherwise valid, is hereby validated and declared effective even though the technical requirements for recordation existing at the time such plat was recorded were not complied with.

1968, c. 279, § 15.1-478.1; 1997, c. 587; 2007, c. 279.

§ 15.2-2267. Petition to restrict access to certain public streets

Notwithstanding the provisions of § 15.2-2265, when the streets in a subdivision have not been accepted into the highway system and serve only, or are primarily for, the general welfare of the inhabitants of the subdivision and do not serve as a connector to other public rights-of-way, then upon petition to the governing body of the locality, signed by the owners of two-thirds of the subdivision lots, including the subdivider if he has an interest in the subdivision, requesting that they be allowed to restrict ingress and egress to the subdivision, the governing body may permit the restriction subject to the following conditions:

1. The restriction may be abolished at any time in the sole discretion of the governing body,

2. The restriction shall not be asserted in opposition to the public ownership,

3. The streets shall not be blocked to ingress and egress of government or public service company vehicles,

4. Necessary maintenance of the streets will be paid for by the owners, and

5. Such other conditions as may be imposed by the governing body.

1980, c. 358, § 15.1-478.2; 1997, c. 587.

§ 15.2-2268. Localities not obligated to pay for grading, paving, etc

Nothing herein shall be construed as creating an obligation upon any locality to pay for grading or paving, or for sidewalk, sewer, curb and gutter improvements or construction.

Code 1950, § 15-967.14; 1962, c. 407, § 15.1-479; 1997, c. 587.

§ 15.2-2269. Plans and specifications for utility fixtures and systems to be submitted for approval

A. If the owners of any such subdivision desire to construct in, on, under, or adjacent to any streets or alleys located in such subdivision any gas, water, sewer or electric light or power works, pipes, wires, fixtures or systems, they shall present plans or specifications therefor to the governing body of the locality in which the subdivision is located or its authorized agent, for approval. If the subdivision is located beyond the corporate limits of a municipality but within the limits set forth in § 15.2-2248, such plans and specifications shall be presented for approval to the governing body of such municipality, or its authorized agent, if the county has not adopted a subdivision ordinance. The governing body, or agent, shall have 45 days in which to approve or disapprove the same. In event of the failure of any governing body, or its agent, to act within such period, such plans and specifications may be submitted, after ten days' notice to the locality, to the circuit court for such locality for its approval or disapproval, and its approval thereof shall, for all purposes of this article be treated and considered as approval by the locality or its authorized agent.

B. Any state agency or public authority authorized by state law making a review of any plat forwarded to it under this article, including, without limitation, the Virginia Department of Transportation and authorities authorized by Chapter 51

(§ 15.2-5100 et seq.), shall complete its review within 45 days of receipt of the plans, provided, however, that the time periods set forth in § 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow use of public rights-of-way dedicated for public street purposes for placement of utilities by permit when practical and shall not unreasonably deny plan approval. If a state agency or public authority by state law does not approve the plan, it shall comply with the requirements, and be subject to the restrictions, set forth in subsection A of § 15.2-2259, with respect to the exception of the time period therein specified. Upon receipt of the approvals from all state agencies, the local agent shall act upon a preliminary subdivision plat within 35 days.

Code 1950, § 15-967.15; 1962, c. 407, § 15.1-480; 1997, c. 587; 2007, c. 202; 2008, c. 718.

§ 15.2-2270. Vacation of interests granted to a locality as a condition of site plan approval

Any interest in streets, alleys, easements for public rights of passage, easements for drainage, and easements for a public utility granted to a locality as a condition of the approval of a site plan may be vacated according to either of the following methods:

1. By a duly executed and acknowledged written instrument of the owner of the land which has been or is to be developed in accordance with the site plan, declaring the interest or interests to be vacated, provided the governing body or authorized agent of the locality where the land lies consents to the vacation. The instrument shall be recorded in the same clerk's office wherein is recorded the written instrument describing the interest in real property to be vacated. The execution and recordation of the instrument shall operate to divest all public rights in, and to reinvest the owner with the title to the interests which formerly were held by the governing body; or

2. By ordinance of the governing body in the locality in which the property which is the subject of an approved site plan lies, provided that no interest shall be vacated in an area in which facilities, for which bonding is required pursuant to §§ 15.2-2241 through 15.2-2245, have been constructed.

The ordinance shall not be adopted until after notice has been given as required by § 15.2-2204. The notice shall clearly describe the interest of the governing body to be vacated by reference to the recorded instrument on which it was created and state the time and place of the meeting of the governing body at which the adoption of the ordinance will be voted upon. Any person may appear at the meeting for the purpose of objecting to the adoption of the ordinance. An appeal from the adoption of the ordinance may be filed within thirty days of the adoption of the ordinance with the circuit court having jurisdiction of the land over which the governing body's interest is located. Upon appeal, the court may nullify the ordinance if it finds that the owner of the property, which has been developed or is to be developed in accordance with the approved site plan, will be irreparably damaged. If no appeal from the adoption of the ordinance is filed within the time above provided or if the ordinance is upheld on appeal, a certified copy of the ordinance of vacation may be recorded in the clerk's office of any court in which the instrument creating the governing body's interest is recorded.

The execution and recordation of an ordinance of vacation shall operate to destroy the effect of the instrument which created the governing body's interest so vacated and to divest all public rights in and to the property and vest title in the streets, alleys, easements for public rights of passage, easements for drainage, and easements for a public utility as may be described in, and in accordance with, the ordinance of vacation.

1990, c. 813, § 15.1-480.1; 1997, c. 587.

§ 15.2-2271. Vacation of plat before sale of lot therein; ordinance of vacation

Where no lot has been sold, the recorded plat, or part thereof, may be vacated according to either of the following methods:

1. With the consent of the governing body, or its authorized agent, of the locality where the land lies, by the owners, proprietors and trustees, if any, who signed the statement required by § 15.2-2264 at any time before the sale of any lot therein, by a written instrument, declaring the plat to be vacated, duly executed, acknowledged or proved and recorded in the same clerk's office wherein the plat to be vacated is recorded and the execution and recordation of such writing shall operate to destroy the force and effect of the recording of the plat so vacated and to divest all public rights in, and to

reinvest the owners, proprietors and trustees, if any, with the title to the streets, alleys, easements for public passage and other public areas laid out or described in the plat; or

2. By ordinance of the governing body of the locality in which the property shown on the plat or part thereof to be vacated lies, provided that no facilities for which bonding is required pursuant to §§ 15.2-2241 through 15.2-2245 have been constructed on the property and no facilities have been constructed on any related section of the property located in the subdivision within five years of the date on which the plat was first recorded.

The ordinance shall not be adopted until after notice has been given as required by § 15.2-2204. The notice shall clearly describe the plat or portion thereof to be vacated and state the time and place of the meeting of the governing body at which the adoption of the ordinance will be voted upon. Any person may appear at the meeting for the purpose of objecting to the adoption of the ordinance. An appeal from the adoption of the ordinance may be filed within thirty days of the adoption of the ordinance with the circuit court having jurisdiction of the land shown on the plat or part thereof to be vacated. Upon appeal the court may nullify the ordinance if it finds that the owner of the property shown on the plat will be irreparably damaged. If no appeal from the adoption of the ordinance is filed within the time above provided or if the ordinance is upheld on appeal, a certified copy of the ordinance of vacation may be recorded in the clerk's office of any court in which the plat is recorded.

The execution and recordation of the ordinance of vacation shall operate to destroy the force and effect of the recording of the plat, or any portion thereof, so vacated, and to divest all public rights in and to the property and reinvest the owners, proprietors and trustees, if any, with the title to the streets, alleys, and easements for public passage and other public areas laid out or described in the plat.

Code 1950, §§ 15-793, 15-967.16; 1950, p. 722; 1962, c. 407, § 15.1-481; 1964, c. 564; 1987, c. 404; 1997, c. 587.

§ 15.2-2272. Vacation of plat after sale of lot

In cases where any lot has been sold, the plat or part thereof may be vacated according to either of the following methods:

1. By instrument in writing agreeing to the vacation signed by all the owners of lots shown on the plat and also signed on behalf of the governing body of the locality in which the land shown on the plat or part thereof to be vacated lies for the purpose of showing the approval of the vacation by the governing body. In cases involving drainage easements or street rights-of-way where the vacation does not impede or alter drainage or access for any lot owners other than those lot owners immediately adjoining or contiguous to the vacated area, the governing body shall only be required to obtain the signatures of the lot owners immediately adjoining or contiguous to the vacated area. The word "owners" shall not include lien creditors except those whose debts are secured by a recorded deed of trust or mortgage and shall not include any consort of an owner. The instrument of vacation shall be acknowledged in the manner of a deed and filed for record in the clerk's office of any court in which the plat is recorded.

2. By ordinance of the governing body of the locality in which the land shown on the plat or part thereof to be vacated lies on motion of one of its members or on application of any interested person. The ordinance shall not be adopted until after notice has been given as required by § 15.2-2204. The notice shall clearly describe the plat or portion thereof to be vacated and state the time and place of the meeting of the governing body at which the adoption of the ordinance will be voted upon. Any person may appear at the meeting for the purpose of objecting to the adoption of the ordinance. An appeal from the adoption of the ordinance may be filed within thirty days with the circuit court having jurisdiction of the land shown on the plat or part thereof to be vacated. Upon appeal the court may nullify the ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged. If no appeal from the adoption of the ordinance is filed within the time above provided or if the ordinance is upheld on appeal, a certified copy of the ordinance of vacation may be recorded in the clerk's office of any court in which the plat is recorded.

Roads within the secondary system of highways may be vacated under either of the preceding methods and the action will constitute abandonment of the road, provided the land shown on the plat or part thereof to be vacated has been the subject of a rezoning or special exception application approved following public hearings required by § 15.2-2204 and provided the Commissioner of Highways or his agent is notified in writing prior to the public hearing, and provided further that the vacation is necessary in order to implement a proffered condition accepted by the governing body pursuant to §§ 15.2-2297, 15.2-2298 or 15.2-2303 or to implement a condition of special exception approval. All

abandonments of roads within the secondary system of highways sought to be effected according to either of the preceding methods before July 1, 1994, are hereby validated, notwithstanding any defects or deficiencies in the proceeding; however, property rights which have vested subsequent to the attempted vacation are not impaired by such validation. The manner of reversion shall not be affected by this section.

Code 1950, §§ 15-793, 15-967.17; 1950, p. 722; 1962, c. 407, § 15.1-482; 1975, c. 641; 1990, c. 719; 1994, c. 341; 1997, c. 587.

§ 15.2-2273. Fee for processing application under § 15.2-2271 or § 15.2-2272

Any locality may prescribe and charge a reasonable fee not exceeding $150 for processing an application pursuant to § 15.2-2271 or § 15.2-2272 for the vacating of any plat.

1970, c. 161, § 15.1-482.1; 1975, c. 641; 1978, c. 554; 1984, c. 285; 1997, c. 587.

§ 15.2-2274. Effect of vacation under § 15.2-2272

The recordation of the instrument as provided under subdivision 1 of § 15.2-2272 or of the ordinance as provided under subdivision 2 of § 15.2-2272 shall operate to destroy the force and effect of the recording of the plat or part thereof so vacated, and to vest fee simple title to the centerline of any streets, alleys or easements for public passage so vacated in the owners of abutting lots free and clear of any rights of the public or other owners of lots shown on the plat, but subject to the rights of the owners of any public utility installations which have been previously erected therein. If any street, alley or easement for public passage is located on the periphery of the plat, the title for the entire width thereof shall vest in the abutting lot owners. The fee simple title to any portion of the plat so vacated as was set apart for other public use shall be revested in the owners, proprietors and trustees, if any, who signed the statement required by § 15.2-2264 free and clear of any rights of public use in the same.

Code 1950, §§ 15-793, 15-967.18; 1950, p. 722; 1962, c. 407, § 15.1-483; 1964, c. 564; 1997, c. 587.

§ 15.2-2275. Relocation or vacation of boundary lines

Any locality may provide, as a part of its subdivision ordinance, that the boundary lines of any lot or parcel of land may be vacated, relocated or otherwise altered as a part of an otherwise valid and properly recorded plat of subdivision or resubdivision (i) approved as provided in the subdivision ordinance or (ii) properly recorded prior to the applicability of a subdivision ordinance, and executed by the owner or owners of the land as provided in § 15.2-2264. The action shall not involve the relocation or alteration of streets, alleys, easements for public passage, or other public areas. No easements or utility rights-of-way shall be relocated or altered without the express consent of all persons holding any interest therein.

Alternatively, a locality may allow the vacating of lot lines by recordation of a deed providing that no easements or utility rights-of-way located along any lot lines to be vacated shall be extinguished or altered without the express consent of all persons holding any interest therein. The deed shall be approved in writing, on its face, by the local governing body or its designee. The deed shall reference the recorded plat by which the lot line was originally created.

1982, c. 294, § 15.1-483.1; 1993, c. 121; 1997, cc. 524, 545, 587; 2005, c. 338.

§ 15.2-2276. Duty of clerk when plat vacated

The clerk in whose office any plat so vacated has been recorded shall write in plain legible letters across such plat, or the part thereof so vacated, the word "vacated," and also make a reference on the plat to the volume and page in which the instrument of vacation is recorded.

Code 1950, §§ 15-794, 15-967.20; 1962, c. 407, § 15.1-485; 1997, c. 587.

§ 15.2-2277. Franklin County may require that notice be given to deed grantees of certain disclaimers regarding responsibility for roads; county eligible to have certain streets taken into secondary system

Franklin County may by ordinance require that the clerk of the circuit court for the county, when a division of land creates any parcels equal to or greater than five acres, notify every grantee shown on the recorded deed for such parcel (i) that any roads constructed to serve parcels of five acres or more will not be accepted by the Virginia Department of Transportation or by the county unless the roads meet applicable subdivision street standards of the Department and (ii) that neither the Department nor the county will maintain such roads until such time as the roads are brought into compliance with applicable subdivision street standards of the Department in effect at the time and without cost to funds administered by the Department or the county. The notice shall be by first-class mail to the address shown on the recorded deed.

The county shall be deemed to have met the definition of "county" pursuant to § 33.2-335 upon adoption of such ordinance and shall be eligible to have certain streets taken into the secondary system pursuant to § 33.2-335 without additional action being necessitated with regard to subdivision ordinances.

1990, c. 906, § 15.1-465.1; 1997, c. 587.

§ 15.2-2278. Vacating plat of subdivision

Any plat of subdivision recorded in any clerk's office, whether or not pursuant to this article, may be vacated in the manner prescribed by § 15.2-2272 and the provisions of §§ 15.2-2274 and 15.2-2276 shall be applicable to such vacation.

1964, c. 564, § 15.1-365; 1997, c. 587.

§ 15.2-2279. Ordinances regulating the building of houses and establishing setback lines

Any locality may by ordinance regulate the building of houses in the locality including the adoption of off-street parking requirements, minimum setbacks and side yards and the establishment of minimum lot sizes.

Any locality may by ordinance require that no building be constructed within thirty-five feet of any street or roadway and may provide for exceptions to such requirement whenever a large portion of existing buildings along a section of street or roadway is within thirty-five feet of such street or roadway. The provisions of such an ordinance shall not apply within the limits of any town which has enacted a zoning ordinance or has adopted an ordinance establishing minimum setbacks.

1970, c. 452, § 15.1-29.2; 1987, c. 399; 1997, c. 587.

Article 7. Zoning

§ 15.2-2280. Zoning ordinances generally

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;

2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;

3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or

4. The excavation or mining of soil or other natural resources.

Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.

§ 15.2-2281. Jurisdiction of localities

For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

Code 1950, §§ 15-819, 15-844, 15-968; 1962, c. 407, § 15.1-486; 1966, c. 344; 1969, Ex. Sess., c. 1; 1972, c. 789; 1975, c. 641; 1997, c. 587.

§ 15.2-2282. Regulations to be uniform

All zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district, but the regulations in one district may differ from those in other districts.

Code 1950, §§ 15-820, 15-845, 15-968.2; 1962, c. 407, § 15.1-488; 1997, c. 587.

§ 15.2-2283. Purpose of zoning ordinances

Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to protect against destruction of or encroachment upon historic areas and working waterfront development areas; (vi) to protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers; (vii) to encourage economic development activities that provide desirable employment and enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment; (ix) to protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities; (x) to promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated; (xi) to provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard; and (xii) to provide reasonable modifications in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.) or state and federal fair housing laws, as applicable. Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in § 62.1-255.

Code 1950, §§ 15-821, 15-968.3; 1962, c. 407, § 15.1-489; 1966, c. 344; 1968, c. 407; 1975, c. 641; 1976, c. 642; 1980, c. 321; 1983, c. 439; 1988, c. 439; 1989, cc. 447, 449; 1990, cc. 19, 169, 384; 1992, c. 812; 1993, cc. 758, 884; 1997, c. 587; 2004, c. 799; 2008, c. 491; 2017, c. 216; 2018, c. 757.

§ 15.2-2283.1. Prohibition of sexual offender treatment office in residentially zoned subdivision

Notwithstanding any other provision of law, no individual shall knowingly provide sex offender treatment services to a person required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 in an office or similar facility located in a residentially zoned subdivision.

2007, c. 878; 2020, c. 829.

§ 15.2-2284. Matters to be considered in drawing and applying zoning ordinances and districts

Zoning ordinances and districts shall be drawn and applied with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by

population and economic studies and other studies, the transportation requirements of the community, the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services, the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agricultural and forestal land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality.

Code 1950, §§ 15-821, 15-968.4; 1962, c. 407, § 15.1-490; 1966, c. 344; 1974, c. 526; 1978, c. 279; 1981, c. 418; 1983, c. 530; 1989, cc. 447, 449; 1997, c. 587; 2008, c. 491.

§ 15.2-2285. Preparation and adoption of zoning ordinance and map and amendments thereto; appeal

A. The planning commission of each locality may, and at the direction of the governing body shall, prepare a proposed zoning ordinance including a map or maps showing the division of the territory into districts and a text setting forth the regulations applying in each district. The commission shall hold at least one public hearing on a proposed ordinance or any amendment of an ordinance, after notice as required by § 15.2-2204, and may make appropriate changes in the proposed ordinance or amendment as a result of the hearing. Upon the completion of its work, the commission shall present the proposed ordinance or amendment including the district maps to the governing body together with its recommendations and appropriate explanatory materials.

B. No zoning ordinance shall be amended or reenacted unless the governing body has referred the proposed amendment or reenactment to the local planning commission for its recommendations. Failure of the commission to report 100 days after the first meeting of the commission after the proposed amendment or reenactment has been referred to the commission, or such shorter period as may be prescribed by the governing body, shall be deemed approval, unless the proposed amendment or reenactment has been withdrawn by the applicant prior to the expiration of the time period. The governing body shall hold at least one public hearing on a proposed reduction of the commission's review period. The governing body shall publish a notice of the public hearing in a newspaper having general circulation in the locality at least two weeks prior to the public hearing date and shall also publish the notice on the locality's website, if one exists. In the event of and upon such withdrawal, processing of the proposed amendment or reenactment shall cease without further action as otherwise would be required by this subsection.

C. Before approving and adopting any zoning ordinance or amendment thereof, the governing body shall hold at least one public hearing thereon, pursuant to public notice as required by § 15.2-2204, after which the governing body may make appropriate changes or corrections in the ordinance or proposed amendment. In the case of a proposed amendment to the zoning map, the public notice shall state the general usage and density range of the proposed amendment and the general usage and density range, if any, set forth in the applicable part of the comprehensive plan. However, no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice required by § 15.2-2204. Zoning ordinances shall be enacted in the same manner as all other ordinances.

D. Any county which has adopted an urban county executive form of government provided for under Chapter 8 (§ 15.2-800 et seq.) may provide by ordinance for use of plans, profiles, elevations, and other such demonstrative materials in the presentation of requests for amendments to the zoning ordinance.

E. The adoption or amendment prior to March 1, 1968, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise, give notice or conduct more than one public hearing as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to the adoption or amendment.

F. Every action contesting a decision of the local governing body adopting or failing to adopt a proposed zoning ordinance or amendment thereto or granting or failing to grant a special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision. However, nothing in this subsection shall be construed to create any new right to contest the action of a local governing body.

Code 1950, §§ 15-822, 15-846, 15-968.7; 1962, c. 407, § 15.1-493; 1964, c. 279; 1968, c. 652; 1970, c. 216; 1972, c. 818; 1975, c. 641; 1984, c. 175; 1988, cc. 573, 733, 856; 1989, c. 359; 1990, c. 475; 1991, c. 235; 1996, c. 867; 1997, c. 587; 2019, c. 483.

§ 15.2-2286. Permitted provisions in zoning ordinances; amendments; applicant to pay delinquent taxes; penalties

A. A zoning ordinance may include, among other things, reasonable regulations and provisions as to any or all of the following matters:

1. For variances or special exceptions, as defined in § 15.2-2201, to the general regulations in any district.

2. For the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation or otherwise, subsequent to the adoption of the zoning ordinance, and pending the orderly amendment of the ordinance.

3. For the granting of special exceptions under suitable regulations and safeguards; notwithstanding any other provisions of this article, the governing body of any locality may reserve unto itself the right to issue such special exceptions. Conditions imposed in connection with residential special use permits, wherein the applicant proposes affordable housing, shall be consistent with the objective of providing affordable housing. When imposing conditions on residential projects specifying materials and methods of construction or specific design features, the approving body shall consider the impact of the conditions upon the affordability of housing.

The governing body or the board of zoning appeals of the Cities of Hampton and Norfolk may impose a condition upon any special exception or use permit relating to retail alcoholic beverage control licensees which provides that such special exception or use permit will automatically expire upon a change of ownership of the property, a change in possession, a change in the operation or management of a facility, or the passage of a specific period of time.

The governing body of the City of Richmond may impose a condition upon any special use permit issued after July 1, 2000, relating to retail alcoholic beverage licensees which provides that such special use permit shall be subject to an automatic review by the governing body upon a change in possession, a change in the owner of the business, or a transfer of majority control of the business entity. Upon review by the governing body, it may either amend or revoke the special use permit after notice and a public hearing as required by § 15.2-2206.

4. For the administration and enforcement of the ordinance including the appointment or designation of a zoning administrator who may also hold another office in the locality. The zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance. His authority shall include (i) ordering in writing the remedying of any condition found in violation of the ordinance; (ii) insuring compliance with the ordinance, bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to § 15.2-2311; and (iii) in specific cases, making findings of fact and, with concurrence of the attorney for the governing body, conclusions of law regarding determinations of rights accruing under § 15.2-2307 or subsection C of § 15.2-2311.

Whenever the zoning administrator has reasonable cause to believe that any person has engaged in or is engaging in any violation of a zoning ordinance that limits occupancy in a residential dwelling unit, which is subject to a civil penalty that may be imposed in accordance with the provisions of § 15.2-2209, and the zoning administrator, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, he may request that the attorney for the locality petition the judge of the general district court for his jurisdiction for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

Notwithstanding the provisions of § 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations.

Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator

finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The zoning administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the zoning administrator shall constitute a decision within the purview of § 15.2-2311, and may be appealed to the board of zoning appeals as provided by that section. Decisions of the board of zoning appeals may be appealed to the circuit court as provided by § 15.2-2314.

The zoning administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his authority unless the requester has agreed to a longer period. If the decision or determination by the zoning administrator could impair the ability of an adjacent property owner to satisfy the minimum storage capacity and yield requirements for a residential drinking well pursuant to § 32.1-176.4 or any regulation adopted thereunder, the zoning administrator shall provide a copy of such decision or determination to such adjacent property owner so affected.

5. For the imposition of penalties upon conviction of any violation of the zoning ordinance. Any such violation shall be a misdemeanor punishable by a fine of not more than $1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not more than $1,000; any such failure during a succeeding 10-day period shall constitute a separate misdemeanor offense punishable by a fine of not more than $1,500; and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than $2,000.

However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to $2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to $5,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to $7,500. However, no such fine shall accrue against an owner or managing agent of a single-family residential dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an overcrowding condition in accordance with the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.). A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.

6. For the collection of fees to cover the cost of making inspections, issuing permits, advertising of notices and other expenses incident to the administration of a zoning ordinance or to the filing or processing of any appeal or amendment thereto.

7. For the amendment of the regulations or district maps from time to time, or for their repeal. Whenever the public necessity, convenience, general welfare, or good zoning practice requires, the governing body may by ordinance amend, supplement, or change the regulations, district boundaries, or classifications of property. Any such amendment may be initiated (i) by resolution of the governing body; (ii) by motion of the local planning commission; or (iii) by petition of the owner, contract purchaser with the owner's written consent, or the owner's agent therefor, of the property which is the subject of the proposed zoning map amendment, addressed to the governing body or the local planning commission, who shall forward such petition to the governing body; however, the ordinance may provide for the consideration of proposed amendments only at specified intervals of time, and may further provide that substantially the same petition will not be reconsidered within a specific period, not exceeding one year. Any such resolution or motion by such governing body or commission proposing the rezoning shall state the above public purposes therefor.

In any county having adopted such zoning ordinance, all motions, resolutions or petitions for amendment to the zoning ordinance, and/or map shall be acted upon and a decision made within such reasonable time as may be necessary which shall not exceed 12 months unless the applicant requests or consents to action beyond such period or unless the applicant withdraws his motion, resolution or petition for amendment to the zoning ordinance or map, or both. In the event of and

upon such withdrawal, processing of the motion, resolution or petition shall cease without further action as otherwise would be required by this subdivision.

8. For the submission and approval of a plan of development prior to the issuance of building permits to assure compliance with regulations contained in such zoning ordinance.

9. For areas and districts designated for mixed use developments or planned unit developments as defined in § 15.2-2201.

10. For the administration of incentive zoning as defined in § 15.2-2201.

11. For provisions allowing the locality to enter into a voluntary agreement with a landowner that would result in the downzoning of the landowner's undeveloped or underdeveloped property in exchange for a tax credit equal to the amount of excess real estate taxes that the landowner has paid due to the higher zoning classification. The locality may establish reasonable guidelines for determining the amount of excess real estate tax collected and the method and duration for applying the tax credit. For purposes of this section, "downzoning" means a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or density.

12. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

13. Provisions to incorporate generally accepted national environmental protection and product safety standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy) projects, such as those developed for existing product certifications and standards including the National Sanitation Foundation/American National Standards Institute No. 457, International Electrotechnical Commission No. 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and Underwriters Laboratories No. 61730-2.

14. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

15. For the enforcement of provisions of the zoning ordinance that regulate the number of persons permitted to occupy a single-family residential dwelling unit, provided such enforcement is in compliance with applicable local, state and federal fair housing laws.

16. For the issuance of inspection warrants by a magistrate or court of competent jurisdiction. The zoning administrator or his agent may make an affidavit under oath before a magistrate or court of competent jurisdiction and, if such affidavit establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant the zoning administrator or his agent an inspection warrant to enable the zoning administrator or his agent to enter the subject dwelling for the purpose of determining whether violations of the zoning ordinance exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the zoning administrator or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The zoning administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

B. Prior to the initiation of an application by the owner of the subject property, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent, for a special exception, special use permit, variance, rezoning or other land disturbing permit, including building permits and erosion and sediment control permits, or prior to the issuance of final approval, the authorizing body may require the applicant to produce satisfactory evidence that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute

a lien on the subject property, that are owed to the locality and have been properly assessed against the subject property, have been paid, unless otherwise authorized by the treasurer.

Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, cc. 529, 543, 587; 1998, c. 385; 1999, c. 792; 2000, cc. 764, 817; 2001, c. 240; 2002, cc. 547, 703; 2005, cc. 625, 677; 2006, cc. 304, 514, 533, 903; 2007, cc. 821, 937; 2008, cc. 297, 317, 343, 581, 593, 720, 777; 2009, c. 721; 2012, cc. 304, 318; 2014, c. 354; 2017, c. 398; 2018, c. 726; 2020, cc. 312, 402, 442, 443, 893, 894.

§ 15.2-2286.1. Provisions for clustering of single-family dwellings so as to preserve open space

A. The provisions of this section shall apply to any county or city that had a population growth rate of 10% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census. However, the requirements of this section shall not apply to any such county or city that has a population density of more than 2,000 people per square mile, according to the most recent report of the United States Bureau of the Census.

B. Any such locality shall provide in its zoning or subdivision ordinances, applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications, standards, conditions, and criteria for the clustering of single-family dwellings and the preservation of open space developments. In establishing such standards, conditions, and criteria, the governing body may, in its discretion, include any provisions it determines appropriate to ensure quality development, preservation of open space, and compliance with its comprehensive plan and land use ordinances. A cluster development is otherwise subject to applicable land use ordinances of the locality; however, the locality shall not impose more stringent land use requirements for such cluster development.

The locality shall not prohibit extension of water or sewer from an adjacent property to a cluster development provided the cluster development is located within an area designated for water and sewer service by a county, city, or town or public service authority.

For any "open space" or "conservation areas" established in a cluster development, the locality shall not (i) require in such areas identification of slopes, species of woodlands or vegetation and whether any of such species are diseased, the locations of species listed as endangered, threatened, or of special concern, or riparian zones or require the applicant to provide a property resource map showing such matters in any conservation areas, other than that which may be required to comply with an ordinance adopted pursuant to § 15.2-961 or 15.2-961.1 or applicable state law; (ii) require such areas be excluded from the calculation of density in a cluster development or exclude land in such areas because of prior land-disturbing activities; (iii) prohibit roads from being located in such areas for purposes of access to the cluster development, but the locality may require such roads be designed to mitigate the impact on such areas; (iv) prohibit stormwater management areas from being located in such areas; or (v) require that lots in the cluster development directly abut such areas or a developed pathway providing direct access to such areas.

For purposes of this section, "open space" or "conservation areas" shall mean the same as "open-space land" in § 10.1-1700.

The density calculation of the cluster development shall be based upon the same criteria for the property as would otherwise be permitted by applicable land use ordinances. As a locality provides for the clustering of single-family dwellings and the preservation of open space developments, it may vary provisions for such developments for each different residential zoning classification within the locality. For purposes of this section, "unimproved land" shall not include land owned or controlled by the locality, the Commonwealth or the federal government, or any instrumentality thereof or land subject to a conservation easement.

If proposals for the clustering of single-family dwellings and the preservation of open space developments comply with the locality's adopted standards, conditions, and criteria, the development and open space preservation shall be permitted by right under the local subdivision ordinance. The implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing. No local ordinance shall require that a special exception, special use, or conditional use permit be obtained for such developments. However,

any such ordinance may exempt (a) developments of two acres or less and (b) property located in an Air Installation Compatible Use Zone from the provisions of this subdivision.

C. Additionally, a locality may, at its option, provide for the clustering of single-family dwellings and the preservation of open space at a density calculation greater than the density permitted in the applicable land use ordinance. To implement and approve such increased density development, the locality may, at its option, (i) establish and provide, in its zoning or subdivision ordinances, standards, conditions, and criteria for such development, and if the proposed development complies with those standards, conditions, and criteria, it shall be permitted by right and approved administratively by the locality's staff in the same manner provided in subsection A, or (ii) approve the increased density development upon approval of a special exception, special use permit, conditional use permit, or rezoning.

D. Notwithstanding any of the requirements of this section to the contrary, any local government land use ordinance in effect as of June 1, 2004, that provides for the clustering of single-family dwellings and preservation of open space development by right in at least one residential zoning classification without requiring either a special exception, special use permit, conditional use permit, or other discretionary approval may remain in effect at the option of the locality and will be deemed to be in compliance with this section. Any other locality may adopt provisions for the clustering of single-family dwellings, following the procedures set out in this section, in its discretion.

2006, c. 903; 2011, cc. 519, 549.

§ 15.2-2287. Localities may require oath regarding property interest of local officials

A zoning ordinance may provide that petitions brought by property owners, contract purchasers or the agents thereof, shall be sworn to under oath before a notary public or other official before whom oaths may be taken, stating whether or not any member of the local planning commission or governing body has any interest in such property, either individually, by ownership of stock in a corporation owning such land, partnership, as the beneficiary of a trust, or the settlor of a revocable trust or whether a member of the immediate household of any member of the planning commission or governing body has any such interest.

Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, c. 587.

§ 15.2-2287.1. Disclosures in land use proceedings

A. The provisions of this section shall apply in their entirety to the County of Loudoun.

B. Each individual member of the board of supervisors, the planning commission, and the board of zoning appeals in any proceeding before each such body involving an application for a special exception or variance or involving an application for amendment of a zoning ordinance map, which does not constitute the adoption of a comprehensive zoning plan, an ordinance applicable throughout the locality, or an application filed by the board of supervisors that involves more than 10 parcels that are owned by different individuals, trusts, corporations, or other entities, shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing, (i) with the applicant in such case; or (ii) with the title owner, contract purchaser or lessee of the land that is the subject of the application, except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10 percent or more of the units in the condominium; or (iii) if any of the foregoing is a trustee (other than a trustee under a corporate mortgage or deed of trust securing one or more issues of corporate mortgage bonds), with any trust beneficiary having an interest in such land; or (iv) with the agent, attorney or real estate broker of any of the foregoing. For the purpose of this subsection, "business or financial relationship" means any relationship (other than any ordinary customer or depositor relationship with a retail establishment, public utility, or bank) such member, or any member of the member's immediate household, either directly or by way of a partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney or holds 10 percent or more of the outstanding bonds or shares of stock of a particular class, has, or has had within the 12-month period prior to such hearing, with the applicant in the case, or with the title owner, contract purchaser, or lessee of the subject land, except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10 percent or

more of the units in the condominium, or with any of the other persons above specified. For the purpose of this subsection "business or financial relationship" also means the receipt by the member, or by any person, firm, corporation, or committee in his behalf, from the applicant in the case or from the title owner, contract purchaser, or lessee of the subject land, except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10 percent or more of the units in the condominium, or from any of the other persons above specified, during the 12-month period prior to the hearing in such case, of any gift or donation having a value of more than $100, singularly or in the aggregate.

If at the time of the hearing in any such case such member has a relationship of employee-employer, agent-principal, or attorney-client with the applicant in the case or with the title owner, contract purchaser, or lessee of the subject land except, in the case of a condominium, with the title owner, contract purchaser, or lessee of 10 percent or more of the units in the condominium, or with any of the other persons above specified, that member shall, prior to any hearing on the matter or at such hearing, make a full public disclosure of such employee-employer, agent-principal, or attorney-client relationship and shall be ineligible to vote or participate in any way in such case or in any hearing thereon.

C. In any case described in subsection B pending before the board of supervisors, planning commission, or board of zoning appeals, the applicant in the case shall, prior to any hearing on the matter, file with the board or commission a statement in writing and under oath identifying by name and last known address each person, corporation, partnership, or other association specified in the first paragraph of subsection B. The requirements of this section shall be applicable only with respect to those so identified.

D. Any person knowingly and willfully violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

2008, c. 532; 2014, c. 743.

§ 15.2-2288. Localities may not require a special use permit for certain agricultural activities

A zoning ordinance shall not require that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. For the purposes of this section, production agriculture and silviculture is the bona fide production or harvesting of agricultural products as defined in § 3.2-6400, including silviculture products, but shall not include the processing of agricultural or silviculture products, the above ground application or storage of sewage sludge, or the storage or disposal of nonagricultural excavation material, waste and debris if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act. However, localities may adopt setback requirements, minimum area requirements and other requirements that apply to land used for agriculture or silviculture activity within the locality that is zoned as an agricultural district or classification. Nothing herein shall require agencies of the Commonwealth or its contractors to obtain a special exception or a special use permit under this section.

Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, c. 587; 2012, c. 455; 2014, c. 435.

§ 15.2-2288.01. Localities shall not require a special use permit for certain small-scale conversion of biomass to alternative fuel

A. As used in this section, unless the context requires a different meaning:

"Biomass" means agricultural-related materials including vineyard, grain or crop residues; straws; aquatic plants; and crops and trees planted for energy production.

"Small-scale conversion of biomass" means the conversion of any renewable biomass into heat, power, or biofuels.

B. A zoning ordinance shall not require that a special exception or special use permit be obtained for the small-scale conversion of biomass if: (i) at least 50 percent of the feedstock is produced either on site or by the owner of the conversion equipment; (ii) any structure used for the processing of the feedstock into energy occupies less than 4,000 square feet, not including the space required for storage of feedstock; and (iii) the owner of the farm notifies the administrative head of the locality in which the processing occurs. Localities may adopt reasonable requirements for

setback, minimum lot area, and restrictions on the hours of operation and maximum noise levels applicable to the small-scale conversion of biomass. No setback, lot area, hours of operation or noise requirements may be more restrictive than similar provisions for other agricultural structures or activities.

2009, c. 363.

§ 15.2-2288.1. Localities may not require a special use permit for certain residential uses

No local ordinance shall require as a condition of approval of a subdivision plat, site plan, or plan of development, or issuance of a building permit, that a special exception, special use, or conditional use permit be obtained for the development and construction of residential dwellings at the use, height and density permitted by right under the local zoning ordinance. Nothing herein shall restrict the use of the special exception, special use, or conditional use permit process on application of a property owner for (i) a cluster or town center as an optional form of residential development at a density greater than that permitted by right, or otherwise permitted by local ordinance; (ii) use in an area designated for steep slope mountain development; (iii) use as a utility facility to serve a residential development; or (iv) nonresidential uses including but not limited to home businesses, home occupations, day care centers, bed and breakfast inns, lodging houses, private boarding schools, and shelters established for the purpose of providing human services to the occupants thereof.

1999, c. 1041; 2002, c. 703.

§ 15.2-2288.2. Localities may not require special use permit for certain temporary structures

A zoning ordinance shall not require that a special exception or special use permit be obtained in order to erect a tent on private property (i) intended to serve as a temporary structure for a period of three days or less and (ii) that will be used primarily for private or family-related events including, but not limited to, weddings and estate sales.

2006, c. 249.

§ 15.2-2288.3. Licensed farm wineries; local regulation of certain activities

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.

B, C. [Expired.]

D. No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.

E. No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 6 of § 4.1-206.1:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine;

2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;

3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the Board of Directors of the Virginia Alcoholic Beverage Control Authority;

4. The sale and shipment of wine to the Virginia Alcoholic Beverage Control Authority, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the Board of Directors of the Virginia Alcoholic Beverage Control Authority, and federal law;

5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Board of Directors of the Virginia Alcoholic Beverage Control Authority, and federal law; or

6. The sale of wine-related items that are incidental to the sale of wine.

2006, c. 794; 2007, cc. 611, 657; 2009, cc. 416, 546; 2015, cc. 38, 730; 2020, cc. 1113, 1114.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 15.2-2288.3:1. Limited brewery license; local regulation of certain activities

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 4 of § 4.1-206.1 to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents.

B. No locality shall regulate any of the following activities of a brewery licensed under subdivision 4 of § 4.1-206.1:

1. The production and harvesting of barley, other grains, hops, fruit, or other agricultural products and the manufacturing of beer;

2. The on-premises sale, tasting, or consumption of beer during regular business hours within the normal course of business of such licensed brewery;

3. The direct sale and shipment of beer in accordance with Title 4.1 and regulations of the Board of Directors of the Alcoholic Beverage Control Authority;

4. The sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1, regulations of the Board of Directors of the Alcoholic Beverage Control Authority, and federal law;

5. The storage and warehousing of beer in accordance with Title 4.1, regulations of the Board of Directors of the Alcoholic Beverage Control Authority, and federal law; or

6. The sale of beer-related items that are incidental to the sale of beer.

C. Any locality may exempt any brewery licensed in accordance with subdivision 4 of § 4.1-206.1 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.

2014, c. 365; 2015, cc. 38, 730; 2020, cc. 1113, 1114.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 15.2-2288.3:2. Limited distiller's license; local regulation of certain activities

A. Local restriction upon activities of distilleries licensed pursuant to subdivision 2 of § 4.1-206.1 to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed distillery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed distilleries. Usual and customary activities and events at such licensed distilleries shall be permitted unless there is a substantial impact on the health, safety, or welfare of the public.

B. No locality shall regulate any of the following activities of a distillery licensed under subdivision 2 of § 4.1-206.1:

1. The production and harvesting of agricultural products and the manufacturing of alcoholic beverages other than wine or beer;

2. The on-premises sale, tasting, or consumption of alcoholic beverages other than wine or beer during regular business hours in accordance with a contract between a distillery and the Alcoholic Beverage Control Board pursuant to the provisions of subsection D of § 4.1-119;

3. The sale and shipment of alcoholic beverages other than wine or beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law;

4. The storage and warehousing of alcoholic beverages other than wine or beer in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; or

5. The sale of items related to alcoholic beverages other than wine or beer that are incidental to the sale of such alcoholic beverages.

C. Any locality may exempt any distillery licensed in accordance with subdivision 2 of § 4.1-206.1 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.

2015, c. 695; 2020, cc. 1113, 1114.

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 15.2-2288.4. Extension of expiration dates for special use permits

Notwithstanding any other provision of law, any special use permit that was valid and outstanding as of January 1, 2009, is extended to July 1, 2011, regardless of whether such expiration or schedule exists by operation of statute, proffer, permit, local ordinance, or local custom. Nothing in this section shall impair the ability of any person to apply for additional extensions of time beyond the period specified in this section where permitted by other law.

2009, c. 636.

§ 15.2-2288.5. Meaning of "cemetery" for purposes of zoning

A. A "cemetery" for purposes of this chapter shall have the meaning set forth in § 54.1-2310.

B. Nothing in this section shall exempt a licensed funeral home or cemetery from any applicable zoning regulation.

C. The following uses shall be included in the approval of a cemetery without further zoning approval being required: all uses necessarily or customarily associated with interment of human remains, benches, ledges, walls, graves, roads, paths, landscaping, and soil storage consistent with federal, state, and local laws on erosion sediment control.

D. Mausoleums, columbaria, chapels, administrative offices, and maintenance and storage areas that are shown in a legislative approval for the specific cemetery obtained at the request of the owner shall not require additional local legislative approval provided such structures and uses are developed in accordance with the original local legislative approval. This subsection shall not supersede any permission required by an ordinance adopted pursuant to § 15.2-2306 relative to historic districts.

2012, cc. 414, 478.

§ 15.2-2288.6. Agricultural operations; local regulation of certain activities

A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public:

1. Agritourism activities as defined in § 3.2-6400;

2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation;

3. The preparation, processing, or sale of food products in compliance with subdivisions c 3, 4, and 5 of § 3.2-5130 or related state laws and regulations; or

4. Other activities or events that are usual and customary at Virginia agricultural operations.

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ 4.1-200 et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2288.3, or to restrict the authority of any locality under Title 58.1.

2014, cc. 153, 494; 2022, c. 204.

§ 15.2-2288.7. Local regulation of solar facilities

A. An owner of a residential dwelling unit may install a solar facility on the roof of such dwelling to serve the electricity or thermal needs of that dwelling, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned residential shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as provided herein, any other solar facility proposed on property zoned residential, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

B. An owner of real property zoned agricultural may install a solar facility on the roof of a residential dwelling on such property, or on the roof of another building or structure on such property, to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned agricultural and to be operated under § 56-594 or 56-594.2 shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as otherwise provided herein, any other solar facility proposed on property zoned agricultural, including any solar facility

that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

C. An owner of real property zoned commercial, industrial, or institutional may install a solar facility on the roof of one or more buildings located on such property to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned commercial, industrial, or institutional shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as otherwise provided herein, any other solar facility proposed on property zoned commercial, industrial, or institutional, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

D. An owner of real property zoned mixed-use may install a solar facility on the roof of one or more buildings located on such property to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned mixed-use shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as provided herein, any other solar facility proposed on property zoned mixed-use, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

E. Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Virginia Condominium Act (§ 55.1-1900 et seq.), the declaration of a common interest community as defined in § 54.1-2345, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.).

F. A locality, by ordinance, may provide by-right authority for installation of solar facilities in any zoning classification in addition to that provided in this section. A locality may also, by ordinance, require a property owner or an applicant for a permit pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) who removes solar panels to dispose of such panels in accordance with such ordinance in addition to other applicable laws and regulations affecting such disposal.

2018, cc. 495, 496.

§ 15.2-2288.8. Special exceptions for solar photovoltaic projects

A. Any locality may grant a special exception pursuant to § 15.2-2286, and include in its zoning ordinance reasonable regulations and provisions for a special exception as defined in § 15.2-2201, for any solar photovoltaic (electric energy) project or energy storage project. For the purposes of this section, "energy storage project" means energy storage equipment and technology within an energy storage project that is capable of absorbing energy, storing such energy for a period of time, and redelivering such energy after it has been stored.

B. The governing body of such locality may grant a condition that includes (i) dedication of real property of substantial value or (ii) substantial cash payments for or construction of substantial public improvements, the need for which is not

generated solely by the granting of a conditional use permit, so long as such conditions are reasonably related to the project.

C. Once a condition is granted pursuant to subsection B, such condition shall continue in effect until a subsequent amendment changes the zoning on the property for which the conditions were granted. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

2020, cc. 385, 414; 2021, Sp. Sess. I, cc. 57, 58.

§ 15.2-2289. Localities may provide by ordinance for disclosure of real parties in interest

In addition to the powers granted by this chapter, localities may provide by ordinance that the local planning commission, governing body or zoning appeals board may require any applicant for a special exception, or a special use permit, amendment to the zoning ordinance or variance to make complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers and directors and in any case the names and addresses of all of the real parties of interest. However, the requirement of listing names of stockholders, officers and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders. In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.

1970, c. 573, § 15.1-486.1; 1975, cc. 575, 641; 1976, c. 370; 1980, c. 604; 1986, c. 173; 1988, c. 408; 1989, cc. 25, 232; 1992, c. 596; 1993, c. 288; 1994, c. 192; 1997, c. 587; 2006, cc. 9, 317.

§ 15.2-2290. Uniform regulations for manufactured housing

A. Localities adopting and enforcing zoning ordinances under the provisions of this article shall provide that, in all agricultural zoning districts or districts having similar classifications regardless of name or designation where agricultural, horticultural, or forest uses such as but not limited to those described in § 58.1-3230 are the dominant use, the placement of manufactured houses that are on a permanent foundation and on individual lots shall be permitted, subject to development standards that are equivalent to those applicable to site-built single family dwellings within the same or equivalent zoning district.

B. Localities adopting and enforcing zoning regulations under the provisions of this article may, to provide for the general purposes of zoning ordinances, adopt uniform standards, so long as they apply to all residential structures erected within the agricultural zoning district or other districts identified in subsection A of this section incorporating such standards. The standards shall not have the effect of excluding manufactured housing.

C. Local zoning ordinances adopting provisions consistent with this section shall not relieve lots or parcels from the obligations relating to manufactured housing units imposed by the terms of a restrictive covenant.

1990, c. 840, § 15.1-486.4; 1991, c. 198; 1995, cc. 540, 583; 1997, c. 587.

§ 15.2-2291. Assisted living facilities and group homes of eight or fewer; single-family residence

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.

B. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any assisted

living facility or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

1990, c. 814, § 15.1-486.3; 1993, c. 373; 1997, c. 587; 1998, c. 585; 2007, c. 813; 2008, c. 601; 2009, cc. 813, 840; 2010, cc. 796, 847; 2012, cc. 476, 507; 2014, c. 238.

§ 15.2-2292. Zoning provisions for family day homes

A. Zoning ordinances for all purposes shall consider a family day home as defined in § 22.1-289.02, serving one through four children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed upon such a home. Nothing in this section shall apply to any county or city which is subject to § 15.2-741 or 15.2-914.

B. A local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home, as defined in § 22.1-289.02, serving five through 12 children, exclusive of the provider's own children and any children who reside in the home. The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance and all other applicable local ordinances, the zoning administrator shall issue the permit sought. If the zoning administrator receives a written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator shall consider such objection and may (i) issue or deny the permit sought or (ii) if required by the ordinance, refer the permit to the local governing body for consideration. The ordinance shall provide a process whereby an applicant for a family day home that is denied a permit through the administrative process may request that its application be considered after a hearing following public notice as provided in § 15.2-2204. Upon such hearing, the local governing body may, in its discretion, approve the permit, subject to such conditions as agreed upon by the applicant and the locality, or deny the permit. The provisions of this subsection shall not prohibit a local governing body from exercising its authority, if at all, under subdivision A 3 of § 15.2-2286.

1994, cc. 781, 798, § 15.1-486.5; 1997, c. 587; 2014, c. 771; 2015, cc. 758, 770; 2019, cc. 380, 442; 2020, cc. 860, 861.

§ 15.2-2292.1. Zoning provisions for temporary family health care structures

A. Zoning ordinances for all purposes shall consider temporary family health care structures (i) for use by a caregiver in providing care for a mentally or physically impaired person and (ii) on property owned or occupied by the caregiver as his residence as a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings. Such structures shall not require a special use permit or be subjected to any other local requirements beyond those imposed upon other authorized accessory structures, except as otherwise provided in this section. Such structures shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. Only one family health care structure shall be allowed on a lot or parcel of land.

B. For purposes of this section:

"Caregiver" means an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage, or adoption to or the legally appointed guardian of the mentally or physically impaired person for whom he is caring.

"Mentally or physically impaired person" means a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in § 63.2-2200, as certified in a writing provided by a physician licensed by the Commonwealth.

"Temporary family health care structure" means a transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation; (ii) is limited to one occupant who shall be the mentally or physically

impaired person or, in the case of a married couple, two occupants, one of whom is a mentally or physically impaired person, and the other requires assistance with one or more activities of daily living as defined in § 63.2-2200, as certified in writing by a physician licensed in the Commonwealth; (iii) has no more than 300 gross square feet; and (iv) complies with applicable provisions of the Industrialized Building Safety Law (§ 36-70 et seq.) and the Uniform Statewide Building Code (§ 36-97 et seq.). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

C. Any person proposing to install a temporary family health care structure shall first obtain a permit from the local governing body, for which the locality may charge a fee of up to $100. The locality may not withhold such permit if the applicant provides sufficient proof of compliance with this section. The locality may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. Such evidence may involve the inspection by the locality of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation.

D. Any temporary family health care structure installed pursuant to this section may be required to connect to any water, sewer, and electric utilities that are serving the primary residence on the property and shall comply with all applicable requirements of the Virginia Department of Health.

E. No signage advertising or otherwise promoting the existence of the structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.

F. Any temporary family health care structure installed pursuant to this section shall be removed within 60 days of the date on which the temporary family health care structure was last occupied by a mentally or physically impaired person receiving services or in need of the assistance provided for in this section.

G. The local governing body, or the zoning administrator on its behalf, may revoke the permit granted pursuant to subsection C if the permit holder violates any provision of this section. Additionally, the local governing body may seek injunctive relief or other appropriate actions or proceedings in the circuit court of that locality to ensure compliance with this section. The zoning administrator is vested with all necessary authority on behalf of the governing body of the locality to ensure compliance with this section.

2010, c. 296; 2013, c. 178.

§ 15.2-2293. Airspace subject to zoning ordinances

A. A zoning ordinance shall be applicable to the superjacent airspace of any nonpublic-owned land area.

B. Airspace superjacent or subjacent to any public highway, street, lane, alley or other way in this Commonwealth not required for the purpose of travel, or other public use, by the Commonwealth or other political jurisdiction owning it, shall be subject to the zoning ordinance of the locality in which the airspace is located.

C. Airspace not provided for in subsection B herein that is superjacent to any land owned by the Commonwealth or other political jurisdiction and occupied by a nonpolitical entity or person shall be subject to the zoning ordinance that would be applicable if the land were owned by a private person.

1979, c. 431, § 15.1-491.01; 1997, c. 587.

§ 15.2-2293.1. Placement of amateur radio antennas

Any ordinance involving the placement, screening or height of antennas shall reasonably accommodate amateur radio antennas and shall impose the minimum regulation necessary to accomplish the locality's legitimate purpose. In localities having a population density of 120 persons or less per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 200 feet above ground level as permitted by the Federal Communications Commission or (ii) restrict the number of support structures. In localities having a population density of more than 120 persons per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 75 feet above ground level or (ii) restrict the number of support structures. Reasonable and customary engineering practices shall be followed in the erection of amateur radio antennas.

This section shall not preclude any locality, by ordinance, from regulating amateur radio antennas with regard to reasonable requirements relating to the use of screening, setback, placement, and health and safety requirements.

1998, c. 642.

§ 15.2-2293.2. Regulation of helicopter use

No local zoning ordinance shall impose a total ban on departures and landings within the locality by non-commercial helicopters for personal use, but local zoning ordinances may require a special exception, special use permit, or conditional use permit for repetitive helicopter landings and departures on the same parcel of land in some or all zoning districts. Special exceptions or special use permits may be made subject to reasonable conditions for the protection or benefit of owners and occupants of neighboring parcels, including but not limited to conditions related to compliance with applicable regulations of the Federal Aviation Administration.

2012, c. 506.

§ 15.2-2294. Airport safety zoning

Every locality (i) in whose jurisdiction a licensed airport or United States government or military air facility is located or (ii) over whose jurisdiction the approach slopes and other safety zones of a licensed airport, including United States government or military air facility extend shall, by ordinance, provide for the regulation of the height of structures and natural growth for the purpose of protecting the safety of air navigation and the public investment in air navigation facilities. The ordinance may be adopted regardless of whether the local governing body has adopted a zoning ordinance applicable to other land uses in the locality. The ordinance may be designed and adopted by the locality as an overlay zone superimposed on any preexisting base zone.

The provisions of the airport safety zoning ordinance shall be in compliance with the rules of the Virginia Aviation Board.

1989, cc. 447, 449, § 15.1-491.02; 1990, c. 384; 1997, c. 587.

§ 15.2-2295. Aircraft noise attenuation features in buildings and structures within airport noise zones

Any locality in whose jurisdiction, or adjacent jurisdiction, is located a licensed airport or United States government or military air facility, may enforce building regulations relating to the provision or installation of acoustical treatment measures in residential buildings and structures, or portions thereof, other than farm structures, for which building permits are issued after January 1, 2003, in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. Any locality in whose jurisdiction, or adjacent jurisdiction, is located a United States Master Jet Base, a licensed airport or United States government or military air facility, may, in addition, adopt and enforce building regulations relating to the provision or installation of acoustical treatment measures applicable to buildings and structures, or portions thereof, in Assembly, Business, Educational, Institutional, and Mercantile groups, as defined in the International Building Code.

In establishing the regulations, the locality may adopt one or more noise overlay zones as an amendment to its zoning map and may establish different measures to be provided or installed within each zone, taking into account the severity of the impact of aircraft noise upon buildings and structures within each zone. Any such regulations or amendments to a zoning map shall provide a process for reasonable notice to affected property owners. Any regulations or amendments to a zoning map shall be adopted in accordance with this chapter. A statement shall be placed on all recorded surveys, subdivision plats and all final site plans approved after January 1, 2003, giving notice that a parcel of real property either partially or wholly lies within an airport noise overlay zone. No existing use of property which is affected by the adoption of such regulations or amendments to a zoning map shall be considered a nonconforming use solely because of the regulations or amendments. The provisions of this section shall not affect any local aircraft noise attenuation regulations or ordinances adopted prior to the effective date of this act, and such regulations and ordinances may be amended provided the amendments shall not alter building materials, construction methods, plan submission requirements or inspection practices specified in the Virginia Uniform Statewide Building Code.

1994, c. 745, § 15.1-491.03; 1997, c. 587; 2002, c. 180; 2005, c. 509; 2011, c. 135.

§ 15.2-2295.1. Regulation of mountain ridge construction

A. As used in this section, unless the context requires a different meaning:

"Construction" means the building, alteration, repair, or improvement of any building or structure.

"Crest" means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

"Protected mountain ridge" means a ridge with (i) an elevation of 2,000 feet or more and (ii) an elevation of 500 feet or more above the elevation of an adjacent valley floor.

"Ridge" means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

"Tall buildings or structures" means any building, structure or unit within a multi-unit building with a vertical height of more than 40 feet, as determined by ordinance, measured from the top of the natural finished grade of the crest or the natural finished grade of the high side of the slope of a ridge to the uppermost point of the building, structure or unit. "Tall buildings or structures" does not include (i) water, radio, telecommunications or television towers or any equipment for the transmission of electricity, telephone or cable television; (ii) structures of a relatively slender nature and minor vertical projections of a parent building, including, but not limited to, chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills; or (iii) any building or structure designated as a historic landmark, building or structure by the United States or by the Board of Historic Resources.

B. Determinations by the governing body of heights and elevations under this section shall be conclusive.

C. Any locality in which a protected mountain ridge is located may, by ordinance, provide for the regulation of the height and location of tall buildings or structures on protected mountain ridges. The ordinance may be designed and adopted by the locality as an overlay zone superimposed on any preexisting base zone.

D. An ordinance adopted under this section may include criteria for the granting or denial of permits for the construction of tall buildings or structures on protected mountain ridges. Any such ordinance shall provide that permit applications shall be denied if a permit application fails to provide for (i) adequate sewerage, water, and drainage facilities, including, but not limited to, facilities for drinking water and the adequate supply of water for fire protection and (ii) compliance with the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.).

E. Any locality that adopts an ordinance providing for the regulation of the height and location of tall buildings or structures on protected mountain ridges shall send a copy of the ordinance to the Secretary of Natural and Historic Resources.

F. Nothing in this section shall be construed to affect or impair a governing body's authority under this chapter to define and regulate uses in any existing zoning district or to adopt overlay districts regulating uses on mountainous areas as defined by the governing body.

2000, c. 732; 2013, cc. 516, 756, 793; 2021, Sp. Sess. I, c. 401.

§ 15.2-2295.2. Dam break inundation zones

A locality may by ordinance require the modification of an application for zoning modification, a conditional use permit, or a special exception for the area of a development that is proposed within a mapped dam break inundation zone.

2008, c. 491.

§ 15.2-2296. Conditional zoning; declaration of legislative policy and findings; purpose

It is the general policy of the Commonwealth in accordance with the provisions of § 15.2-2283 to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases,

more flexible and adaptable zoning methods are needed to permit differing land uses and the same time to recognize effects of change. It is the purpose of §§ 15.2-2296 through 15.2-2300 to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The exercise of authority granted pursuant to §§ 15.2-2296 through 15.2-2302 shall not be construed to limit or restrict powers otherwise granted to any locality, nor to affect the validity of any ordinance adopted by any such locality which would be valid without regard to this section. The provisions of this section and the following six sections shall not be used for the purpose of discrimination in housing.

1978, c. 320, § 15.1-491.1; 1997, c. 587.

§ 15.2-2297. Same; conditions as part of a rezoning or amendment to zoning map

A. A zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map; provided that (i) the rezoning itself must give rise for the need for the conditions; (ii) the conditions shall have a reasonable relation to the rezoning; (iii) the conditions shall not include a cash contribution to the locality; (iv) the conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in § 15.2-2241; (v) the conditions shall not include a requirement that the applicant create a property owners' association under the Property Owners' Association Act (§ 55.1-1800 et seq.) which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation; (vi) the conditions shall not include payment for or construction of off-site improvements except those provided for in § 15.2-2241; (vii) no condition shall be proffered that is not related to the physical development or physical operation of the property; and (viii) all such conditions shall be in conformity with the comprehensive plan as defined in § 15.2-2223. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendments to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property.

Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or

2. Accept or impose valid conditions pursuant to subdivision A 3 of § 15.2-2286 or other provision of law.

1978, c. 320, § 15.1-491.2; 1982, c. 293; 1990, c. 868; 1997, c. 587; 2001, c. 703; 2006, c. 450.

§ 15.2-2298. Same; additional conditions as a part of rezoning or zoning map amendment in certain high-growth localities

A. Except for those localities to which § 15.2-2303 is applicable, this section shall apply to (i) any locality which has had population growth of 5% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census; (ii) any city adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county. However, any such locality may by ordinance choose to utilize the conditional zoning authority granted under § 15.2-2303 rather than this section.

In any such locality, notwithstanding any contrary provisions of § 15.2-2297, a zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan as defined in § 15.2-2223.

Reasonable conditions may include the payment of cash for any off-site road improvement or any off-site transportation improvement that is adopted as an amendment to the required comprehensive plan and incorporated into the capital improvements program, provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. For purposes of this section, "road improvement" includes construction of new roads or improvement or expansion of existing roads as required by applicable construction standards of the Virginia Department of Transportation to meet increased demand attributable to new development. For purposes of this section, "transportation improvement" means any real or personal property acquired, constructed, improved, or used for constructing, improving, or operating any (i) public mass transit system or (ii) highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this title. Such improvements shall include, without limitation, public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owners' association under the Property Owners' Association Act (§ 55.1-1800 et seq.) which includes an express further condition that members of a property association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted as part of an amendment to the zoning ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions; however, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

No proffer shall be accepted by a locality unless it has adopted a capital improvement program pursuant to § 15.2-2239 or local charter. In the event proffered conditions include the dedication of real property or payment of cash, the property shall not transfer and the payment of cash shall not be made until the facilities for which the property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of the property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to the property, shall be effective with respect to the property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B above, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

D. The provisions of subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

Nothing in this section shall be construed to affect or impair the authority of a governing body to:

1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or

2. Accept or impose valid conditions pursuant to subdivision A 3 of § 15.2-2286 or other provision of law.

1989, c. 697, § 15.1-492.2:1; 1990, c. 868; 1991, c. 233; 1997, c. 587; 2001, c. 703; 2006, cc. 450, 882; 2007, c. 324.

§ 15.2-2299. Same; enforcement and guarantees

The zoning administrator is vested with all necessary authority on behalf of the governing body of the locality to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including (i) the ordering in writing of the remedy of any noncompliance with the conditions; (ii) the bringing of legal action to insure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and (iii) requiring a guarantee, satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the governing body, or agent thereof, upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

1978, c. 320, § 15.1-491.3; 1983, c. 221; 1997, c. 587.

§ 15.2-2300. Same; records

The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The zoning administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone. The Index shall also provide ready access to all proffered cash payments and expenditures disclosure reports prepared by the local governing body pursuant to § 15.2-2303.2. The zoning administrator shall update the Index annually and no later than November 30 of each year.

1978, c. 320, § 15.1-491.4; 1997, c. 587; 2004, c. 531.

§ 15.2-2301. Same; petition for review of decision

Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of § 15.2-2299 may petition the governing body for review of the decision of the zoning administrator. All petitions for review shall be filed with the zoning administrator and with the clerk of the governing body within 30 days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved. A decision by the governing body on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided written notice of the zoning violation, written determination, or other appealable decision.

An aggrieved party may petition the circuit court for review of the decision of the governing body on an appeal taken pursuant to this section. The provisions of subsection F of § 15.2-2285 shall apply to such petitions to the circuit court, mutatis mutandis.

1978, c. 320, § 15.1-491.5; 1988, c. 856; 1997, c. 587; 2011, c. 457; 2012, c. 401.

§ 15.2-2302. Same; amendments and variations of conditions

A. Subject to any applicable public notice or hearing requirement of subsection B but notwithstanding any other provision of law, any landowner subject to conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 may apply to the governing body for amendments to or variations of such proffered conditions provided only that written notice of such application be provided in the manner prescribed by subsection B of § 15.2-2204. Further, the approval of such an amendment or variation by the governing body shall not in itself cause the use of any other property to be determined a nonconforming use.

B. There shall be no such amendment or variation of any conditions proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 until after a public hearing before the governing body advertised pursuant to the provisions of § 15.2-2204. However, where an amendment to such proffered conditions is requested pursuant to subsection A, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing (i) under this section and (ii) under any other statute, ordinance, or proffer requiring a public hearing prior to amendment of such proffered conditions.

C. Once amended pursuant to this section, the proffered conditions shall continue to be an amendment to the zoning ordinance and may be enforced by the zoning administrator pursuant to the applicable provisions of this chapter.

D. Notwithstanding any other provision of law, no claim of any right derived from any condition proffered pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1 shall impair the right of any landowner subject to such a proffered condition to secure amendments to or variations of such proffered conditions.

E. Notwithstanding any other provision of law, the governing body may waive the written notice requirement of subsection A in order to reduce, suspend, or eliminate outstanding cash proffer payments for residential construction calculated on a per-dwelling-unit or per-home basis that have been agreed to, but unpaid, by any landowner.

1978, c. 320, § 15.1-491.6; 1997, c. 587; 2009, c. 315; 2012, cc. 415, 465; 2013, c. 513; 2017, c. 379.

§ 15.2-2303. Conditional zoning in certain localities

A. A zoning ordinance may include reasonable regulations and provisions for conditional zoning as defined in § 15.2-2201 and for the adoption, in counties, or towns therein which have planning commissions, wherein the urban county executive form of government is in effect, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county, and in the counties east of the Chesapeake Bay as a part of an amendment to the zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, in advance of the public hearing before the governing body required by § 15.2-2285 by the owner of the property which is the subject of the proposed zoning map amendment. Reasonable conditions shall not include, however, conditions that impose upon the applicant the requirement to create a property owners' association under the Property Owners' Association Act (§ 55.1-1800 et seq.) which includes an express further condition that members of a property owners' association pay an assessment for the maintenance of public facilities owned in fee by a public entity, including open space, parks, schools, fire departments, and other public facilities not otherwise provided for in § 15.2-2241; however, such facilities shall not include sidewalks, special street signs or markers, or special street lighting in public rights-of-way not maintained by the Department of Transportation. The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

B. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ratio, or the density of use permitted in the zoning district applicable to such property, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

C. Any landowner who has prior to July 1, 1990, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 1990, shall advise the local governing body by certified mail prior to July 1, 1991, that he intends to proceed with the implementation of such proffers. Such notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 1995, substantially to implement such proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the governing body affecting use, floor area ratio, and density set out in subsection B, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subdivision shall acquire no rights pursuant to this section.

D. Subsections B and C of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 10, 1990. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 1990, or any such litigation nonsuited and thereafter refiled.

E. Nothing in this section shall be construed to affect or impair the authority of a governing body to (i) accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or (ii) accept or impose valid conditions pursuant to subdivision A 3 of § 15.2-2286, subdivision 5 of § 15.2-2242, or other provision of law.

F. In any instance in which a locality has accepted proffered conditions that include pedestrian improvements, and the Virginia Department of Transportation has reviewed and not objected to the proposed pedestrian improvements during

the processing of the rezoning, the Virginia Department of Transportation shall allow the proffered improvements to be constructed, except when such improvements will violate local, state, or federal laws, regulations, or mandated engineering and safety standards.

G. In addition to the powers granted by the preceding subsections, a zoning ordinance may include reasonable regulations to implement, in whole or in part, the provisions of §§ 15.2-2296 through 15.2-2302.

Code 1950, § 15-968.5; 1962, c. 407, § 15.1-491; 1964, c. 564; 1966, c. 455; 1968, cc. 543, 595; 1973, c. 286; 1974, c. 547; 1975, cc. 99, 575, 579, 582, 641; 1976, cc. 71, 409, 470, 683; 1977, c. 177; 1978, c. 543; 1979, c. 182; 1982, c. 44; 1983, c. 392; 1984, c. 238; 1987, c. 8; 1988, cc. 481, 856; 1989, cc. 359, 384; 1990, cc. 672, 868; 1992, c. 380; 1993, c. 672; 1994, c. 802; 1995, cc. 351, 475, 584, 603; 1996, c. 451; 1997, c. 587; 2001, c. 703; 2006, c. 450; 2008, c. 733.

§ 15.2-2303.1. Development agreements in certain counties

A. In order to promote the public health, safety and welfare and to encourage economic development consistent with careful planning, New Kent County may include in its zoning ordinance provisions for the governing body to enter into binding development agreements with any persons owning legal or equitable interests in real property in the county if the property to be developed contains at least one thousand acres.

B. Any such agreements shall be for the purpose of stimulating and facilitating economic growth in the county; shall not be inconsistent with the comprehensive plan at the time of the agreement's adoption, except as may have been authorized by existing zoning ordinances; and shall not authorize any use or condition inconsistent with the zoning ordinance or other ordinances in effect at the time the agreement is made, except as may be authorized by a variance, special exception or similar authorization. The agreement shall be authorized by ordinance, shall be for a term not to exceed fifteen years, and may be renewed by mutual agreement of the parties for successive terms of not more than ten years each. It may provide, among other things, for uses; the density or intensity of uses; the maximum height, size, setback and/or location of buildings; the number of parking spaces required; the location of streets and other public improvements; the measures required to control stormwater; the phasing or timing of construction or development; or any other land use matters. It may authorize the property owner to transfer to the county land, public improvements, money or anything of value to further the purposes of the agreement or other public purposes set forth in the county's comprehensive plan, but not as a condition to obtaining any permitted use or zoning. The development agreement shall not run with the land except to the extent provided therein, and the agreement may be amended or canceled in whole or in part by the mutual consent of the parties thereto or their successors in interest and assigns.

C. If, pursuant to the agreement, a property owner who is a party thereto and is not in breach thereof, (i) dedicates or is required to dedicate real property to the county, the Commonwealth or any other political subdivision or to the federal government or any agency thereof, (ii) makes or is required to make cash payments to the county, the Commonwealth or any other political subdivision or to the federal government or any agency thereof, or (iii) makes or is required to make public improvements for the county, the Commonwealth or any other political subdivision or for the federal government or any agency thereof, such dedication, payment or construction therefor shall vest the property owner's rights under the agreement. If a property owner's rights have vested, neither any amendment to the zoning map for the subject property nor any amendment to the text of the zoning ordinance with respect to the zoning district applicable to the property which eliminates or restricts, reduces, or modifies the use; the density or intensity of uses; the maximum height, size, setback or location of buildings; the number of parking spaces required; the location of streets and other public improvements; the measures required to control stormwater; the phasing or timing of construction or development; or any other land use or other matters provided for in such agreement shall be effective with respect to such property during the term of the agreement unless there has been a mistake, fraud or change in circumstances substantially affecting the public health, safety or welfare.

D. Nothing in this section shall be construed to preclude, limit or alter the vesting of rights in accordance with existing law; authorize the impairment of such rights; or invalidate any similar agreements entered into pursuant to existing law.

1997, c. 738, § 15.1-491.001; 2007, c. 813.

§ 15.2-2303.1:1. When certain cash proffers collected or accepted

A. Notwithstanding the provisions of any cash proffer requested, offered, or accepted pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 for residential construction on a per-dwelling unit or per-home basis, cash payment made pursuant to such a cash proffer shall be collected or accepted by any locality only after completion of the final inspection and prior to the time of the issuance of any certificate of occupancy for the subject property.

B. Notwithstanding the provisions of any proffer to the contrary, the assertion of a right to delayed payment of cash proffers pursuant to this section shall not constitute cause for any action pursuant to § 15.2-2299.

C. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action successfully challenging an ordinance, administrative or other action as being in conflict with this section.

2010, cc. 549, 613; 2011, c. 173; 2012, cc. 508, 798; 2015, c. 346.

§ 15.2-2303.2. Proffered cash payments and expenditures

A. The governing body of any locality accepting cash payments voluntarily proffered on or after July 1, 2005, pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall, within 12 years of receiving full payment of all cash proffered pursuant to an approved rezoning application, begin, or cause to begin (i) construction, (ii) site work, (iii) engineering, (iv) right-of-way acquisition, (v) surveying, or (vi) utility relocation on the improvements for which the cash payments were proffered. A locality that does not comply with the above requirement, or does not begin alternative improvements as provided for in subsection C, shall forward the amount of the proffered cash payments to the Commonwealth Transportation Board no later than December 31 following the fiscal year in which such forfeiture occurred for direct allocation to the secondary system construction program or the urban system construction program for the locality in which the proffered cash payments were collected. The funds to which any locality may be entitled under the provisions of Title 33.2 for construction, improvement, or maintenance of primary, secondary, or urban roads shall not be diminished by reason of any funds remitted pursuant to this subsection by such locality, regardless of whether such contributions are matched by state or federal funds.

B. The governing body of any locality eligible to accept any proffered cash payments pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall, for each fiscal year beginning with the fiscal year 2007, (i) include in its capital improvement program created pursuant to § 15.2-2239, or as an appendix thereto, the amount of all proffered cash payments received during the most recent fiscal year for which a report has been filed pursuant to subsection E, and (ii) include in its annual capital budget the amount of proffered cash payments projected to be used for expenditures or appropriated for capital improvements in the ensuing year.

C. Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by the governing body of a locality pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1, a locality may utilize any cash payments proffered for any road improvement or any transportation improvement that is incorporated into the capital improvements program as its matching contribution under § 33.2-357. For purposes of this section, "road improvement" includes construction of new roads or improvement or expansion of existing roads as required by applicable construction standards of the Virginia Department of Transportation to meet increased demand attributable to new development. For purposes of this section, "transportation improvement" means any real or personal property acquired, constructed, improved, or used for constructing, improving, or operating any (i) public mass transit system or (ii) highway, or portion or interchange thereof, including parking facilities located within a district created pursuant to this title. Such improvements shall include, without limitation, public mass transit systems, public highways, and all buildings, structures, approaches, and facilities thereof and appurtenances thereto, rights-of-way, bridges, tunnels, stations, terminals, and all related equipment and fixtures.

Regardless of the date of rezoning approval, unless prohibited by the proffer agreement accepted by the governing body of a locality pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1, a locality may utilize any cash payments proffered for capital improvements for alternative improvements of the same category within the locality in the vicinity of the improvements for which the cash payments were originally made. Prior to utilization of such cash payments for the alternative improvements, the governing body of the locality shall give at least 30 days' written notice of the proposed alternative improvements to the entity who paid such cash payment mailed to the last known address of such entity, or if proffer payment records no longer exist, then to the original zoning applicant, and conduct a public hearing on such

proposal advertised as provided in subsection F of § 15.2-1427. The governing body of the locality prior to the use of such cash payments for alternative improvements shall, following such public hearing, find: (a) the improvements for which the cash payments were proffered cannot occur in a timely manner or the functional purpose for which the cash payment was made no longer exists; (b) the alternative improvements are within the vicinity of the proposed improvements for which the cash payments were proffered; and (c) the alternative improvements are in the public interest. Notwithstanding the provisions of the Virginia Public Procurement Act, the governing body may negotiate and award a contract without competition to an entity that is constructing road improvements pursuant to a proffered zoning condition or special exception condition in order to expand the scope of the road improvements by utilizing cash proffers of others or other available locally generated funds. The local governing body shall adopt a resolution stating the basis for awarding the construction contract to extend the scope of the road improvements. All road improvements to be included in the state primary or secondary system of highways must conform to the adopted standards of the Virginia Department of Transportation.

D. Notwithstanding any provision of this section or any other provision of law, general or special, no cash payment proffered pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall be used for any capital improvement to an existing facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility or for any operating expense of any existing facility such as ordinary maintenance or repair.

E. The governing body of any locality with a population in excess of 3,500 persons accepting a cash payment voluntarily proffered pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 shall within three months of the close of each fiscal year, beginning in fiscal year 2002 and for each fiscal year thereafter, report to the Commission on Local Government the following information for the preceding fiscal year:

1. The aggregate dollar amount of proffered cash payments collected by the locality;

2. The estimated aggregate dollar amount of proffered cash payments that have been pledged to the locality and which pledges are not conditioned on any event other than time; and

3. The total dollar amount of proffered cash payments expended by the locality, and the aggregate dollar amount expended in each of the following categories:

a Schools	$_____
b Road and other Transportation Improvements	$_____
c Fire and Rescue/Public Safety	$_____
d Libraries	$_____
e Parks, Recreation, and Open Space	$_____
f Water and Sewer Service Extension	$_____
g Community Centers	$_____
h Stormwater Management	$_____
i Special Needs Housing	$_____
j Affordable Housing	$_____
k Miscellaneous	$_____
l Total dollar amount expended	$_____

F. The governing body of any locality with a population in excess of 3,500 persons eligible to accept any proffered cash payments pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 but that did not accept any proffered cash payments during the preceding fiscal year shall within three months of the close of each fiscal year, beginning in 2001 and for each fiscal year thereafter, so notify the Commission on Local Government.

G. The Commission on Local Government shall by November 30, 2001, and by November 30 of each fiscal year thereafter, prepare and make available to the public and the chairmen of the Senate Local Government Committee and the House Counties, Cities and Towns Committee an annual report containing the information made available to it pursuant to subsections E and F.

2001, c. 282; 2003, c. 522; 2005, c. 855; 2006, cc. 583, 872, 882; 2007, c. 321; 2012, c. 521; 2013, cc. 510, 541.

§ 15.2-2303.3. Cash proffers requested or accepted by a locality

A. No locality may require payment of a cash proffer prior to payment of any fees for the issuance of a building permit for construction on property that is the subject of a rezoning. However, a landowner petitioning for a zoning change may voluntarily agree to an earlier payment, pursuant to §§ 15.2-2298 and 15.2-2303. If the petitioner voluntarily agrees to an earlier payment, the proffered condition may be enforced as to the petitioner and any successor in interest according to its terms as part of an approved rezoning.

B. No locality shall either request or accept a cash proffer whose amount is scheduled to increase annually, from the time of proffer until tender of payment, by a percentage greater than the annual rate of inflation, as calculated by referring to the Consumer Price Index for all urban consumers (CPI-U), 1982-1984=100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics or the Marshall and Swift Building Cost Index.

C. No locality shall request or accept any provision of any proffer entered pursuant to § 15.2-2298, 15.2-2303, or 15.2-2303.1 in which the profferor purports to waive future legal rights against the locality or its agents. Any such proffer provision contained in a proffer entered and enacted on or after January 1, 2012, shall be severable from the remainder of the proffer and shall be void ab initio. In the event that a proffer containing such a provision is entered and enacted on or after January 1, 2012, the rezoning to which the proffer containing such provision is attached shall not be nullified, rescinded, or repealed, however described or delineated, by reason of any alleged breach of such a provision by the profferor, notwithstanding any provisions of the proffer to the contrary.

2005, c. 552; 2012, c. 798.

§ 15.2-2303.4. Provisions applicable to certain conditional rezoning proffers

A. For purposes of this section, unless the context requires a different meaning:

"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed-use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.

"New residential use" means any use of residentially zoned property that requires a rezoning or that requires a proffer condition amendment to allow for new residential development.

"Offsite proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.

"Onsite proffer" means a proffer addressing an impact within the boundaries of the property to be developed and shall not include any cash proffers.

"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.

"Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.

"Public facility improvement" means an offsite public transportation facility improvement, a public safety facility improvement, a public school facility improvement, or an improvement to or construction of a public park. No public facility improvement shall include any operating expense of an existing public facility, such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility. For purposes of this section, the term "public park" shall include playgrounds and other recreational facilities.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.

"Public transportation facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.

"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § 15.2-2223 that is specifically applicable to a delineated area within a locality rather than the locality as a whole.

B. Notwithstanding any other provision of law, general or special, no local governing body shall (i) require any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

C. Notwithstanding any other provision of law, general or special, as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless:

1. It addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for; and

2. If an offsite proffer, it addresses an impact to an offsite public facility, such that (i) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and (ii) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. A locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.

D. Notwithstanding the provisions of subsection C:

1. An applicant or owner may, at the time of filing an application pursuant to this section or during the development review process, submit any onsite or offsite proffer that the owner and applicant deem reasonable and appropriate, as conclusively evidenced by the signed proffers.

2. Failure to submit proffers as set forth in subdivision 1 shall not be a basis for the denial of any rezoning or proffer condition amendment application.

E. Notwithstanding any other provision of law, general or special:

1. Actions brought to contest the action of a local governing body in violation of this section shall be brought only by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of § 15.2-2285, provided that the applicant objected in writing to the governing body regarding a proposed condition prior to the governing body's grant or denial of the rezoning application.

2. In any action in which a local governing body has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that was requested in writing by the local governing body in violation of this section, the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial.

3. In any successful action brought pursuant to this section contesting an action of a local governing body in violation of this section, the applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer condition amendment without the inclusion of any unreasonable proffer or to amend the proffer to bring it into compliance with this section. If the local governing body fails or refuses to approve the rezoning or proffer condition amendment, or fails or refuses to amend the proffer to bring it into compliance with this section, within a reasonable time not to exceed 90 days from the date of the court's order to do so, the court shall enjoin the local governing body from interfering with the use of the property as applied for without the unreasonable proffer. Upon remand to the local governing body pursuant to this subsection, the requirements of § 15.2-2204 shall not apply.

F. The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or (iii) an approved service district created pursuant to § 15.2-2400 that encompasses an existing or planned Metrorail station.

G. This section shall be construed as supplementary to any existing provisions limiting or curtailing proffers or proffer condition amendments for new residential development or new residential use that are consistent with its terms and shall be construed to supersede any existing statutory provision with respect to proffers or proffer condition amendments for new residential development or new residential use that are inconsistent with its terms.

H. Notwithstanding any provision in this section to the contrary, nothing contained herein shall be deemed or interpreted to prohibit or to require communications between an applicant or owner and the locality. The applicant, owner, and locality may engage in pre-filing and post-filing discussions regarding the potential impacts of a proposed new residential development or new residential use on public facilities as defined in subsection A and on other public facilities of the locality, and potential voluntary onsite or offsite proffers, permitted under subsections C and D, that might address those impacts. Such verbal discussions shall not be used as the basis that an unreasonable proffer or proffer condition amendment was required by the locality. Furthermore, notwithstanding any provision in this section to the contrary, nothing contained herein shall be deemed or interpreted to prohibit or to require presentation, analysis, or discussion of the potential impacts of new residential development or new residential use on the locality's public facilities.

2016, c. 322; 2019, cc. 129, 245.

§ 15.2-2304. Affordable dwelling unit ordinances in certain localities

In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing body of any county where the urban county executive form of government or the county manager plan of government is in effect, the Counties of Albemarle and Loudoun, and the Cities of Alexandria, Charlottesville, and Fairfax may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. The program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing. Any project that is subject to an affordable housing dwelling unit program adopted pursuant to this section shall not be subject to an additional requirement outside of such program to contribute to a county or city housing fund.

Any local ordinance of any other locality providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect.

1989, cc. 634, 748, § 15.1-491.8; 1990, cc. 591, 834; 1991, c. 599; 1997, cc. 587, 607; 2001, cc. 18, 313; 2002, c. 151; 2004, c. 543; 2015, cc. 390, 605; 2020, c. 486.

§ 15.2-2305. Affordable dwelling unit ordinances

A. In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing body of any locality, other than localities to which § 15.2-2304 applies, may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of housing affordable to low and moderate income citizens, determined in accordance with the locality's definition of affordable housing, by providing for increases in density to the applicant in exchange for the applicant providing such affordable housing. Any local ordinance providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect. Any local ordinance may authorize the governing body to (i) establish qualifying jurisdiction-wide affordable dwelling unit sales prices based on local market conditions, (ii) establish jurisdiction-wide affordable dwelling unit qualifying income guidelines, and (iii) offer incentives other than density increases, such as reductions or waiver of permit, development, and infrastructure fees, as the governing body deems appropriate to encourage the provision of affordable housing. Counties to which § 15.2-2304 applies shall be governed by the provisions of § 15.2-2304 for purposes of the adoption of an affordable dwelling unit ordinance.

B. Any zoning ordinance establishing an affordable housing dwelling unit program may include, among other things, reasonable regulations and provisions as to any or all of the following:

1. A definition of affordable housing and affordable dwelling units.

2. For application of the requirements of an affordable housing dwelling unit program to any site, as defined by the locality, or a portion thereof at one location which is the subject of an application for rezoning or special exception or, at the discretion of the local governing body, site plan or subdivision plat which yields, as submitted by the applicant, at an equivalent density greater than one unit per acre and which is located within an approved sewer area.

3. For an increase of up to 30 percent in the developable density of each site subject to the ordinance and for a provision requiring up to 17 percent of the total units approved, including the optional density increase, to be affordable dwelling units, as defined in the ordinance. In the event a 30 percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the same ratio of 30 percent to 17 percent.

4. For increases by up to 30 percent of the density or of the lower and upper end of the density range set forth in the comprehensive plan of such locality applicable to rezoning and special exception applications that request approval of single family detached dwelling units or single family attached dwelling units, when such applications are approved after the effective date of a local affordable housing zoning ordinance amendment.

5. For a requirement that not less than 17 percent of the total number of dwelling units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 4 of this section shall be affordable dwelling units, as defined by the local zoning ordinance unless reduced by the 30 to 17 percent ratio pursuant to subdivision B 3 of this section.

6. For establishment of a local housing fund as part of its affordable housing dwelling unit program to assist in achieving the affordable housing goals of the locality pursuant to this section. The local housing fund may be a dedicated fund within the other funds of the locality, but any funds received pursuant to this section shall be used for achieving the affordable housing goals of the locality.

7. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of the market rate units.

8. For standards of compliance with the provisions of an affordable housing dwelling unit program and for the authority of the local governing body or its designee to enforce compliance with such standards and impose reasonable penalties for noncompliance, provided that a local zoning ordinance provide for an appeal process for any party aggrieved by a decision of the local governing body.

C. For any building which is four stories or above and has an elevator, the applicant may request, and the locality shall consider, the unique ancillary costs associated with living in such a building in determining whether such housing will be affordable under the definition established by the locality in its ordinance adopted pursuant to this section. However, for localities under this section in Planning District Eight, nothing in this section shall apply to any elevator structure four stories or above.

D. Any ordinance adopted hereunder shall provide that the local governing body shall have no more than 280 days in which to process site or subdivision plans proposing the development or construction of affordable housing or affordable dwelling units under such ordinance. The calculation of such period of review shall include only the time that plans are in review by the local governing body and shall not include such time as may be required for revision or modification in order to comply with lawful requirements set forth in applicable ordinances and regulations.

E. A locality establishing an affordable housing dwelling unit program in any ordinance shall establish in its general ordinances, adopted in accordance with the requirements of subsection B of § 15.2-1427, reasonable regulations and provisions as to any or all of the following:

1. For administration and regulation by a local housing authority or by the local governing body or its designee of the sale and rental of affordable units.

2. For a local housing authority or local governing body or its designee to have an exclusive right to purchase up to one-third of the for-sale affordable housing dwelling units within a development within ninety days of a dwelling unit being completed and ready for purchase, provided that the remaining two-thirds of such units be offered for sale exclusively for a ninety-day period to persons who meet the income criteria established by the local housing authority or local governing body or the latter's designee.

3. For a local housing authority or local governing body or its designee to have an exclusive right to lease up to a specified percentage of the rental affordable dwelling units within a development within a controlled period determined by the housing authority or local governing body or its designee, provided that the remaining for-rental affordable dwelling units within a development be offered to persons who meet the income criteria established by the local housing authority or local governing body or its designee.

4. For the establishment of jurisdiction-wide affordable dwelling unit sales prices by the local housing authority or local governing body or the latter's designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary and reasonable costs required to construct the affordable dwelling unit prototype dwellings by private industry after considering written comment by the public, local housing authority or advisory body to the local governing body, and other information such as the area's current general market and economic conditions, provided that sales prices not include the cost of land, on-site sales commissions and marketing expenses, but may include, among other costs, builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid expenses required at settlement.

5. For the establishment of jurisdiction-wide affordable dwelling unit rental prices by a local housing authority or local governing body or its designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary and reasonable costs required to construct and market the required number of affordable dwelling rental units by private industry in the area, after considering written comment by the public, local housing authority, or advisory body to the local governing body, and other information such as the area's current general market and economic conditions.

6. For a requirement that the prices for resales and rerentals be controlled by the local housing authority or local governing body or designee for a period of not less than 15 years nor more than 50 years after the initial sale or rental transaction for each affordable dwelling unit, provided that the ordinance further provide for reasonable rules and regulations to implement a price control provision.

7. For establishment of an affordable dwelling unit advisory board which shall, among other things, advise the jurisdiction on sales and rental prices of affordable dwelling units; advise the housing authority or local governing body or its designees on requests for modifications of the requirements of an affordable dwelling unit program; adopt regulations concerning its recommendations of sales and rental prices of affordable dwelling units; and adopt procedures concerning requests for modifications of an affordable housing dwelling unit program. Members of the board, to be ten in number and to be appointed by the governing body, shall be qualified as follows: two members shall be either civil engineers or architects, each of whom shall be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom shall have extensive experience in practice in the locality; one member shall be a real estate salesperson or broker, licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; one member shall be a representative of a lending institution which finances residential development in the locality; four members shall consist of a representative from a local housing authority or local governing body or its designee, a residential builder with

extensive experience in producing single-family detached and attached dwelling units, a residential builder with extensive experience in producing multiple-family dwelling units, and a representative from either the public works or planning department of the locality; one member may be a representative of a nonprofit housing organization which provides services in the locality; and one citizen of the locality. At least four members of the advisory board shall be employed in the locality.

F. A locality establishing an affordable housing dwelling unit program in any ordinance shall establish in its general ordinances, adopted in accordance with the requirements of subsection B of § 15.2-1427, reasonable regulations and provisions as to the following:

The sales and rental price for affordable dwelling units within a development shall be established such that the owner/applicant shall not suffer economic loss as a result of providing the required affordable dwelling units. "Economic loss" for sales units means that result when the owner or applicant of a development fails to recoup the cost of construction and certain allowances as may be determined by the designee of the governing body for the affordable dwelling units, exclusive of the cost of land acquisition and cost voluntarily incurred but not authorized by the ordinance, upon the sale of an affordable dwelling unit.

1990, c. 834, § 15.1-491.9; 1991, c. 599; 1992, c. 244; 1993, c. 437; 1994, cc. 88, 679; 1996, cc. 233, 426; 1997, cc. 587, 607; 2007, cc. 695, 713; 2008, c. 790.

§ 15.2-2305.1. Affordable housing dwelling unit ordinances

A. In furtherance of the purpose of providing affordable shelter for all, the governing body of any locality, other than localities to which § 15.2-2304 applies, may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of housing affordable to low-and-moderate-income citizens by providing for increases in density to the applicant in exchange for the applicant voluntarily electing to provide such affordable housing. Any local ordinance providing optional increases in density for provision of low-and-moderate-income housing adopted before December 31, 1988, shall continue in full force and effect. Any local ordinance may authorize the governing body to (i) establish qualifying jurisdiction-wide affordable dwelling unit sales prices based on local market conditions, (ii) establish jurisdiction-wide affordable housing dwelling unit qualifying income guidelines, and (iii) offer incentives other than density increases, such as reductions or waivers of permit, development, and infrastructure fees, as the governing body deems appropriate to encourage the provision of affordable housing. Counties to which § 15.2-2304 applies shall be governed by the provisions of § 15.2-2304 for purposes of the adoption of an affordable housing dwelling unit ordinance.

B. Any zoning ordinance establishing an affordable housing dwelling unit program pursuant to this section may include reasonable regulations and provisions as to any or all of the following:

1. For application of the requirements of an affordable housing dwelling unit program to any site, as defined by the locality, or a portion thereof at one location that is the subject of an application for rezoning or special exception or site plan or subdivision plat which yields, as submitted by the applicant, at an equivalent density greater than one unit per acre and that is located within an approved sewer area.

2. The waiver of any fees associated with the construction, renovation, or rehabilitation of a structure, including but not limited to building permit fees, application review fees, and water and sewer connection fees.

3. For standards of compliance with the provisions of an affordable housing dwelling unit program and for the authority of the local governing body or its designee to enforce compliance with such standards and impose reasonable penalties for noncompliance, provided that a local zoning ordinance provide for an appeal process for any party aggrieved by a decision of the local governing body.

4. For establishment of a local housing fund as part of its affordable housing dwelling unit program to assist in achieving the affordable housing goals of the locality pursuant to this section. The local housing fund may be a dedicated fund within the other funds of the locality, but any funds received pursuant to this section shall be used for achieving the affordable housing goals of the locality. A locality shall not condition the submission, review, or approval of any application for a housing development upon a contribution by the applicant to the locality's housing trust fund.

5. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of the market rate units.

6. For administration and regulation by a local housing authority or the local governing body or its designee of the sale and rental of affordable units.

7. For a local housing authority or local governing body or its designee to have an exclusive right to purchase up to one-third of the for-sale affordable housing dwelling units within a development within 90 days of a dwelling unit being completed and ready for purchase, provided that the remaining two-thirds of such units be offered for sale exclusively for a 90-day period to persons who meet the income criteria established by the local housing authority or the local governing body or its designee.

8. For a local housing authority or a local governing body or its designee to have an exclusive right to lease up to a specified percentage of the rental affordable dwelling units within a development within a controlled period determined by the housing authority or the local governing body or its designee, provided that the remaining for-rental affordable dwelling units within a development be offered to persons who meet the income criteria established by the local housing authority or the local governing body or its designee.

9. For the establishment of jurisdiction-wide affordable housing dwelling unit sales prices by the local housing authority or the local governing body or its designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary, and reasonable costs required to construct the affordable dwelling unit prototype dwellings by private industry after considering written comment by the public, the local housing authority, or an advisory body to the local governing body, and other information such as the area's current general market and economic conditions, provided that sales prices do not include the cost of land, on-site sales commissions, and marketing expenses, but may include, among other costs, builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid expenses required at settlement.

10. For the establishment of jurisdiction-wide affordable dwelling unit rental prices by a local housing authority or the local governing body or its designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary, and reasonable costs required to construct and market the required number of affordable dwelling rental units by private industry in the area, after considering written comment by the public, the local housing authority, or an advisory body to the local governing body, and other information such as the area's current general market and economic conditions.

11. For a requirement that the prices for the sales and rentals of affordable dwelling units subsequent to the initial sale or rental transaction be controlled by the local housing authority or the local governing body or its designee for a period of not less than 15 years nor more than 50 years after the initial sale or rental transaction for each affordable dwelling unit, provided that the ordinance further provides for reasonable rules and regulations to implement a price control provision.

C. For any building that is four stories or taller and has an elevator, the applicant may request, and the locality shall consider, the unique ancillary costs associated with living in such a building in determining whether such housing will be affordable under the definition established by the locality in its ordinance adopted pursuant to this section. However, for localities under this section in Planning District 8, nothing in this section shall apply to any elevator structure four stories or taller.

D. Any ordinance adopted hereunder shall provide that the local governing body shall have no more than 280 days in which to process site or subdivision plans proposing the development or construction of affordable housing or affordable dwelling units under such ordinance. The calculation of such period of review shall include only the time that plans are in review by the local governing body and shall not include such time as may be required for revision or modification in order to comply with lawful requirements set forth in applicable ordinances and local regulations.

E. Any zoning ordinance establishing an affordable housing dwelling unit program under this section shall adopt the following regulations and provisions to establish an affordable housing density bonus and development standards relief program:

1. Adopt procedures for processing an application authorized under this subdivision, which shall include a provision for a list of all documents and information required to be submitted with an application for a housing development.

Procedures authorized by this subdivision shall require the zoning administrator or his designee to make an official determination in writing within 30 days of the application date as to each of the following, as applicable: (i) the amount of density bonus, calculated pursuant to subdivision 2, for which the applicant is eligible; (ii) if the applicant requests a parking ratio pursuant to subdivision 4, the parking ratio for which the applicant is eligible; and (iii) if the applicant requests waivers or reductions of development standards pursuant to subdivision 3, whether the applicant has provided adequate information for the locality to make a determination as to those waivers or reductions of development standards. An appeal by a party aggrieved of an official determination pursuant to this subdivision shall be made to the board of zoning appeals pursuant to § 15.2-2311.

2. The locality shall grant a density bonus, the amount of which shall be as specified in the corresponding table accompanying this subdivision, when an applicant voluntarily seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least:

a. Ten percent of the total units of a housing development deemed affordable, as defined in this section, for low-income households; or

b. Five percent of the total units of a housing development deemed affordable, as defined in this section, for very-low-income households;

For housing developments meeting the criteria of subdivision a, the density bonus shall be calculated as follows:

	Percentage Low-Income Units	Percentage Density Bonus
a	10	20
b	11	21.5
c	12	23
d	13	24.5
e	14	26
f	15	27.5
g	16	29
h	17	30.5
i	18	32
j		

k	19	33.5
l	20	35
m	21	36.5
n	22	38
o	23	39.5
p	24	41
q	25	42.5
r	26	44
s	27	45.5
t	28	47
u	29	48.5
v	30	50
w	31	51.5
x	32	53
y	33	54.5
z	34	56
aa	35	57.5

For housing developments meeting the criteria of subdivision b, the density bonus shall be calculated as follows:

	a Percentage Very Low-Income Units	Percentage Density Bonus
b	5	20
c	6	22.5
d	7	25
e	8	27.5
f	9	30
g	10	32.5
h	11	35
i	12	37.5
j	13	40
k	14	42.5
l	15	45
m	16	47.5
n	17	50
o	18	52.5

p	19
q	20
r	21
s	22
t	23
u	24
v	25
w	26
x	27
y	28
z	29
aa	30
ab	31
ac	32
ad	33
ae	34
af	35

55
57.5
60
62.5
65
67.5
70
72.5
75
77.5
80
82.5
85
87.5
90
92.5
95

For housing developments meeting the criteria of subdivision a or b, an applicant shall be awarded an increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the locality, or, if elected by the applicant, a lesser percentage of density increase, including but not limited to no increase in density.

3. An applicant for a density bonus pursuant to subdivision 2 a or b may request a waiver or reduction of local development standards that (i) physically preclude the construction of a project at the density permitted by this section or (ii) impact the financial feasibility of a project submitted pursuant to this section. The locality shall grant the waiver or reduction of local development standards requested by the applicant unless the locality is able to make a written determination that such waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment. The locality may also recommend to the applicant modifications of the initial request for waiver or reduction of local development standards that would satisfy the locality's concerns. Nothing in this subsection shall be interpreted to require a locality to waive or reduce development standards that would have an adverse impact on any real property that is listed in the Virginia Landmarks Register or National Register of Historic Places or would be contrary to state or federal law.

4. An applicant for a density bonus pursuant to subdivision 2 a or b may request a waiver or reduction in any local parking ratios or requirements. The locality shall grant the waiver or reduction unless the locality is able to make a written determination that such waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment of residents of the locality. The locality may also recommend to the applicant modifications of the initial request for waiver or reduction of local development standards that would satisfy the locality's concerns. This subdivision does not preclude a locality from reducing or eliminating a parking requirement for development projects of any type in any location.

F. A locality establishing an affordable housing dwelling unit program in any ordinance shall establish in its general ordinances, adopted in accordance with the requirements of subsection B of § 15.2-1427, reasonable regulations and provisions as to the following:

The sales and rental price for affordable dwelling units within a development shall be established such that the owner or applicant, or both, shall not suffer economic loss as a result of providing the required affordable dwelling units. For purposes of this subsection, "economic loss" for sales units means that result when the owner or applicant of a development fails to recoup the cost of construction and certain allowances as may be determined by the designee of the governing body for the affordable dwelling units, exclusive of the cost of land acquisition and cost voluntarily incurred but not authorized by the ordinance, upon the sale of an affordable dwelling unit.

G. Any locality establishing an affordable housing dwelling unit program pursuant to this section shall not condition the submission, review, or approval of any application for a housing development on the basis of an applicant's decision to incorporate units deemed affordable for low-income or very-low-income households.

H. Notwithstanding any other provisions of this chapter, as used in this section, unless the context requires a different meaning:

"Affordable" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than 30 percent of his gross income for gross housing costs, including utilities.

"Density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the locality, or, if elected by the applicant, a lesser percentage of density increase, including but not limited to no increase in density.

"Development standard" includes any local land use, site, or construction regulation, including but not limited to height restrictions, setback requirements, side yard requirements, minimum area requirements, minimum lot size requirements, floor area ratios, or onsite open-space requirements that applies to a residential or mixed-use development pursuant to any local ordinance, policy, resolution, or regulation.

"Housing development" means a specific work or improvement within the Commonwealth, whether multifamily residential housing or single-family residential housing, undertaken primarily to provide dwelling accommodations, including the acquisition, construction, rehabilitation, preservation, or improvement of land, buildings, and

improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental, related, or appurtenant thereto.

"Low-income household" means any individual or family whose incomes do not exceed 80 percent of the area median income for the locality in which the housing development is being proposed.

"Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the comprehensive plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

"Very-low-income household" means any individual or family whose incomes do not exceed 50 percent of the area median income for the locality in which the housing development is being proposed.

2020, cc. 143, 833.

§ 15.2-2306. Preservation of historical sites and architectural areas

A. 1. Any locality may adopt an ordinance setting forth the historic landmarks within the locality as established by the Virginia Board of Historic Resources, and any other buildings or structures within the locality having an important historic, architectural, archaeological or cultural interest, any historic areas within the locality as defined by § 15.2-2201, and areas of unique architectural value located within designated conservation, rehabilitation or redevelopment districts, amending the existing zoning ordinance and delineating one or more historic districts, adjacent to such landmarks, buildings and structures, or encompassing such areas, or encompassing parcels of land contiguous to arterial streets or highways (as designated pursuant to Title 33.2, including § 33.2-319 of that title) found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts therein or in a contiguous locality. A governing body may provide in the ordinance that the applicant must submit documentation that any development in an area of the locality of known historical or archaeological significance will preserve or accommodate the historical or archaeological resources. An amendment of the zoning ordinance and the establishment of a district or districts shall be in accordance with the provisions of Article 7 (§ 15.2-2280 et seq.) of this chapter. The governing body may provide for a review board to administer the ordinance and may provide compensation to the board. The ordinance may include a provision that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein.

2. Subject to the provisions of subdivision 3 of this subsection the governing body may provide in the ordinance that no historic landmark, building or structure within any district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the review board, or, on appeal, by the governing body after consultation with the review board.

3. The governing body shall provide by ordinance for appeals to the circuit court for such locality from any final decision of the governing body pursuant to subdivisions 1 and 2 of this subsection and shall specify therein the parties entitled to appeal the decisions, which parties shall have the right to appeal to the circuit court for review by filing a petition at law, setting forth the alleged illegality of the action of the governing body, provided the petition is filed within thirty days after the final decision is rendered by the governing body. The filing of the petition shall stay the decision of the governing body pending the outcome of the appeal to the court, except that the filing of the petition shall not stay the decision of the governing body if the decision denies the right to raze or demolish a historic landmark, building or structure. The court may reverse or modify the decision of the governing body, in whole or in part, if it finds upon review that the decision of the governing body is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the governing body.

In addition to the right of appeal hereinabove set forth, the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subdivision 2 of this subsection, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that: (i) he has applied to the governing body for such right, (ii) the owner has for the period of time set forth in the same schedule hereinafter contained and at a price

reasonably related to its fair market value, made a bona fide offer to sell the landmark, building or structure, and the land pertaining thereto, to the locality or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto, and (iii) no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of the governing body, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by the governing body, but thereafter the owner may renew his request to the governing body to approve the razing or demolition of the historic landmark, building or structure. The time schedule for offers to sell shall be as follows: three months when the offering price is less than $25,000; four months when the offering price is $25,000 or more but less than $40,000; five months when the offering price is $40,000 or more but less than $55,000; six months when the offering price is $55,000 or more but less than $75,000; seven months when the offering price is $75,000 or more but less than $90,000; and twelve months when the offering price is $90,000 or more.

4. The governing body is authorized to acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the governing body should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people; provide for their renovation, preservation, maintenance, management and control as places of historic interest by a department of the locality or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the historic character of the area, landmark, building, structure or land shall be preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, landmark, building, structure, land pertaining thereto or interest therein so acquired as a place of historic interest; however, the locality shall not use the right of condemnation under this subsection unless the historic value of such area, landmark, building, structure, land pertaining thereto, or estate or interest therein is about to be destroyed.

The authority to enter into contracts with any person, firm or corporation as stated above may include the creation, by ordinance, of a resident curator program such that private entities through lease or other contract may be engaged to manage, preserve, maintain, or operate, including the option to reside in, any such historic area, property, lands, or estate owned or leased by the locality. Any leases or contracts entered into under this provision shall require that all maintenance and improvement be conducted in accordance with established treatment standards for historic landmarks, areas, buildings, and structures. For purposes of this section, leases or contracts that preserve historic landmarks, buildings, structures, or areas are deemed to be consistent with the purposes of use, observation, education, pleasure, and welfare of the people as stated above so long as the lease or contract provides for reasonable public access consistent with the property's nature and use. The Department of Historic Resources shall provide technical assistance to local governments, at their request, to assist in developing resident curator programs.

B. Notwithstanding any contrary provision of law, general or special, in the City of Portsmouth no approval of any governmental agency or review board shall be required for the construction of a ramp to serve the handicapped at any structure designated pursuant to the provisions of this section.

C. Any locality that establishes or expands a local historic district pursuant to this section shall identify and inventory all landmarks, buildings, or structures in the areas being considered for inclusion within the proposed district. Prior to adoption of an ordinance establishing or expanding a local historic district, the locality shall (i) provide for public input from the community and affected property owners in accordance with § 15.2-2204; (ii) establish written criteria to be used to determine which properties should be included within a local historic district; and (iii) review the inventory and the criteria to determine which properties in the areas being considered for inclusion within the proposed district meet the criteria to be included in a local historic district. Local historic district boundaries may be adjusted to exclude properties along the perimeter that do not meet the criteria. The locality shall include only the geographical areas in a local historic district where a majority of the properties meet the criteria established by the locality in accordance with this section. However, parcels of land contiguous to arterial streets or highways found by the governing body to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures, or districts

therein, or in a contiguous locality may be included in a local historic district notwithstanding the provisions of this subsection.

D. Any locality utilizing the urban county executive form of government may include a provision in any ordinance adopted pursuant to this section that would allow public access to any such historic area, landmark, building, or structure, or land pertaining thereto, or providing that no subdivision shall occur within any historic district unless approved by the review board or, on appeal, by the governing body of the locality as being compatible with the historic nature of such area, landmarks, buildings, or structures therein with regard to any parcel or parcels that collectively are (i) adjacent to a navigable river and a national park and (ii) in part or as a whole subject to an easement granted to the National Park Service or Virginia Outdoors Foundation granted on or after January 1, 1973.

1973, c. 270, § 15.1-503.2; 1974, c. 90; 1975, cc. 98, 574, 575, 641; 1977, c. 473; 1987, c. 563; 1988, c. 700; 1989, c. 174; 1993, c. 770; 1996, c. 424; 1997, cc. 587, 676; 2009, c. 290; 2011, c. 237; 2012, c. 790; 2021, Sp. Sess. I, c. 531.

§ 15.2-2306.1. Creation of working waterfront development areas

A. Any locality may establish by ordinance one or more working waterfront development areas for the purpose of providing incentives to private entities to purchase real property and interests in real property to assemble parcels suitable for working waterfront development. Each locality establishing a working waterfront development area may grant such incentives and provide regulatory flexibility. Such zones shall be reasonably compact, shall not encompass the entire locality, and shall constitute one or more tax parcels not commonly owned. Properties that are acquired through the use of eminent domain shall not be eligible for the incentives and regulatory flexibility provided by the ordinance.

B. Incentives granted by a locality pursuant to subsection A may include, but not be limited to, (i) reduction of permit fees, (ii) reduction of user fees, (iii) reduction of any type of gross receipts tax, and (iv) waiver of tax liens to facilitate the sale of property.

C. Incentives granted pursuant to this section may extend for a period of up to 10 years from the date of initial establishment of the working waterfront development area; however, the extent and duration of any incentive shall conform to the requirements of applicable federal and state law.

D. The regulatory flexibility provided in a working waterfront development area may include (i) special zoning for the district, (ii) the use of a special permit process, (iii) exemption from certain specified ordinances, excluding ordinances or provisions of ordinances adopted pursuant to the requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), and the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq.), and (iv) any other incentives adopted by ordinance, which shall be binding upon the locality for a period of up to 10 years.

E. This section shall not authorize any local government powers that are not expressly granted herein.

F. Prior to adopting or amending any ordinance pursuant to this section, a locality shall provide for notice and public hearing in accordance with subsection A of § 15.2-2204.

2017, c. 216.

§ 15.2-2307. Vested rights not impaired; nonconforming uses

A. Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

B. For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception

or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or (vii) the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.

C. A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever, with respect to the building or structure, the square footage of a building or structure is enlarged, or the building or structure is structurally altered as provided in the Uniform Statewide Building Code (§ 36-97 et seq.). If a use does not conform to the zoning prescribed for the district in which such use is situated, and if (i) a business license was issued by the locality for such use and (ii) the holder of such business license has operated continuously in the same location for at least 15 years and has paid all local taxes related to such use, the locality shall permit the holder of such business license to apply for a rezoning or a special use permit without charge by the locality or any agency affiliated with the locality for fees associated with such filing. Further, a zoning ordinance may provide that no nonconforming use may be expanded, or that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

D. Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefor, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period of more than the previous 15 years, a zoning ordinance shall not provide that such building or structure is illegal and subject to removal solely due to such nonconformity. Such building or structure shall be nonconforming. A zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code, provided that to do so shall not affect the nonconforming status of such building or structure. If the local government has issued a permit, other than a building permit, that authorized construction of an improvement to real property and the improvement was thereafter constructed in accordance with such permit, the ordinance may provide that the improvements are nonconforming, but not illegal. If the structure is one that requires no permit, and an authorized local government official informs the property owner that the structure will comply with the zoning ordinance, and the improvement was thereafter constructed, a zoning ordinance may provide that the structure is nonconforming but shall not provide that such structure is illegal and subject to removal solely due to such nonconformity. In any proceeding when the authorized government official is deceased or is otherwise unavailable to testify, uncorroborated testimony of the oral statement of such official shall not be sufficient evidence to prove that the authorized government official made such statement.

E. A zoning ordinance shall permit the owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in § 15.2-2310. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.) and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. Unless such building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance of the locality. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the zoning ordinance shall provide for an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided in this paragraph. For purposes of this section, "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave,

earthquake or fire caused by lightning or wildfire. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under § 18.2-77 or 18.2-80, and obtain vested rights under this section.

F. Notwithstanding any local ordinance to the contrary, an owner of real property shall be permitted to replace an existing on-site sewage system for any existing building in the same general location on the property even if a new on-site sewage system would not otherwise be permitted in that location, unless access to a public sanitary sewer is available to the property. If access to a sanitary sewer system is available, then the connection to such system shall be required. Any new on-site system shall be installed in compliance with applicable regulations of the Department of Health in effect at the time of the installation.

G. Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to notify such property owner, from ordering the removal of a nonconforming sign that has been abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least two years. Any locality may, by ordinance, provide that following the expiration of the two-year period any abandoned nonconforming sign shall be removed by the owner of the property on which the sign is located, if notified by the locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify the property owner, the locality through its own agents or employees may enter the property upon which the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from applying to a court of competent jurisdiction for an order requiring the removal of such abandoned nonconforming sign by the owner by means of injunction or other appropriate remedy.

H. Nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

Code 1950, §§ 15-843, 15-848, 15-968.6; 1962, c. 407, § 15.1-492; 1966, c. 202; 1975, c. 641; 1997, c. 587; 1998, c. 801; 2002, c. 823; 2003, cc. 21, 53, 189; 2004, c. 538; 2006, c. 244; 2008, cc. 377, 411; 2009, c. 782; 2010, cc. 315, 698; 2014, c. 648; 2016, c. 584; 2017, c. 404.

§ 15.2-2307.1. Protection of established commercial fishing operations

Registered commercial fishermen and seafood buyers who operate their businesses from their waterfront residences shall not be prohibited by a locality from continuing their businesses, notwithstanding the provisions of any local zoning ordinance. This section shall only apply to businesses that have been in operation by the current owner, or a family member of the current owner, for at least 20 years at the location in question. The protection granted by this section shall continue so long as the property is owned by the current owner or a family member of the owner.

2005, c. 194.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, or in a town with a population of 3,500 or less, either three, five, or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each, except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least 30 days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill

vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality, except that one may be a member of the local planning commission, any member may be appointed to serve as an officer of election as defined in § 24.2-101, and any elected official of an incorporated town may serve on the board of the county in which the member also resides. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman 24 hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years, except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body. Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Upon request of the board of zoning appeals, the governing body shall consider appropriation of funds so that the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. If a board has needs that surpass the budgeted amount, the governing body shall review the board's request. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least 15 days' notice.

E. Notwithstanding any contrary provisions of this section, in the Cities of Portsmouth and Virginia Beach, members of the board shall be appointed by the governing body. The governing body shall also appoint at least one but not more than three alternates to the board.

Code 1950, §§ 15-825, 15-850, 15-968.8; 1950, pp. 176, 489; 1952, c. 688; 1962, c. 407, § 15.1-494; 1975, c. 641; 1976, c. 642; 1977, c. 172; 1982, c. 3; 1989, c. 27; 1992, c. 47; 1997, cc. 570, 587; 1998, cc. 346, 520, 528; 1999, c. 838; 2002, cc. 205, 545; 2007, c. 813; 2009, c. 734; 2010, c. 705; 2015, cc. 406, 407, 597; 2019, c. 703; 2020, cc. 11, 1006; 2021, Sp. Sess. I, c. 355; 2022, c. 249.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings

A. The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in

such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.

C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.

2015, c. 597.

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a

property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555; 1997, c. 587; 2000, c. 1050; 2002, c. 546; 2003, c. 403; 2006, c. 264; 2008, c. 318; 2009, c. 206; 2015, c. 597; 2018, c. 757.

§ 15.2-2310. Applications for special exceptions and variances

Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board or bureau. Applications shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. No special exceptions or variances shall be authorized except after notice and hearing as required by § 15.2-2204. The zoning administrator shall also transmit a copy of the application to the local planning commission which may send a recommendation to the board or appear as a party at the hearing. Any locality may provide by ordinance that substantially the same application will not be considered by the board within a specified period, not exceeding one year.

Code 1950, §§ 15-828 through 15-830, 15-832, 15-833, 15-850, 15-968.10; 1950, p. 176; 1962, c. 407, § 15.1-496; 1966, c. 256; 1975, cc. 521, 641; 1989, c. 407; 1997, c. 587.

§ 15.2-2311. Appeals to board

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given and the zoning administrator's written order is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

1975, c. 521, § 15.1-496.1; 1983, c. 12; 1993, c. 780; 1995, c. 424; 1997, c. 587; 2005, cc. 625, 677; 2008, c. 378; 2010, c. 241; 2011, c. 457; 2012, cc. 400, 550, 606; 2017, c. 665; 2019, c. 387.

§ 15.2-2312. Procedure on appeal

The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and make its decision within ninety days of the filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

1975, c. 521, § 15.1-496.2; 1983, c. 444; 1986, c. 483; 1997, c. 587.

§ 15.2-2313. Proceedings to prevent construction of building in violation of zoning ordinance

Where a building permit has been issued and the construction of the building for which the permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

1975, c. 521, § 15.1-496.3; 1997, c. 587.

§ 15.2-2314. Certiorari to review decision of board

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. Once the writ of certiorari is served, the board of zoning appeals shall have 21 days or as ordered by the court to respond. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the

proceedings in the circuit court. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law de novo.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality or the governing body, unless it shall appear to the court that the locality or the governing body acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality or the governing body may request that the court hear the matter on the question of whether the appeal was frivolous.

Code 1950, §§ 15-834 through 15-839, 15-850, 15-958.11; 1950, p. 176; 1962, c. 407, § 15.1-497; 1975, c. 641; 1988, c. 856; 1994, c. 705; 1996, c. 450; 1997, c. 587; 2001, c. 422; 2003, c. 568; 2005, cc. 625, 677; 2006, c. 446; 2010, c. 241; 2015, c. 597; 2017, c. 661; 2020, c. 86.

§ 15.2-2315. Conflict with statutes, local ordinances or regulations

Whenever the regulations made under authority of this article require a greater width or size of yards, courts or other open spaces, require a lower height of building or less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this article shall govern. Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, require a lower height of building or a less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of this article, the provisions of such statute or local ordinance or regulation shall govern.

Code 1950, §§ 15-842, 15-968.12; 1962, c. 407, § 15.1-498; 1997, c. 587.

§ 15.2-2316. Validation of zoning ordinances prior to 1971

All proceedings had in the preparation, certification and adoption of zoning ordinances by every locality prior to January 1, 1971, which shall have been in substantial compliance with the provisions of this chapter are validated and confirmed, and all such zoning ordinances adopted or attempted to be adopted pursuant to the provisions of this chapter are declared to be validly adopted and enacted, notwithstanding any defects or irregularities in the adoption thereof.

Code 1950, § 15-854.2; 1962, c. 583, § 15.1-503; 1984, c. 380; 1997, c. 587.

Article 7.1. Transfer of Development Rights

§ 15.2-2316.1. Definitions

As used in this article, the term:

"Development rights" means the permitted uses and density of development that are allowed on the sending property under any zoning ordinance of a locality on a date prescribed by the ordinance. "Development rights" includes "transferable development rights."

"Receiving area" means one or more areas identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

"Receiving property" means a lot or parcel within a receiving area and within which development rights are increased pursuant to a transfer of development rights affixed to the property. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property. Development rights may be transferred between receiving properties, as otherwise permitted in the ordinance.

"Sending area" means one or more areas identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be severed and transferred to a receiving area.

"Sending property" means a lot or parcel within a sending area from which development rights are authorized to be severed.

"Severance of development rights" means the process by which development rights from a sending property are severed pursuant to this act.

"Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

"Transferable development rights" means all or that portion of development rights that are transferred or are transferable.

2006, c. 573; 2007, cc. 363, 410; 2009, cc. 413, 731.

§ 15.2-2316.2. Localities may provide for transfer of development rights

A. Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction. Any locality adopting or amending any such transfer of development rights ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body.

B. In order to implement the provisions of this act, a locality shall adopt an ordinance that shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property, to convey development rights to one or more parties, or to affix development rights to one or more receiving properties. These instruments shall be executed by the property owners of the development rights being transferred, and any lien holders of such property owners. The instruments shall identify the development rights being severed, and the sending properties or the receiving properties, as applicable;

2. Assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;

3. The severance of transferable development rights from the sending property;

4. The purchase, sale, exchange, or other conveyance of transferable development rights, after severance, and prior to the rights being affixed to a receiving property;

5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

6. A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties;

7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;

8. The permitted uses and the maximum increases in density in the receiving area;

9. The minimum acreage of a sending property and the minimum reduction in density of the sending property that may be conveyed in severance or transfer of development rights;

10. The development rights permitted to be attached in the receiving areas shall be equal to or greater than the development rights permitted to be severed from the sending areas;

11. An assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designated receiving area; and

12. The application to be deemed approved upon the determination of compliance with the ordinance by the agent of the planning commission, or other agent designated by the locality.

C. In order to implement the provisions of this act, a locality may provide in its ordinance for:

1. The purchase of all or part of such development rights, which shall retire the development rights so purchased;

2. The severance of development rights from existing zoned or subdivided properties as otherwise provided in subsection E;

3. The owner of such development rights to make application to the locality for a real estate tax abatement for a period up to 25 years, to compensate the owner of such development rights for the fair market value of all or part of the development rights, which shall retire the number of development rights equal to the amount of the tax abatement, and such abatement is transferable with the property;

4. The owner of a property to request designation by the locality of the owner's property as a "sending property" or a "receiving property";

5. The allowance for residential density to be converted to bonus density on the receiving property by (i) an increase in the residential density on the receiving property or (ii) an increase in the square feet of commercial, industrial, or other uses on the receiving property, which upon conversion shall retire the development rights so converted;

6. The receiving areas to include such urban development areas or similarly defined areas in the locality established pursuant to § 15.2-2223.1;

7. The sending properties, subsequent to severance of development rights, to generate one or more forms of renewable energy, as defined in § 56-576, subject to the provisions of the local zoning ordinance;

8. The sending properties, subsequent to severance of development rights, to produce agricultural products or forestal products, as defined in § 15.2-4302, and to include parks, campgrounds and related camping facilities; however, for purposes of this subdivision, "campgrounds" does not include use by travel trailers, motor homes, and similar vehicular type structures;

9. The review of an application by the planning commission to determine whether the application complies with the provisions of the ordinance;

10. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this act;

11. Approval of an application upon the determination of compliance with the ordinance by the agent of the planning commission; and

12. A requirement that development comply with any locality-adopted neighborhood design standards identified in the comprehensive plan for the receiving area in which the development shall occur, provided such design standard was adopted in the comprehensive plan and applied to the receiving area prior to the transfer of the development right.

D. The locality may, by ordinance, designate receiving areas or receiving properties, add to, supplement, or amend its designations of receiving areas or receiving properties, or designate receiving areas or receiving properties that shall receive development rights only from certain sending areas or sending properties specified by the locality, so long as the development rights permitted to be attached in the receiving areas are equal to or greater than the development rights permitted to be severed in the sending areas.

E. Any proposed severance or transfer of development rights shall only be initiated upon application by the property owners of the sending properties, development rights, or receiving properties as otherwise provided herein.

F. A locality may not require property owners to sever or transfer development rights as a condition of the development of any property.

G. The owner of a property may sever development rights from the sending property, pursuant to the provisions of this act. An application to transfer development rights to one or more receiving properties, for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of such development rights and the owners of the receiving properties.

H. Development rights severed pursuant to this article shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. Once a deed for transferable development rights, created pursuant to this act, has been recorded in the land records of the office of the circuit court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise transferred by the owner of the sending property, the development rights shall vest in the grantee and may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to prevent the owner of the sending property from recording a deed covenant against the sending property severing the development rights on said property, with the owner of the sending property retaining ownership of the severed development rights. Any transfer of the development rights to a property in a receiving area shall be in accordance with the provisions of the ordinance adopted pursuant to this article.

I. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is severed from and recorded as a distinct interest in real property, or the transferable development right is used at a receiving property and becomes appurtenant thereto. Once a transferable development right is severed from the sending property, the assessment of the fee interest in the sending property shall reflect any change in the fair market value that results from the inability of the owner of the fee interest to use such property for such uses terminated by the severance of the transferable development right. Upon severance from the sending property and recordation as a distinct interest in real property, the transferable development right shall be assessed at its fair market value on a separate real estate tax bill sent to the owner of said development right as taxable real estate in accordance with Article 1 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58.1. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

J. The owner of a sending property from which development rights are severed shall provide a copy of the instrument, showing the deed book and page number, or instrument or GPIN, to the real estate tax assessor for the locality.

K. Localities, from time to time as the locality designates sending and receiving areas, shall incorporate the map identified in subdivision B 6 into the comprehensive plan.

L. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or downzone the uses, or the density of uses permitted in the zoning district applicable to any property to which development rights have been transferred, shall be effective with respect to such property unless there has been mistake, fraud, or a material change in circumstances substantially affecting the public health, safety, or welfare.

M. A county adopting an ordinance pursuant to this article may designate eligible receiving areas in any incorporated town within such county, if the governing body of the town has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

N. Any county and an adjacent city may enter voluntarily into an agreement to permit the county to designate eligible receiving areas in the city if the governing body of the city has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The city council shall designate areas it deems suitable as receiving areas and shall designate the maximum increases in density in each such receiving area. However, if any such agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), or 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et seq.). The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.

1. The terms and conditions of the density transfer agreement as provided in this subsection shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement, provided the governing body of each such locality first holds a public hearing, which shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.

2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision to either affirming or denying the agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The circuit court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.

2006, c. 573; 2007, cc. 363, 410; 2009, cc. 413, 731; 2010, c. 239; 2012, c. 512; 2014, c. 527; 2019, c. 701.

Article 7.2. Zoning for Wireless Communications Infrastructure

§ 15.2-2316.3. Definitions

As used in this article, unless the context requires a different meaning:

"Administrative review-eligible project" means a project that provides for:

1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities; or

2. The co-location on any existing structure of a wireless facility that is not a small cell facility.

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Department" means the Department of Transportation.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to co-locate equipment on that structure. "Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"New structure" means a wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider applies to a locality for any required zoning approval.

"Project" means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the co-location on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of § 15.2-2316.4 apply.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Standard process project" means any project other than an administrative review-eligible project.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

"Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i); (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless facilities.

"Wireless services provider" means a provider of wireless services.

"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed or self-supporting, or suitable existing structure or alternative structure designed to support or capable of supporting wireless facilities. "Wireless support structure" does not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

2017, c. 835; 2018, cc. 835, 844.

§ 15.2-2316.4. Zoning; small cell facilities

A. A locality shall not require that a special exception, special use permit, or variance be obtained for any small cell facility installed by a wireless services provider or wireless infrastructure provider on an existing structure, provided that the wireless services provider or wireless infrastructure provider (i) has permission from the owner of the structure to co-locate equipment on that structure and (ii) notifies the locality in which the permitting process occurs.

B. Localities may require administrative review for the issuance of any required zoning permits for the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure. Localities shall permit an applicant to submit up to 35 permit requests on a single application. In addition:

1. A locality shall approve or disapprove the application within 60 days of receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval of the application shall be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an additional 30 days. The application shall be deemed approved if the locality fails to act within the initial 60 days or an extended 30-day period.

2. A locality may prescribe and charge a reasonable fee for processing the application not to exceed:

a. $100 each for up to five small cell facilities on a permit application; and

b. $50 for each additional small cell facility on a permit application.

3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

4. The locality may disapprove a proposed location or installation of a small cell facility only for the following reasons:

a. Material potential interference with other pre-existing communications facilities or with future communications facilities that have already been designed and planned for a specific location or that have been reserved for future public safety communications facilities;

b. The public safety or other critical public service needs;

c. Only in the case of an installation on or in publicly owned or publicly controlled property, excluding privately owned structures where the applicant has an agreement for attachment to the structure, aesthetic impact or the absence of all required approvals from all departments, authorities, and agencies with jurisdiction over such property; or

d. Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306, or pursuant to local charter on a historic property that is not eligible for the review process established under 54 U.S.C. § 306108.

5. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of small cell facilities.

6. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities.

C. Notwithstanding anything to the contrary in this section, the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes shall be exempt from locality-imposed permitting requirements and fees.

2017, c. 835.

§ 15.2-2316.4:1. Zoning; other wireless facilities and wireless support structures

A. A locality shall not require that a special exception, special use permit, or variance be obtained for the installation or construction of an administrative review-eligible project but may require administrative review for the issuance of any zoning permit, or an acknowledgement that zoning approval is not required, for such a project.

B. A locality may charge a reasonable fee for each application submitted under subsection A or for any zoning approval required for a standard process project. The fee shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement. Upon request, a locality shall provide the applicant with the cost basis for the fee. A locality shall not charge market-based or value-based fees for the processing of an application. If the application is for:

1. An administrative review-eligible project, the fee shall not exceed $500; and

2. A standard process project, the fee shall not exceed the actual direct costs to process the application, including permits and inspection.

C. The processing of any application submitted under subsection A or for any zoning approval required for a standard process project shall be subject to the following:

1. Within 10 business days after receiving an incomplete application, the locality shall notify the applicant that the application is incomplete. The notice shall specify any additional information required to complete the application. The notice shall be sent by electronic mail to the applicant's email address provided in the application. If the locality fails to provide such notice within such 10-day period, the application shall be deemed complete.

2. Except as provided in subdivision 3, a locality shall approve or disapprove a complete application:

a. For a new structure within the lesser of 150 days of receipt of the completed application or the period required by federal law for such approval or disapproval; or

b. For the co-location of any wireless facility that is not a small cell facility within the lesser of 90 days of receipt of the completed application or the period required by federal law for such approval or disapproval, unless the application constitutes an eligible facilities request as defined in 47 U.S.C. § 1455(a).

3. Any period specified in subdivision 2 for a locality to approve or disapprove an application may be extended by mutual agreement between the applicant and the locality.

D. A complete application for a project shall be deemed approved if the locality fails to approve or disapprove the application within the applicable period specified in subdivision C 2 or any agreed extension thereof pursuant to subdivision C 3.

E. If a locality disapproves an application submitted under subsection A or for any zoning approval required for a standard process project:

1. The locality shall provide the applicant with a written statement of the reasons for such disapproval; and

2. If the locality is aware of any modifications to the project as described in the application that if made would permit the locality to approve the proposed project, the locality shall identify them in the written statement provided under subdivision 1. The locality's subsequent disapproval of an application for a project that incorporates the modifications identified in such a statement may be used by the applicant as evidence that the locality's subsequent disapproval was arbitrary or capricious in any appeal of the locality's action.

F. A locality's action on disapproval of an application submitted under subsection A or for any zoning approval required for a standard process project shall:

1. Not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; and

2. Be supported by substantial record evidence contained in a written record publicly released within 30 days following the disapproval.

G. An applicant adversely affected by the disapproval of an application submitted under subsection A or for any zoning approval required for a standard process project may file an appeal pursuant to subsection F of § 15.2-2285, or to § 15.2-2314 if the requested zoning approval involves a variance, within 30 days following delivery to the applicant or notice to the applicant of the record described in subdivision F 2.

2018, cc. 835, 844.

§ 15.2-2316.4:2. Application reviews

A. In its receiving, consideration, and processing of a complete application submitted under subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project, a locality shall not:

1. Disapprove an application on the basis of:

a. The applicant's business decision with respect to its designed service, customer demand for service, or quality of its service to or from a particular site;

b. The applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or

c. The wireless facility technology selected by the applicant for use at the project;

2. Require an applicant to provide proprietary, confidential, or other business information to justify the need for the project, including propagation maps and telecommunications traffic studies, or information reviewed by a federal agency as part of the approval process for the same structure and wireless facility, provided that a locality may require an applicant to provide a copy of any approval granted by a federal agency, including conditions imposed by that agency;

3. Require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. A locality may adopt reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;

4. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other types of financial surety, to ensure that abandoned or unused wireless facilities can be removed, unless the locality imposes similar requirements on other permits for other types of similar commercial development. Any such instrument shall not exceed a reasonable estimate of the direct cost of the removal of the wireless facilities;

5. Discriminate or create a preference on the basis of the ownership, including ownership by the locality, of any property, structure, base station, or wireless support structure, when promulgating rules or procedures for siting wireless facilities or for evaluating applications;

6. Impose any unreasonable requirements or obligations regarding the presentation or appearance of a project, including unreasonable requirements relating to (i) the kinds of materials used or (ii) the arranging, screening, or landscaping of wireless facilities or wireless structures;

7. Impose any requirement that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in which a locality has a competitive, economic, financial, governance, or other interest;

8. Condition or require the approval of an application solely on the basis of the applicant's agreement to allow any wireless facilities provided or operated, in whole or in part, by a locality or by any other entity, to be placed at or co-located with the applicant's project;

9. Impose a setback or fall zone requirement for a project that is larger than a setback or fall zone area that is imposed on other types of similar structures of a similar size, including utility poles;

10. Limit the duration of the approval of an application, except a locality may require that construction of the approved project shall commence within two years of final approval and be diligently pursued to completion; or

11. Require an applicant to perform services unrelated to the project described in the application, including restoration work on any surface not disturbed by the applicant's project.

B. Nothing in this article shall prohibit a locality from disapproving an application submitted under subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project:

1. On the basis of the fact that the proposed height of any wireless support structure, wireless facility, or wireless support structure with attached wireless facilities exceeds 50 feet above ground level, provided that the locality follows a local ordinance or regulation that does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services; or

2. That proposes to locate a new structure, or to co-locate a wireless facility, in an area where all cable and public utility facilities are required to be placed underground by a date certain or encouraged to be undergrounded as part of a transportation improvement project or rezoning proceeding as set forth in objectives contained in a comprehensive plan, if:

a. The undergrounding requirement or comprehensive plan objective existed at least three months prior to the submission of the application;

b. The locality allows the co-location of wireless facilities on existing utility poles, government-owned structures with the government's consent, existing wireless support structures, or a building within that area;

c. The locality allows the replacement of existing utility poles and wireless support structures with poles or support structures of the same size or smaller within that area; and

d. The disapproval of the application does not unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services.

The locality may also disapprove an application if the applicant has not given written notice to adjacent landowners at least 15 days before it applies to locate a new structure in the area.

C. Nothing in this article shall prohibit an applicant from voluntarily submitting, and the locality from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from the placement of a new structure or facility.

D. Nothing in this article shall prohibit a locality from disapproving an application submitted under a standard process project on the basis of the availability of existing wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations on the applicant.

2018, cc. 835, 844; 2020, c. 344.

§ 15.2-2316.4:3. Additional provisions

A. A locality shall not require zoning approval for (i) routine maintenance or (ii) the replacement of wireless facilities or wireless support structures within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller. However, a locality may require a permit to work within the right-of-way for the activities described in clause (i) or (ii), if applicable.

B. Nothing in this article shall prohibit a locality from limiting the number of new structures or the number of wireless facilities that can be installed in a specific location.

2018, cc. 835, 844.

§ 15.2-2316.5. Moratorium prohibited

A locality shall not adopt a moratorium on considering zoning applications submitted by wireless services providers or wireless infrastructure providers.

2017, c. 835.

Article 7.3. Siting of Solar Projects and Energy Storage Projects

§ 15.2-2316.6. Definitions

As used in this article, unless the context requires a different meaning:

"Energy storage facilities" means the energy storage equipment and technology within an energy storage project that is capable of absorbing energy, storing such energy for a period of time, and redelivering such energy after it has been stored.

"Energy storage project" means the energy storage facilities within the project site.

"Host locality" means any locality within the jurisdictional boundaries of which construction of a commercial solar project or an energy storage project is proposed.

"Solar facilities" means commercial solar photovoltaic (electric energy) generation facilities. "Solar facilities" does not include any solar project that is (i) described in § 56-594, 56-594.01, 56-594.02, or 56-594.2, or (ii) five megawatts or less.

"Solar project" means the solar facilities, subject to this chapter, that are within the project site.

2020, c. 802; 2021, Sp. Sess. I, cc. 57, 58.

§ 15.2-2316.7. Negotiations; siting agreement

A. Any applicant for a solar project or an energy storage project shall give to the host locality written notice of the applicant's intent to locate in such locality and request a meeting. Such applicant shall meet, discuss, and negotiate a siting agreement with such locality.

B. The siting agreement may include terms and conditions, including (i) mitigation of any impacts of such solar project or energy storage project; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the applicant in the deployment of broadband, as defined in § 56-585.1:9, in such locality.

2020, c. 802; 2021, Sp. Sess. I, cc. 57, 58.

§ 15.2-2316.8. Powers of host localities

A. The governing body of a host locality shall have the power to:

1. Hire and pay consultants and other experts on behalf of the host locality in matters pertaining to the siting of a solar project or energy storage project;

2. Meet, discuss, and negotiate a siting agreement with an applicant; and

3. Enter into a siting agreement with an applicant that is binding upon the governing body of the host locality and enforceable against it and future governing bodies of the host locality in any court of competent jurisdiction by signing a siting agreement pursuant to this article. Such contract may be assignable at the parties' option.

B. If the parties to the siting agreement agree upon the terms and conditions of a siting agreement, the host locality shall schedule a public hearing, pursuant to subsection A of § 15.2-2204, for the purpose of consideration of such siting agreement. If a majority of a quorum of the members of the governing body present at such public hearing approve of such siting agreement, the siting agreement shall be executed by the signatures of (i) the chief executive officer of the host locality and (ii) the applicant or the applicant's authorized agent. The siting agreement shall continue in effect until it is amended, revoked, or suspended.

2020, c. 802; 2021, Sp. Sess. I, cc. 57, 58.

§ 15.2-2316.9. Effect of executed siting agreement; land use approval

A. Nothing in this article shall be construed to exempt an applicant from any other applicable requirements to obtain approvals and permits under federal, state, or local ordinances and regulations. An applicant may file for appropriate land use approvals for the solar project or energy storage project, as applicable, under the regulations and ordinances of the host locality at or after the time the applicant submits its notice of intent to site a solar project or energy storage project as set forth in subsection A of § 15.2-2316.7.

B. Nothing in this article shall affect the authority of the host locality to enforce its ordinances and regulations to the extent that they are not inconsistent with the terms and conditions of the siting agreement.

C. Approval of a siting agreement by the local governing body in accordance with subsection B of § 15.2-2316.8 shall deem the solar project or energy storage project to be substantially in accord with the comprehensive plan of the host locality, thereby satisfying the requirements of § 15.2-2232.

D. The failure of an applicant and the governing body to enter into a siting agreement may be a factor in the decision of the governing body in the consideration of any land use approvals for a solar project or energy storage project, but shall not be the sole reason for a denial of such land use approvals.

2020, c. 802; 2021, Sp. Sess. I, cc. 57, 58.

Article 8. Road Impact Fees

§ 15.2-2317. Applicability of article

This article shall apply to any locality that has adopted zoning pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 and that (i) has a population of at least 20,000 and has a population growth rate of at least 5% or (ii) has population growth of 15% or more. For the purposes of this section, population growth shall be the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census.

1989, c. 485, § 15.1-498.1; 1997, c. 587; 2000, c. 495; 2006, c. 832; 2007, c. 896.

§ 15.2-2318. Definitions

As used in this article, unless the context requires a different meaning:

"Cost" includes, in addition to all labor, materials, machinery and equipment for construction, (i) acquisition of land, rights-of-way, property rights, easements and interests, including the costs of moving or relocating utilities, (ii) demolition or removal of any structure on land so acquired, including acquisition of land to which such structure may be

moved, (iii) survey, engineering, and architectural expenses, (iv) legal, administrative, and other related expenses, and (v) interest charges and other financing costs if impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued by the locality to finance the road improvement.

"Impact fee" means a charge or assessment imposed against new development in order to generate revenue to fund or recover the costs of reasonable road improvements benefiting the new development. Impact fees may not be assessed and imposed for road repair, operation and maintenance, nor to meet demand which existed prior to the new development.

"Impact fee service area" means an area designated within the comprehensive plan of a locality having clearly defined boundaries and clearly related traffic needs and within which development is to be subject to the assessment of impact fees.

"Road improvement" includes construction of new roads or improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality with road maintenance responsibilities, to meet increased demand attributable to new development. Road improvements do not include on-site construction of roads which a developer may be required to provide pursuant to §§ 15.2-2241 through 15.2-2245.

1989, c. 485, § 15.1-498.2; 1992, c. 465; 1997, c. 587; 2007, c. 896.

§ 15.2-2319. Authority to assess and impose impact fees

Any applicable locality may, by ordinance pursuant to the procedures and requirements of this article, assess and impose impact fees on new development to pay all or a part of the cost of reasonable road improvements that benefit the new development.

Prior to the adoption of the ordinance, a locality shall establish an impact fee advisory committee. The committee shall be composed of not less than five nor more than ten members appointed by the governing body of the locality and at least forty percent of the membership shall be representatives from the development, building or real estate industries. The planning commission or other existing committee that meets the membership requirements may serve as the impact fee advisory committee. The committee shall serve in an advisory capacity to assist and advise the governing body of the locality with regard to the ordinance. No action of the committee shall be considered a necessary prerequisite for any action taken by the locality in regard to the adoption of an ordinance.

1989, c. 485, § 15.1-498.2; 1992, c. 465; 1997, c. 587; 2007, c. 896.

§ 15.2-2320. Impact fee service areas to be established

The locality shall delineate one or more impact fee service areas within its comprehensive plan. Impact fees collected from new development within an impact fee service area shall be expended for road improvements benefiting that impact fee service area. An impact fee service area may encompass more than one road improvement project. A locality may exclude urban development areas designated pursuant to § 15.2-2223.1 from impact fee service areas.

1989, c. 485, § 15.1-498.3; 1992, c. 465; 1997, c. 587; 2007, c. 896.

§ 15.2-2321. Adoption of road improvements program

Prior to adopting a system of impact fees, the locality shall conduct an assessment of road improvement needs benefiting an impact fee service area and shall adopt a road improvements plan for the area showing the new roads proposed to be constructed and the existing roads to be improved or expanded and the schedule for undertaking such construction, improvement or expansion. The road improvements plan shall be adopted as an amendment to the required comprehensive plan and shall be incorporated into the capital improvements program or, in the case of the counties where applicable, the six-year plan for secondary highway construction pursuant to § 33.2-331.

The locality shall adopt the road improvements plan after holding a duly advertised public hearing. The public hearing notice shall identify the impact fee service area or areas to be designated, and shall include a summary of the needs assessment and the assumptions upon which the assessment is based, the proposed amount of the impact fee, and

information as to how a copy of the complete study may be examined. A copy of the complete study shall be available for public inspection and copying at reasonable times prior to the public hearing.

The locality at a minimum shall include the following items in assessing road improvement needs and preparing a road improvements plan:

1. An analysis of the existing capacity, current usage and existing commitments to future usage of existing roads, as indicated by (i) current and projected service levels, (ii) current valid building permits outstanding, and (iii) approved and pending site plans and subdivision plats. If the current usage and commitments exceed the existing capacity of the roads, the locality also shall determine the costs of improving the roads to meet the demand. The analysis shall include any off-site road improvements or cash payments for road improvements accepted by the locality and shall include a plan to fund the current usages and commitments that exceed the existing capacity of the roads.

2. The projected need for and costs of construction of new roads or improvement or expansion of existing roads attributable in whole or in part to projected new development. Road improvement needs shall be projected for the impact fee service area when fully developed in accord with the comprehensive plan and, if full development is projected to occur more than 20 years in the future, at the end of a 20-year period. The assumptions with regard to land uses, densities, intensities, and population upon which road improvement projections are based shall be presented.

3. The total number of new service units projected for the impact fee service area when fully developed and, if full development is projected to occur more than 20 years in the future, at the end of a 20-year period. A "service unit" is a standardized measure of traffic use or generation. The locality shall develop a table or method for attributing service units to various types of development and land use, including but not limited to residential, commercial and industrial uses. The table shall be based upon the ITE manual (published by the Institute of Transportation Engineers) or locally conducted trip generation studies, and consistent with the traffic analysis standards adopted pursuant to § 15.2-2222.1.

1989, c. 485, § 15.1-498.4; 1992, c. 465; 1997, c. 587; 2007, c. 896.

§ 15.2-2322. Adoption of impact fee and schedule

After adoption of a road improvement program, the locality may adopt an ordinance establishing a system of impact fees to fund or recapture all or any part of the cost of providing reasonable road improvements benefiting new development. The ordinance shall set forth the schedule of impact fees.

1989, c. 485, § 15.1-498.5; 1997, c. 587; 2007, c. 896.

§ 15.2-2323. When impact fees assessed and imposed

The amount of impact fees to be imposed on a specific development or subdivision shall be determined before or at the time the site plan or subdivision is approved. The ordinance shall specify that the fee is to be collected at the time of the issuance of a building permit. The ordinance shall provide that fees (i) may be paid in lump sum or (ii) be paid on installment at a reasonable rate of interest for a fixed number of years. The locality by ordinance may provide for negotiated agreements with the owner of the property as to the time and method of paying the impact fees.

The maximum impact fee to be imposed shall be determined (i) by dividing projected road improvement costs in the impact fee service area when fully developed by the number of projected service units when fully developed, or (ii) for a reasonable period of time, but not less than ten years, by dividing the projected costs necessitated by development in the next ten years by the service units projected to be created in the next ten years.

The ordinance shall provide for appeals from administrative determinations, regarding the impact fees to be imposed, to the governing body or such other body as designated in the ordinance. The ordinance may provide for the resolution of disputes over an impact fee by arbitration or otherwise.

1989, c. 485, § 15.1-498.6; 1992, c. 465; 1997, c. 587; 2007, c. 896.

§ 15.2-2324. Credits against impact fee

The value of any dedication, contribution or construction from the developer for off-site road or other transportation improvements benefiting the impact fee service area shall be treated as a credit against the impact fees imposed on the developer's project. The locality shall treat as a credit any off-site transportation dedication, contribution, or construction, whether it is a condition of a rezoning or otherwise committed to the locality. The locality may by ordinance provide for credits for approved on-site transportation improvements in excess of those required by the development.

The locality also shall calculate and credit against impact fees the extent to which (i) other developments have already contributed to the cost of existing roads which will benefit the development, (ii) new development will contribute to the cost of existing roads, and (iii) new development will contribute to the cost of road improvements in the future other than through impact fees, including any special taxing districts, special assessments, or community development authorities.

1989, c. 485, § 15.1-498.7; 1992, c. 465; 1997, c. 587; 2007, c. 896.

§ 15.2-2325. Updating plan and amending impact fee

The locality shall update the needs assessment and the assumptions and projections at least once every two years. The road improvement plan shall be updated at least every two years to reflect current assumptions and projections. The impact fee schedule may be amended to reflect any substantial changes in such assumptions and projections. Any impact fees not yet paid shall be assessed at the updated rate.

1989, c. 485, § 15.1-498.8; 1997, c. 587; 2007, c. 896.

§ 15.2-2326. Use of proceeds

A separate road improvement account shall be established for the impact fee service area and all funds collected through impact fees shall be deposited in the interest-bearing account. Interest earned on deposits shall become funds of the account. The expenditure of funds from the account shall be only for road improvements benefiting the impact fee service area as set out in the road improvement plan for the impact fee service area.

1989, c. 485, § 15.1-498.9; 1992, c. 465; 1997, c. 587; 2007, c. 896.

§ 15.2-2327. Refund of impact fees

The locality shall refund any impact fee or portion thereof for which construction of a project is not completed within a reasonable period of time, not to exceed fifteen years. In the event that impact fees are not committed to road improvements benefiting the impact fee service area within seven years from the date of collection, the locality may commit any such impact fees to the secondary or urban system construction program of that locality for road improvements that benefit the impact fee service area.

Upon completion of a project, the locality shall recalculate the impact fee based on the actual cost of the improvement. It shall refund the difference if the impact fee paid exceeds actual cost by more than fifteen percent. Refunds shall be made to the record owner of the property at the time the refund is made.

1989, c. 485, § 15.1-498.10; 1992, c. 465; 1997, c. 587; 2007, c. 896.

Article 9. Impact Fees

§ 15.2-2328. Applicability of article

The provisions of this article shall apply in their entirety to any locality that has established an urban transportation service district in accordance with § 15.2-2403.1. However, the authority granted by this article may be exercised only in areas outside of urban transportation service districts and on parcels that are currently zoned agricultural and are being subdivided for by-right residential development. The authority granted by this article shall expire on December 31, 2008, for any locality that has not established an urban transportation service district and adopted an impact fee ordinance pursuant to this article by such date.

2007, c. 896.

§ 15.2-2329. Imposition of impact fees

A. Any locality that includes within its comprehensive plan a calculation of the capital costs of public facilities necessary to serve residential uses may impose and collect impact fees in amounts consistent with the methodologies used in its comprehensive plan to defray the capital costs of public facilities related to the residential development.

B. Impact fees imposed and collected pursuant to this section shall only be used for public facilities that are impacted by residential development.

C. A locality imposing impact fees as provided in this section shall allow credit against the impact fees for cash proffers collected for the purpose of defraying the capital costs of public facilities related to the residential development. A locality imposing impact fees as provided in this section shall also include within its comprehensive plan a methodology for calculating credit for the value of proffered land donations to accommodate public facilities, and for the construction cost of any public facilities or public improvements the construction of which is required by proffer.

D. A locality imposing impact fees under this section may require that such impact fees be paid prior to and as a condition of the issuance of any necessary building permits for residential uses.

E. For the purposes of this section, "public facilities" shall be deemed to include: (i) roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways; (ii) stormwater collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements; (iii) parks, open space, and recreation areas and related facilities; (iv) public safety facilities, including police, fire, emergency medical, and rescue facilities; (v) primary and secondary schools and related facilities; and (vi) libraries and related facilities; however, the definition "public facilities" for counties within the Richmond MSA shall be deemed to include: roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways.

2007, c. 896.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Virginia Administrative Code
Title 13. Housing
Agency 5. Department of Housing And Community Development
Chapter 63. Virginia Uniform Statewide Building Code

Part I. Construction

13VAC5-63-10. Chapter 1 Administration; Section 101 General.

Part I
Construction

A. Section 101.1 Short title. The Virginia Uniform Statewide Building Code, Part I, Construction, may be cited as the Virginia Construction Code or as the VCC. The term "USBC" shall mean the VCC unless the context in which the term is used clearly indicates it to be an abbreviation for the entire Virginia Uniform Statewide Building Code or for a different part of the Virginia Uniform Statewide Building Code.

Note: This code is also known as the 2018 edition of the USBC due to the use of the 2018 editions of the model codes.

B. Section 101.2 Incorporation by reference. Chapters 2 - 35 of the 2018 International Building Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the USBC. The term "IBC" means the 2018 International Building Code, published by the International Code Council, Inc. Any codes and standards referenced in the IBC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference. In addition, any provisions of the appendices of the IBC specifically identified to be part of the USBC are also considered to be part of the incorporation by reference.

Note 1: The IBC references other International Codes and standards including the following major codes:

2018 International Plumbing Code (IPC)

2018 International Mechanical Code (IMC)

2017 NFPA 70

2018 International Fuel Gas Code (IFGC)

2018 International Energy Conservation Code (IECC)

2018 International Residential Code (IRC)

Note 2: The IRC is applicable to the construction of detached one-family and two-family dwellings and townhouses as set out in Section 310.

C. Section 101.3 Numbering system. A dual numbering system is used in the USBC to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IBC. IBC numbering system designations are provided in the catchlines of the Virginia Administrative Code sections. Cross references between sections or chapters of the USBC use only the IBC numbering system designations. The term "chapter" is used in the context of the numbering system of the IBC and may mean a chapter in the USBC, a chapter in the IBC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

D. Section 101.4 Arrangement of code provisions. The USBC is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 - 35 of the IBC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IBC that are specifically identified. The terminology "changes to the text of the incorporated chapters of the IBC that are specifically identified" shall also be referred to as the "state amendments to the IBC." Such state amendments to the IBC are set out using corresponding chapter and section numbers of the IBC numbering system. In addition, since Chapter 1 of the IBC is not incorporated as part of the USBC, any reference to a provision of Chapter 1 of the IBC in the provisions of Chapters 2 - 35 of the IBC is generally invalid. However, where the purpose of such a reference would clearly correspond to a provision of Chapter 1 established herein, then the reference may be construed to be a valid reference to such corresponding Chapter 1 provision.

E. Section 101.5 Use of terminology and notes. The provisions of this code shall be used as follows:

1. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 - 35 of the IBC or in the state amendments to the IBC means the USBC, unless the context clearly indicates otherwise.

2. The term "this code," or "the code," where used in a code or standard referenced in the IBC means that code or standard, unless the context clearly indicates otherwise.

3. The use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision.

4. Notes in the IBC, in the codes and standards referenced in the IBC and in the state amendments to the IBC may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

5. References to International Codes and standards, where used in this code, include state amendments made to those International Codes and standards in the VCC.

F. Section 101.6 Order of precedence. The provisions of this code shall be used as follows:

1. The provisions of Chapter 1 of this code supersede any provisions of Chapters 2 - 35 of the IBC that address the same subject matter and impose differing requirements.

2. The provisions of Chapter 1 of this code supersede any provisions of the codes and standards referenced in the IBC that address the same subject matter and impose differing requirements.

3. The state amendments to the IBC supersede any provisions of Chapters 2 - 35 of the IBC that address the same subject matter and impose differing requirements.

4. The state amendments to the IBC supersede any provisions of the codes and standards referenced in the IBC that address the same subject matter and impose differing requirements.

5. The provisions of Chapters 2 - 35 of the IBC supersede any provisions of the codes and standards referenced in the IBC that address the same subject matter and impose differing requirements.

6. The provisions of the NEC, VMC, VPC, and VFGC supersede any provisions of the VECC that address the same subject matter and impose differing requirements.

7. The provisions of Chapters 2 through 10 and 12 through 44 of the VRC supersede any provisions of Chapter 11 of the VRC that address the same subject matter and impose differing requirements.

G. Section 101.7 Administrative provisions. The provisions of Chapter 1 establish administrative requirements, which include provisions relating to the scope of the code, enforcement, fees, permits, inspections and disputes. Any provisions of Chapters 2 - 35 of the IBC or any provisions of the codes and standards referenced in the IBC that address the same subject matter and impose differing requirements are deleted and replaced by the provisions of Chapter 1. Further, any administrative requirements contained in the state amendments to the IBC shall be given the same precedence as the provisions of Chapter 1. Notwithstanding the above, where administrative requirements of Chapters 2 - 35 of the IBC or of the codes and standards referenced in the IBC are specifically identified as valid administrative requirements in Chapter 1 of this code or in the state amendments to the IBC, then such requirements are not deleted and replaced.

Note: The purpose of this provision is to eliminate overlap, conflicts and duplication by providing a single standard for administrative, procedural and enforcement requirements of this code.

H. Section 101.8 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

Note: The order of precedence outlined in Section 101.6 may be determinative in establishing how to apply the definitions in the IBC and in the referenced codes and standards.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-20. Section 102 Purpose and scope.

A. Section 102.1 Purpose. In accordance with § 36-99 of the Code of Virginia, the purpose of the USBC is to protect the health, safety and welfare of the residents of the Commonwealth of Virginia, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged.

B. Section 102.2 Scope. This section establishes the scope of the USBC in accordance with § 36-98 of the Code of Virginia. The USBC shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies. This code also shall supersede the provisions of local ordinances applicable to single-family residential construction that (i) regulate dwelling foundations or crawl spaces, (ii) require the use of specific building materials or finishes in construction, or (iii) require minimum surface area or numbers of windows; however, this code shall not supersede proffered conditions accepted as a part of a rezoning application, conditions imposed upon the grant of special exceptions, special or conditional use permits or variances, conditions imposed upon a clustering of single-family homes and preservation of open space development through standards, conditions, and criteria established by a locality pursuant to subdivision 8 of § 15.2-2242 of the Code of Virginia or § 15.2-2286.1 of the Code of Virginia, or land use requirements in airport or highway overlay districts, or historic districts created pursuant to § 15.2-2306 of the Code of Virginia, or local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program.

Note: Requirements relating to functional design are contained in Section 103.5 of this code.

C. Section 102.2.1 Invalidity of provisions. To the extent that any provisions of this code are in conflict with Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia or in conflict with the scope of the USBC, those provisions are considered to be invalid to the extent of such conflict.

D. Section 102.3 Exemptions. The following are exempt from this code:

1. Equipment and wiring used for providing utility, communications, information, cable television, broadcast or radio service in accordance with all of the following conditions:

1.1. The equipment and wiring are located on either rights-of-way or property for which the service provider has rights of occupancy and entry.

1.2. Buildings housing exempt equipment and wiring shall be subject to the USBC.

1.3. The equipment and wiring exempted by this section shall not create an unsafe condition prohibited by the USBC.

2. Support structures owned or controlled by a provider of publicly regulated utility service or its affiliates for the transmission and distribution of electric service in accordance with all of the following conditions:

2.1. The support structures are located on either rights-of-way or property for which the service provider has rights of occupancy and entry.

2.2. The support structures exempted by this section shall not create an unsafe condition prohibited by the USBC.

3. Direct burial poles used to support equipment or wiring providing communications, information or cable television services. The poles exempted by this section shall not create an unsafe condition prohibited by the USBC.

4. Electrical equipment, transmission equipment, and related wiring used for wireless transmission of radio, broadcast, telecommunications, or information service in accordance with all of the following conditions:

4.1. Buildings housing exempt equipment and wiring and structures supporting exempt equipment and wiring shall be subject to the USBC.

4.2. The equipment and wiring exempted by this section shall not create an unsafe condition prohibited by the USBC.

5. Manufacturing, processing, and product handling machines and equipment that do not produce or process hazardous materials regulated by this code, including those portions of conveyor systems used exclusively for the transport of associated materials or products, and all of the following service equipment:

5.1. Electrical equipment connected after the last disconnecting means.

5.2. Plumbing piping and equipment connected after the last shutoff valve or backflow device and before the equipment drain trap.

5.3. Gas piping and equipment connected after the outlet shutoff valve.

Manufacturing and processing machines that produce or process hazardous materials regulated by this code are only required to comply with the code provisions regulating the hazardous materials.

6. Parking lots and sidewalks that are not part of an accessible route.

7. Nonmechanized playground or recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment where no admission fee is charged for its use or for admittance to areas where the equipment is located.

8. Industrialized buildings subject to the Virginia Industrialized Building Safety Regulations (13VAC5-91) and manufactured homes subject to the Virginia Manufactured Home Safety Regulations (13VAC5-95); except as provided for in Section 427 and in the case of demolition of such industrialized buildings or manufactured homes.

9. Farm buildings and structures, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in § 35.1-1 of the Code of Virginia and licensed as such by the Virginia Board of Health pursuant to Chapter 2 (§ 35.1-11 et seq.) of Title 35.1 of the Code of Virginia. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

10. Federally owned buildings and structures unless federal law specifically requires a permit from the locality. Underground storage tank installations, modifications and removals shall comply with this code in accordance with federal law.

11. Off-site manufactured intermodal freight containers, moving containers, and storage containers placed on site temporarily or permanently for use as a storage container.

12. Automotive lifts.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-30. Section 103 Application of code.

A. Section 103.1 General. In accordance with § 36-99 of the Code of Virginia, the USBC shall prescribe building regulations to be complied with in the construction and rehabilitation of buildings and structures, and the equipment therein.

B. Section 103.1.1 Virginia Existing Building Code. Part II of the Virginia Uniform Statewide Building Code, also known as the "Virginia Existing Building Code," or the "VEBC" is applicable to construction and rehabilitation activities in existing buildings and structures, as those terms are defined in the VEBC, except where specifically addressed in the VCC.

C. Section 103.2 When applicable to construction. Construction for which a permit application is submitted to the local building department on or after the effective date of the 2018 edition of the code shall comply with the provisions of this code, except for permit applications submitted during a one-year period beginning on the effective date of the 2018 edition of the code. The applicant for a permit during such one-year period shall be permitted to choose whether to comply with the provisions of this code or the provisions of the edition of the code in effect immediately prior to the 2018 edition. This provision shall also apply to subsequent amendments to this code based on the effective date of such amendments. In addition, when a permit has been properly issued under a previous edition of this code, this code shall not require changes to the approved construction documents, design or construction of such a building or structure, provided the permit has not been suspended or revoked.

D. Section 103.3 Nonrequired equipment. The following criteria for nonrequired equipment is in accordance with § 36-103 of the Code of Virginia. Building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the edition of the USBC in effect at the time a building was constructed without meeting current requirements of the code, provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with this code. In addition, as a requirement of this code, when such nonrequired equipment is to be installed, the building official shall notify the appropriate fire official or fire chief.

E. Section 103.3.1 Reduction in function or discontinuance of nonrequired fire protection systems. When a nonrequired fire protection system is to be reduced in function or discontinued, it shall be done in such a manner so as not to create a false sense of protection. Generally, in such cases, any features visible from interior areas shall be removed, such as sprinkler heads, smoke detectors or alarm panels or devices, but any wiring or piping hidden within the construction of the building may remain. Approval of the proposed method of reduction or discontinuance shall be obtained from the building official.

F. Section 103.4 Use of certain provisions of referenced codes. The following provisions of the IBC and of other indicated codes or standards are to be considered valid provisions of this code. Where any such provisions have been modified by the state amendments to the IBC, then the modified provisions apply.

1. Special inspection requirements in Chapters 2 - 35.

2. Testing requirements and requirements for the submittal of construction documents in any of the ICC codes referenced in Chapter 35 and in the IRC.

3. Section R301.2 of the IRC authorizing localities to determine climatic and geographic design criteria.

4. Flood load or flood-resistant construction requirements in the IBC or the IRC, including any such provisions pertaining to flood elevation certificates that are located in Chapter 1 of those codes. Any required flood elevation certificate pursuant to such provisions shall be prepared by a land surveyor licensed in Virginia or a registered design professional (RDP).

5. Section R101.2 of the IRC.

6. Section N1102.1 of the IRC and Sections C402.1.1 and R402.1 of the IECC.

G. Section 103.5 Functional design. The following criteria for functional design is in accordance with § 36-98 of the Code of Virginia. The USBC shall not supersede the regulations of other state agencies that require and govern the functional design and operation of building related activities not covered by the USBC, including (i) public water supply systems, (ii) waste water treatment and disposal systems, and (iii) solid waste facilities. Nor shall state agencies be prohibited from requiring, pursuant to other state law, that buildings and equipment be maintained in accordance with provisions of this code. In addition, as established by this code, the building official may refuse to issue a permit until the applicant has supplied certificates of functional design approval from the appropriate state agency or agencies. For purposes of coordination, the locality may require reports to the building official by other departments or agencies indicating compliance with their regulations applicable to the functional design of a building or structure as a condition for issuance of a building permit or certificate of occupancy. Such reports shall be based upon review of the plans or inspection of the project as determined by the locality. All enforcement of these conditions shall not be the responsibility of the building official, but rather the agency imposing the condition.

Note: Identified state agencies with functional design approval are listed in the "Related Laws Package," which is available from DHCD.

H. Section 103.6 Amusement devices and inspections. In accordance with § 36-98.3 of the Code of Virginia, to the extent they are not superseded by the provisions of § 36-98.3 of the Code of Virginia and the VADR, the provisions of the USBC shall apply to amusement devices. In addition, as a requirement of this code, inspections for compliance with the VADR shall be conducted either by local building department personnel or private inspectors provided such persons are certified as amusement device inspectors under the VCS.

I. Section 103.7 State buildings and structures. This section establishes the application of the USBC to state-owned buildings and structures in accordance with § 36-98.1 of the Code of Virginia. The USBC shall be applicable to all state-owned buildings and structures, with the exception that §§ 2.2-1159 through 2.2-1161 of the Code of Virginia shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.

Any state-owned building or structure or building built on state-owned property for which preliminary plans were prepared or on which construction commenced after the initial effective date of the USBC, shall remain subject to the provisions of the USBC that were in effect at the time such plans were completed or such construction commenced. Subsequent reconstruction, renovation or demolition of such building or structure shall be subject to the pertinent provisions of this code.

Acting through the Division of Engineering and Buildings, the Virginia Department of General Services shall function as the building official for state-owned buildings. The department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It shall provide for the inspection of state-owned buildings and enforcement of the USBC and standards for access by the physically handicapped by delegating inspection and USBC enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested. State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services rendered when such services are requested by the department. The department may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the department shall provide the local building department with a written summary of its reasons for doing so.

Notwithstanding any provision of this code to the contrary, roadway tunnels and bridges owned by the Virginia Department of Transportation shall be exempt from this code. The Virginia Department of General Services shall not have jurisdiction over such roadway tunnels, bridges and other limited access highways; provided, however, that the Department of General Services shall have jurisdiction over any occupied buildings within any Department of Transportation rights-of-way that are subject to this code.

Except as provided in subsection E of § 23.1-1016 of the Code of Virginia, and notwithstanding any provision of this code to the contrary, at the request of a public institution of higher education, the Virginia Department of General Services, as further set forth in this provision, shall authorize that institution of higher education to contract with a building official of the locality in which the construction is taking place to perform any inspection and certifications required for the purpose of complying with this code. The department shall publish administrative procedures that shall be followed in contracting with a building official of the locality. The authority granted to a public institution of higher education under this provision to contract with a building official of the locality shall be subject to the institution meeting the conditions prescribed in subsection A of § 23.1-1002 of the Code of Virginia.

Note: In accordance with § 36-98.1 of the Code of Virginia, roadway tunnels and bridges shall be designed, constructed and operated to comply with fire safety standards based on nationally recognized model codes and standards to be developed by the Virginia Department of Transportation in consultation with the State Fire Marshal. Emergency response planning and activities related to the standards shall be developed by the Department of Transportation and coordinated with the appropriate local officials and emergency service providers. On an annual basis, the Department of Transportation shall provide a report on the maintenance and operability of installed fire protection and detection systems in roadway tunnels and bridges to the State Fire Marshal.

J. Section 103.7.1 Certification of state enforcement personnel. State enforcement personnel shall comply with the applicable requirements of Section 105 for certification.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-40. Section 104 Enforcement, generally.

A. Section 104.1 Scope of enforcement. This section establishes the requirements for enforcement of the USBC in accordance with § 36-105 of the Code of Virginia. Enforcement of the provisions of the USBC for construction and rehabilitation shall be the responsibility of the local building department. Whenever a county or municipality does not have such a building department, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such enforcement. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the USBC; however, where the town does not elect to administer and enforce the code, the county in which the town is situated shall administer and enforce the code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the USBC for that portion of the town situated within their respective boundaries.

However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of Part III of the Virginia Uniform Statewide Building Code, also known as the "Virginia Maintenance Code," or the "VMC," the local building department shall enforce such provisions.

If the local building department receives a complaint that a violation of the VMC exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject building or structure, the local building official or his agent may make an affidavit under oath before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the VMC exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54 of the Code of Virginia. After executing the warrant, the local building official or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The local building official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

The local governing body shall, however, inspect and enforce the provisions of the VMC for elevators, escalators, and related conveyances, except for elevators in single-family and two-family homes and townhouses. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

B. Section 104.2 Interagency coordination. When any inspection functions under this code are assigned to a local agency other than the local building department, such agency shall coordinate its reports of inspection with the local building department.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 22, Issue 20, eff. July 12, 2006; Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-50. Section 105 Local building department.

A. Section 105.1 Appointment of building official. Every local building department shall have a building official as the executive official in charge of the department. The building official shall be appointed in a manner selected by the local governing body. After permanent appointment, the building official shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. DHCD shall be notified by the appointing authority within 30 days of the appointment or release of a permanent or acting building official.

Note: Building officials are subject to sanctions in accordance with the VCS.

B. Section 105.1.1 Qualifications of building official. The building official shall have at least five years of building experience as a licensed professional engineer or architect, building, fire or trade inspector, contractor, housing inspector or superintendent of building, fire or trade construction or at least five years of building experience after obtaining a degree in architecture or engineering, with at least three years in responsible charge of work. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The building official shall have general knowledge of sound engineering practice in respect to the design and construction of structures, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

C. Section 105.1.2 Certification of building official. An acting or permanent building official shall be certified as a building official in accordance with the VCS within one year after being appointed as acting or permanent building official.

Exception: A building official in place prior to April 1, 1983, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

D. Section 105.1.3 Noncertified building official. Except for a building official exempt from certification under the exception to Section 105.1.2, any acting or permanent building official who is not certified as a building official in accordance with the VCS shall attend the core module of the Virginia Building Code Academy or an equivalent course in an individual or regional code academy accredited by DHCD within 180 days of appointment. This requirement is in addition to meeting the certification requirement in Section 105.1.2.

Note: Continuing education and periodic training requirements for DHCD certifications are set out in the VCS.

E. Section 105.2 Technical assistants. The building official, subject to any limitations imposed by the locality, shall be permitted to utilize technical assistants to assist the building official in the enforcement of the USBC. DHCD shall be notified by the building official within 60 days of the employment of, contracting with or termination of all technical assistants.

Note: Technical assistants are subject to sanctions in accordance with the VCS.

F. Section 105.2.1 Qualifications of technical assistants. A technical assistant shall have at least three years of experience and general knowledge in at least one of the following areas: building construction; building construction conceptual and administrative processes; building, fire or housing inspections; plumbing, electrical or

mechanical trades; or fire protection, elevator or property maintenance work. Any combination of education and experience that would confer equivalent knowledge and ability, including high school technical training programs or college engineering, architecture, or construction degree programs, shall be deemed to satisfy this requirement. The locality may establish additional qualification requirements.

G. Section 105.2.2 Certification of technical assistants. A technical assistant shall be certified in the appropriate subject area within 18 months after becoming a technical assistant. When required by local policy to have two or more certifications, a technical assistant shall obtain the additional certifications within three years from the date of such requirement.

Exceptions:

1. A technical assistant in place prior to March 1, 1988, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

2. A permit technician in place prior to the effective date of the 2015 edition of the code shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

Note: Continuing education and periodic training requirements for DHCD certifications are set out in the VCS.

H. Section 105.3 Conflict of interest. The standards of conduct for building officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

I. Section 105.4 Records. The local building department shall retain a record of applications received, permits, certificates, notices and orders issued, fees collected and reports of inspection in accordance with The Library of Virginia's General Schedule Number Six.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-60. Section 106 Powers and duties of the building official.

A. Section 106.1 Powers and duties, generally. The building official shall enforce this code as set out herein and as interpreted by the State Review Board.

B. Section 106.2 Delegation of authority. The building official may delegate powers and duties except where such authority is limited by the local government. However, such limitations of authority by the local government are not applicable to the third-party inspector policy required by Section 113.7.1 nor shall such limitations of authority by the local government have the effect of altering the provisions of this code or creating building regulations. When such delegations are made, the building official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.

C. Section 106.3 Issuance of modifications. Upon written application by an owner or an owner's agent, the building official may approve a modification of any provision of the USBC provided the spirit and functional intent of the code are observed and public health, welfare and safety are assured. The decision of the building official concerning a modification shall be made in writing and the application for a modification and the decision of the building official concerning such modification shall be retained in the permanent records of the local building department.

Note: The USBC references nationally recognized model codes and standards. Future amendments to such codes and standards are not automatically included in the USBC; however the building official should give them due consideration in deciding whether to approve a modification.

D. Section 106.3.1 Substantiation of modification. The building official may require or may consider a statement from a registered design professional (RDP) or other person competent in the subject area of the application as to the equivalency of the proposed modification. In addition, the building official may require the application to include construction documents sealed by an RDP. The building official may also consider nationally recognized guidelines in deciding whether to approve a modification.

E. Section 106.3.2 Use of performance code. Compliance with the provisions of a nationally recognized performance code when approved as a modification shall be considered to constitute compliance with this code. All documents submitted as part of such consideration shall be retained in the permanent records of the local building department.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-70. Section 107 Fees.

A. Section 107.1 Authority for charging fees. In accordance with § 36-105 of the Code of Virginia, fees may be levied by the local governing body in order to defray the cost of enforcement of the USBC.

Note: See subsection D of § 36-105 of the Code of Virginia for rules for permit fees involving property with easements or liens.

B. Section 107.1.1 Fee schedule. The local governing body shall establish a fee schedule incorporating unit rates, which may be based on square footage, cubic footage, estimated cost of construction or other appropriate criteria. A permit or any amendments to an existing permit shall not be issued until the designated fees have been paid, except that the building official may authorize the delayed payment of fees.

C. Section 107.1.2 Refunds. When requested in writing by a permit holder, the locality shall provide a fee refund in the case of the revocation of a permit or the abandonment or discontinuance of a building project. The refund shall not be required to exceed an amount which correlates to work not completed.

D. Section 107.1.3 Fees for generators used with amusement devices. Fees for generators and associated wiring used with amusement devices shall only be charged under the Virginia Amusement Device Regulations (13VAC5-31).

E. Section 107.2 Code academy fee levy. In accordance with subdivision 7 of § 36-137 of the Code of Virginia, the local building department shall collect a 2.0% levy of fees charged for permits issued under this code and transmit it quarterly to DHCD to support training programs of the Virginia Building Code Academy. Localities that maintain individual or regional training academies accredited by DHCD shall retain such levy.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-80. Section 108 Application for permit.

A. Section 108.1 When applications are required. Application for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities, except that applications for emergency construction, alterations or equipment replacement shall be submitted by the end of the first working day that follows the day such work commences. In addition, the building official may authorize work to commence pending the receipt of an application or the issuance of a permit.

1. Construction or demolition of a building or structure. Installations or alterations involving (i) the removal or addition of any wall, partition or portion thereof, (ii) any structural component, (iii) the repair or replacement of any required component of a fire or smoke rated assembly, (iv) the alteration of any required means of egress system, including the addition of emergency supplemental hardware, (v) water supply and distribution system, sanitary drainage system or vent system, (vi) electric wiring, (vii) fire protection system, mechanical systems, or fuel supply systems, or (viii) any equipment regulated by the USBC.

2. For change of occupancy, application for a permit shall be made when a new certificate of occupancy is required by the VEBC.

3. Movement of a lot line that increases the hazard to or decreases the level of safety of an existing building or structure in comparison to the building code under which such building or structure was constructed.

4. Removal or disturbing of any asbestos containing materials during the construction or demolition of a building or structure, including additions.

B. Section 108.2 Exemptions from application for permit. Notwithstanding the requirements of Section 108.1, application for a permit and any related inspections shall not be required for the following; however, this section shall not be construed to exempt such activities from other applicable requirements of this code. In addition, when an owner or an owner's agent requests that a permit be issued for any of the following, then a permit shall be issued and any related inspections shall be required.

1. Installation of wiring and equipment that (i) operates at less than 50 volts, (ii) is for broadband communications systems, (iii) is exempt under Section 102.3(1) or 102.3(4), or (iv) is for monitoring or automation systems in dwelling units, except when any such installations are located in a plenum, penetrate fire rated or smoke protected construction or are a component of any of the following:

1.1. Fire alarm system.

1.2. Fire detection system.

1.3. Fire suppression system.

1.4. Smoke control system.

1.5. Fire protection supervisory system.

1.6. Elevator fire safety control system.

1.7. Access or egress control system or delayed egress locking or latching system.

1.8. Fire damper.

1.9. Door control system.

2. One story detached structures used as tool and storage sheds, playhouses or similar uses, provided the building area does not exceed 256 square feet (23.78 m^2) and the structures are not classified as a Group F-1 or H occupancy.

3. Detached prefabricated buildings housing the equipment of a publicly regulated utility service, provided the floor area does not exceed 150 square feet (14 m^2).

4. Tents or air-supported structures, or both, that cover an area of 900 square feet (84 m^2) or less, including within that area all connecting areas or spaces with a common means of egress or entrance, provided such tents or structures have an occupant load of 50 or less persons.

5. Fences of any height unless required for pedestrian safety as provided for by Section 3306, or used for the barrier for a swimming pool.

6. Concrete or masonry walls, provided such walls do not exceed six feet in height above the finished grade. Ornamental column caps shall not be considered to contribute to the height of the wall and shall be permitted to extend above the six feet height measurement.

7. Retaining walls supporting less than three feet of unbalanced fill that are not constructed for the purpose of impounding Class I, II or III-A liquids or supporting a surcharge other than ordinary unbalanced fill.

8. Swimming pools that have a surface area not greater than 150 square feet (13.95 m^2), do not exceed 5,000 gallons (19,000 L) and are less than 24 inches (610 mm) deep.

9. Signs under the conditions in Section H101.2 of Appendix H.

10. Replacement of above-ground existing LP-gas containers of the same capacity in the same location and associated regulators when installed by the serving gas supplier.

11. Flagpoles 30 feet (9144 mm) or less in height.

12. Temporary ramps serving dwelling units in Groups R-3 and R-5 occupancies where the height of the entrance served by the ramp is no more than 30 inches (762 mm) above grade.

13. Construction work deemed by the building official to be minor and ordinary and which does not adversely affect public health or general safety.

14. Ordinary repairs that include the following:

14.1. Replacement of windows and doors with windows and doors of similar operation and opening dimensions that do not require changes to the existing framed opening and that are not required to be fire rated in Group R-2 where serving a single dwelling unit and in Groups R-3, R-4 and R-5.

14.2. Replacement of plumbing fixtures and well pumps in all groups without alteration of the water supply and distribution systems, sanitary drainage systems or vent systems.

14.3. Replacement of general use snap switches, dimmer and control switches, 125 volt-15 or 20 ampere receptacles, luminaires (lighting fixtures) and ceiling (paddle) fans in Group R-2 where serving a single dwelling unit and in Groups R-3, R-4 and R-5.

14.4. Replacement of mechanical appliances provided such equipment is not fueled by gas or oil in Group R-2 where serving a single-family dwelling and in Groups R-3, R-4 and R-5.

14.5. Replacement of an unlimited amount of roof covering or siding in Group R-3, R-4 or R-5 provided the building or structure is not in an area where the nominal design wind speed is greater than 100 miles per hour (44.7 meters per second) and replacement of 100 square feet (9.29 m^2) or less of roof covering in all groups and all wind zones.

14.6. Replacement of 256 square feet (23.78 m^2) or less of roof decking in Group R-3, R-4 or R-5 unless the decking to be replaced was required at the time of original construction to be fire-retardant-treated or protected in some other way to form a fire-rated wall termination.

14.7. Installation or replacement of floor finishes in all occupancies.

14.8. Replacement of Class C interior wall or ceiling finishes installed in Groups A, E and I and replacement of all classes of interior wall or ceiling finishes in other groups.

14.9. Installation or replacement of cabinetry or trim.

14.10. Application of paint or wallpaper.

14.11. Other repair work deemed by the building official to be minor and ordinary which does not adversely affect public health or general safety.

15. Crypts, mausoleums, and columbaria structures not exceeding 1,500 square feet (139.35 m^2) in area if the building or structure is not for occupancy and used solely for the interment of human or animal remains and is not subject to special inspections.

16. Billboard safety upgrades to add or replace steel catwalks, steel ladders, or steel safety cable.

Exceptions:

1. Application for a permit may be required by the building official for the installation of replacement siding, roofing and windows in buildings within a historic district designated by a locality pursuant to § 15.2-2306 of the Code of Virginia.

2. Application for a permit may be required by the building official for any items exempted in this section that are located in a special flood hazard area.

C. Section 108.3 Applicant information, processing by mail. Application for a permit shall be made by the owner or lessee of the relevant property or the agent of either or by the RDP, contractor or subcontractor associated with the work or any of their agents. The full name and address of the owner, lessee and applicant shall be provided in the application. If the owner or lessee is a corporate body, when and to the extent determined necessary by the building official, the full name and address of the responsible officers shall also be provided.

A permit application may be submitted by mail and such permit applications shall be processed by mail, unless the permit applicant voluntarily chooses otherwise. In no case shall an applicant be required to appear in person.

The building official may accept applications for a permit through electronic submissions provided the information required by this section is obtained.

D. Section 108.4 Prerequisites to obtaining permit. In accordance with § 54.1-1111 of the Code of Virginia, any person applying to the building department for the construction, removal or improvement of any structure shall furnish prior to the issuance of the permit either (i) satisfactory proof to the building official that he is duly licensed or certified under the terms or Chapter 11 (§ 54.1-1000 et seq.) of Title 54.1 of the Code of Virginia to carry out or superintend the same or (ii) file a written statement that he is not subject to licensure or certification as a contractor or subcontractor pursuant to Chapter 11 of Title 54.1 of the Code of Virginia. The applicant shall also furnish satisfactory proof that the taxes or license fees required by any county, city, or town have been paid so as to be qualified to bid upon or contract for the work for which the permit has been applied.

E. Section 108.5 Mechanics' lien agent designation. In accordance with § 36-98.01 of the Code of Virginia, a building permit issued for any one-family or two-family residential dwelling shall at the time of issuance contain, at the request of the applicant, the name, mailing address, and telephone number of the mechanics' lien agent

as defined in § 43-1 of the Code of Virginia. If the designation of a mechanics' lien agent is not so requested by the applicant, the building permit shall at the time of issuance state that none has been designated with the words "None Designated."

Note: In accordance with § 43-4.01A of the Code of Virginia, a permit may be amended after it has been initially issued to name a mechanics' lien agent or a new mechanics' lien agent.

F. Section 108.6 Application form, description of work. The application for a permit shall be submitted on a form supplied by the local building department. The application shall contain a general description and location of the proposed work and such other information as determined necessary by the building official.

G. Section 108.7 Amendments to application. An application for a permit may be amended at any time prior to the completion of the work governed by the permit. Additional construction documents or other records may also be submitted in a like manner. All such submittals shall have the same effect as if filed with the original application for a permit and shall be retained in a like manner as the original filings.

H. Section 108.8 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned six months after the date of filing unless such application has been pursued in good faith or a permit has been issued, except that the building official is authorized to grant one or more extensions of time if a justifiable cause is demonstrated.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-90. Section 109 Construction documents.

A. Section 109.1 Submittal of documents. Construction documents shall be submitted with the application for a permit. The number of sets of such documents to be submitted shall be determined by the locality. Construction documents for one- and two-family dwellings may have floor plans reversed provided an accompanying site plan is approved.

Exception: Construction documents do not need to be submitted when the building official determines the proposed work is of a minor nature.

Note: Information on the types of construction required to be designed by an RDP is included in the "Related Laws Package" available from DHCD.

B. Section 109.2 Site plan. When determined necessary by the building official, a site plan shall be submitted with the application for a permit. The site plan shall show to scale the size and location of all proposed construction, including any associated wells, septic tanks or drain fields. The site plan shall also show to scale the size and location of all existing structures on the site, the distances from lot lines to all proposed construction, the established street grades and the proposed finished grades. When determined necessary by the building official, the site plan shall contain the elevation of the lowest floor of any proposed buildings. The site plan shall also be drawn in accordance with an accurate boundary line survey. When the application for a permit is for demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures that are to remain on the site.

Note: Site plans are generally not necessary for alterations, renovations, repairs or the installation of equipment.

C. Section 109.3 Engineering details. When determined necessary by the building official, construction documents shall include adequate detail of the structural, mechanical, plumbing or electrical components. Adequate detail may include computations, stress diagrams or other essential technical data and when proposed buildings are more than two stories in height, adequate detail may specifically be required to include where floor penetrations will be made for pipes, wires, conduits, and other components of the electrical, mechanical and plumbing systems and how such floor penetrations will be protected to maintain the required structural integrity or fire-resistance rating, or both. When dry floodproofing is provided, the engineering details shall include detail of the walls, floors, and flood shields designed to resist flood-related loads, including the sealing of floor and wall penetrations. All engineered documents, including relevant computations, shall be sealed by the RDP responsible for the design.

D. Section 109.4 Examination of documents. The building official shall examine or cause to be examined all construction documents or site plans, or both, within a reasonable time after filing. If such documents or plans do not comply with the provisions of this code, the permit applicant shall be notified in writing of the reasons, which shall include any adverse construction document review comments or determinations that additional information or engineering details need to be submitted. The review of construction documents for new one- and two-family dwellings for determining compliance with the technical provisions of this code not relating to the site, location or soil conditions associated with the dwellings shall not be required when identical construction documents for identical dwellings have been previously approved in the same locality under the same edition of the code and such construction documents are on file with the local building department.

E. Section 109.4.1 Expedited construction document review. The building official may accept reports from an approved person or agency that the construction documents have been examined and conform to the requirements of the USBC and may establish requirements for the person or agency submitting such reports. In addition, where such reports have been submitted, the building official may expedite the issuance of the permit.

F. Section 109.5 Approval of construction documents. The approval of construction documents shall be limited to only those items within the scope of the USBC. Either the word "Approved" shall be stamped on all required sets of approved construction documents or an equivalent endorsement in writing shall be provided. One set of the approved construction documents shall be retained for the records of the local building department and one set shall be kept at the building site and shall be available to the building official at all reasonable times.

G. Section 109.6 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-100. Section 110 Permits.

A. Section 110.1 Approval and issuance of permits. The building official shall examine or cause to be examined all applications for permits or amendments to such applications within a reasonable time after filing. If the applications or amendments do not comply with the provisions of this code or all pertinent laws and ordinances, the permit shall not be issued and the permit applicant shall be notified in writing of the reasons for not issuing the permit. If the application complies with the applicable requirements of this code, a permit shall be issued as soon as practicable. The issuance of permits shall not be delayed in an effort to control the pace of construction of new detached one- or two-family dwellings.

B. Section 110.1.1 Consultation and notification. Prior to approval of emergency supplemental hardware, the building code official shall consult with the local fire code official, or state fire code official if no local fire code official exists, and head of the local law-enforcement agency. The local fire code official; the state fire code official; and the local fire, EMS, and law-enforcement first responders shall be notified of such approval after approval of such emergency supplemental hardware by the building code official.

C. Section 110.2 Types of permits. Separate or combined permits may be required for different areas of construction such as building construction, plumbing, electrical, and mechanical work, or for special construction as determined appropriate by the locality. In addition, permits for two or more buildings or structures on the same lot may be combined. Annual permits may also be issued for any construction regulated by this code. The annual permit holder shall maintain a detailed record of all alterations made under the annual permit. Such record shall be available to the building official and shall be submitted to the local building department if requested by the building official.

D. Section 110.3 Asbestos inspection in buildings to be renovated or demolished; exceptions. In accordance with § 36-99.7 of the Code of Virginia, the local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1985, to be renovated or demolished until the local building department receives certification from the owner or his agent that the affected portions of the building have been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503 of the Code of Virginia and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR Part 61, Subpart M), and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.1101). Local educational agencies that are subject to the requirements established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR Part 763 and subsequent amendments thereto.

To meet the inspection requirements above, except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by a statement that the materials to be repaired or replaced are assumed to contain friable asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor.

The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than 35 cubic feet off facility components where the length or area could not be measured previously.

An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).

E. Section 110.4 Fire apparatus access road requirements. The permit applicant shall be informed of any requirements for providing or maintaining fire apparatus access roads prior to the issuance of a building permit.

F. Section 110.5 Posting of permits; limitation of approval. A copy of the permit shall be posted on the construction site for public inspection until the work is completed. Such posting shall include the street or lot number if one has been assigned, to be readable from a public way. In addition, each building or structure to which a street number has been assigned shall, upon completion, have the number displayed so as to be readable from the public way.

A permit shall be considered authority to proceed with construction in accordance with this code, the approved construction documents, the permit application and any approved amendments or modifications. The permit shall not be construed to otherwise authorize the omission or amendment of any provision of this code.

G. Section 110.6 Abandonment of work. A building official shall be permitted to revoke a permit if work on the site authorized by the permit is not commenced within six months after issuance of the permit, or if the authorized work on the site is suspended or abandoned for a period of six months after the permit is issued; however, permits issued for plumbing, electrical and mechanical work shall not be revoked if the building permit is still in effect. It shall be the responsibility of the permit applicant to prove to the building official that authorized work includes substantive progress, characterized by approved inspections as specified in Section 113.3 of at least one inspection within a period of six months or other evidence that would indicate substantial work has been performed. Upon written request, the building official may grant one or more extensions of time, not to exceed one year per extension.

H. Section 110.7 Single-family dwelling permits. The building official shall be permitted to require a three-year time limit to complete construction of new detached single-family dwellings, additions to detached single-family dwellings and residential accessory structures. The time limit shall begin from the issuance date of the permit. The building official may grant extensions of time if the applicant can demonstrate substantive progress, characterized by approved inspections as specified in Section 113.3 of at least one inspection within a period of six months or other evidence that would indicate substantial work has been performed.

I. Section 110.8 Revocation of a permit. The building official may revoke a permit or approval issued under this code in the case of any false statement, misrepresentation of fact, abandonment of work, failure to complete construction as required by Section 110.7, noncompliance with provisions of this code and pertinent laws and ordinances, or incorrect information supplied by the applicant in the application or construction documents on which the permit or approval was based.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-110. Section 111 RDP services.

A. Section 111.1 When required. In accordance with § 54.1-410 of the Code of Virginia and under the general authority of this code, the local building department shall establish a procedure to ensure that construction documents under Section 109 are prepared by an RDP in any case in which the exemptions contained in § 54.1-401, 54.1-402 or 54.1-402.1 of the Code of Virginia are not applicable or in any case where the building official determines it necessary. When required under § 54.1-402 of the Code of Virginia or when required by the building official, or both, construction documents shall bear the name and address of the author and his occupation.

Note: Information on the types of construction required to be designed by an RDP is included in the "Related Laws Package" available from DHCD.

B. Section 111.2 Special inspection requirements. Special inspections shall be conducted when required by Section 1704. Individuals or agencies, or both, conducting special inspections shall meet the qualification requirements of Sections 1703 and 1704.2.1. The permit applicant shall submit a completed statement of special inspections with the permit application. The building official shall review, and if satisfied that the requirements have been met, approve the statement of special inspections as required in Sections 1704.2.3 and 1705 as a requisite to the issuance of a building permit. The building official may require interim inspection reports. The building official shall receive, and if satisfied that the requirements have been met, approve a final report of special inspections as specified in Section 1704.2.4. All fees and costs related to the special inspections shall be the responsibility of the building owner.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 30, Issue 16, eff. July 14, 2014.

13VAC5-63-120. Section 112 Workmanship, materials and equipment.

A. Section 112.1 General. It shall be the duty of any person performing work covered by this code to comply with all applicable provisions of this code and to perform and complete such work so as to secure the results intended by the USBC. Damage to regulated building components caused by violations of this code or by the use of faulty materials or installations shall be considered as separate violations of this code and shall be subject to the applicable provisions of Section 115.

B. Section 112.2 Alternative methods or materials. In accordance with § 36-99 of the Code of Virginia, where practical, the provisions of this code are stated in terms of required level of performance so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, this section and other applicable requirements of this code provide for acceptance of materials and methods whose performance is substantially equal in safety to those specified on the basis of reliable test and evaluation data presented by the proponent. In addition, as a requirement of this code, the building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device, assembly or method of construction. The building official may consider nationally recognized guidelines in making a determination.

C. Section 112.3 Documentation and approval. In determining whether any material, equipment, device, assembly or method of construction complies with this code, the building official shall approve items listed by nationally recognized testing laboratories, when such items are listed for the intended use and application, and in addition, may consider the recommendations of RDPs. Approval shall be issued when the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code and that the material, equipment, device, assembly or method of construction offered is, for the purpose intended, at least the equivalent of that prescribed by the code. Such approval is subject to all applicable requirements of this code and the material, equipment, device, assembly or method of construction shall be installed in accordance with the conditions of the approval and their listings. In addition, the building official may revoke such approval whenever it is discovered that such approval was issued in error or on the basis of incorrect information, or where there are repeated violations of the USBC.

D. Section 112.3.1 Conditions of listings. Where conflicts between this code and conditions of the listing or the manufacturer's installation instructions occur, the provisions of this code shall apply.

Exception: Where a code provision is less restrictive than the conditions of the listing of the equipment or appliance or the manufacturer's installation instructions, the conditions of the listing and the manufacturer's installation instructions shall apply.

E. Section 112.4 Used material and equipment. Used materials, equipment and devices may be approved provided they have been reconditioned, tested or examined and found to be in good and proper working condition and acceptable for use by the building official.

F. Section 112.5 Defective materials. Notwithstanding any provision of this code to the contrary, where action has been taken and completed by the BHCD under subsection D of § 36-99 of the Code of Virginia establishing new performance standards for identified defective materials, this section sets forth the new performance standards addressing the prospective use of such materials and establishes remediation standards for the removal of any defective materials already installed, which when complied with enables the building official to certify that the building is deemed to comply with the edition of the USBC under which the building was originally constructed with respect to the remediation of the defective materials.

G. Section 112.5.1 Drywall, performance standard. All newly installed gypsum wallboard shall not be defective drywall as defined in Section 112.5.1.1.1.

H. Section 112.5.1.1 Remediation standards. The following provisions establish remediation standards where defective drywall was installed in buildings.

I. Section 112.5.1.1.1 Definition. For the purposes of this section the term "defective drywall" means gypsum wallboard that (i) contains elemental sulfur exceeding 10 parts per million that when exposed to heat or humidity, or both, emits volatile sulfur compounds in quantities that cause observable corrosion on electrical wiring, plumbing pipes, fuel gas lines, or HVAC equipment, or any components of the foregoing or (ii) has been designated by the U.S. Consumer Product Safety Commission as a product with a product defect that constitutes a substantial product hazard within the meaning of § 15(a)(2) of the Consumer Product Safety Act (15 USC § 2064(a)(2)).

J. Section 112.5.1.1.2 Permit. Application for a permit shall be made to the building official, and a permit shall be obtained prior to the commencement of remediation work undertaken to remove defective drywall from a building and for the removal, replacement, or repair of corroded electrical, plumbing, mechanical, or fuel gas equipment and components.

K. Section 112.5.1.1.3 Protocol. Where remediation of defective drywall is undertaken, the following standards shall be met. The building official shall be permitted to consider and approve modifications to these standards in accordance with Section 106.3.

L. Section 112.5.1.1.3.1 Drywall. Drywall in the building, whether defective or nondefective, shall be removed and discarded, including fasteners that held any defective drywall to prevent small pieces of drywall from remaining under fasteners.

Exceptions:

1. Nondefective drywall not subject to the corrosive effects of any defective drywall shall be permitted to be left in place in buildings where the defective drywall is limited to a defined room or space or isolated from the rest of the building and the defective drywall can be positively identified. If the room or space containing the defective drywall also contains any nondefective drywall, the nondefective drywall in that room or space shall also be removed.

2. In multifamily buildings where defective drywall was not used in the firewalls between units and there are no affected building systems behind the firewalls, the firewalls shall be permitted to be left in place.

M. Section 112.5.1.1.3.2 Insulation and other building components. Insulation in walls and ceilings shall be removed and discarded. Carpet and vinyl flooring shall be removed and discarded. Woodwork, trim, cabinets, and tile or wood floors may be left in place or may be reused.

Exceptions:

1. Closed-cell foam insulation is permitted to be left in place if testing for off-gassing from defective drywall is negative, unless its removal is required to gain access.

2. Insulation, carpet, or vinyl flooring in areas not exposed to defective drywall or to the effects of defective drywall, may be left in place or reused.

N. Section 112.5.1.1.3.3 Electrical wiring, equipment, devices, and components. All electrical wiring regulated by this code shall be permitted to be left in place, but removal or cleaning of exposed ends of the wiring to reveal clean or uncorroded surfaces is required. All electrical equipment, devices, and components of the electrical system of the building regulated by this code shall be removed and discarded. This shall include all smoke detectors.

Exceptions:

1. Electrical equipment, devices, or components in areas not exposed to the corrosive effects of defective drywall shall be permitted to be left in place or reused. Electrical equipment, devices, or components in areas exposed to the corrosive effects of defective drywall shall be cleaned, repaired, or replaced.

2. Cord and plug connected appliances are not subject to this code and, therefore, cannot be required to be removed or replaced.

Note: All low-voltage wiring associated with security systems, door bells, elevator controls, and other such components shall be removed and replaced or repaired.

O. Section 112.5.1.1.3.4 Plumbing and fuel gas piping, fittings, fixtures, and equipment. All copper fuel gas piping and all equipment utilizing fuel gas with copper, silver, or aluminum components shall be removed and discarded. All copper plumbing pipes and fittings shall be removed and discarded. Plumbing fixtures with copper, silver, or aluminum components shall be removed and discarded.

Exception: Plumbing or fuel gas piping, fittings, fixtures, equipment, or components in areas not exposed to the corrosive effects of defective drywall shall be permitted to be left in place or reused.

P. Section 112.5.1.1.3.5 Mechanical systems. All heating, air-conditioning, and ventilation system components, including ductwork, air-handling units, furnaces, heat pumps, refrigerant lines, and thermostats and associated wiring, shall be removed and discarded.

Exception: Mechanical system components in areas not exposed to the corrosive effects of defective drywall shall be permitted to be left in place or reused.

Q. Section 112.5.1.1.3.6 Cleaning. Following the removal of all materials and components in accordance with Sections 112.5.1.1.3.1 through 112.5.1.1.3.5, the building shall be thoroughly cleaned to remove any particulate matter and dust.

R. Section 112.5.1.1.3.7 Airing out. Following cleaning in accordance with Section 112.5.1.1.3.6, the building shall be thoroughly aired out with the use of open windows and doors and fans.

S. Section 112.5.1.1.3.8 Pre-rebuilding clearance testing. Following the steps outlined above for removal of all materials and components, cleaning and airing out, a pre-rebuilding clearance test shall be conducted with the use of copper or silver coupons and the methodology outlined in the April 2, 2010, joint report by the Consumer Products Safety Commission and the Department of Housing and Urban Development "Interim Remediation Guidance for Homes with Corrosion from Problem Drywall" or with the use of a copper probe and dosimeter. The clearance testing shall confirm that all airborne compounds associated with the defective drywall are at usual environmental background levels. The clearance testing report, certifying compliance, shall be submitted to the building official.

Notes:

1. Where the building is served by a well and prior to conducting clearance tests, all outlets in piping served by the well should be capped or otherwise plugged to prevent contamination of the air sample.

2. To prevent siphoning and evaporation of the trap seals, fixtures should be capped or otherwise plugged to prevent sewer gases from contaminating the air sample.

T. Section 112.5.1.1.3.9 Testing agencies and personnel. Agencies and personnel performing pre-rebuilding or post-rebuilding clearance testing shall be independent of those responsible for all other remediation work and the agencies and personnel shall be appropriately certified or accredited by the Council of Engineering and Scientific Specialty Boards, the American Indoor Air Quality Council, or the World Safety Organization.

Exception: Testing agencies and personnel shall be accepted if certified by an RDP or if the agency employs an RDP to be in responsible charge of the work.

U. Section 112.5.1.1.3.10 Rebuilding standards. The rebuilding of the building shall comply with the edition of the USBC that was in effect when the building was originally built.

V. Section 112.5.1.1.3.11 Post-rebuilding clearance testing. A post-rebuilding clearance test prior to reoccupancy of the building or structure shall be conducted with the use of copper or silver coupons and the methodology outlined in the April 2, 2010, joint report by the U.S. Consumer Products Safety Commission and by the

Department of Housing and Urban Development "Interim Remediation Guidance for Homes with Corrosion from Problem Drywall" or with the use of a copper probe and dosimeter. The clearance testing shall confirm that all airborne compounds associated with the defective drywall are at usual environmental background levels. The clearance testing report certifying compliance shall be submitted to the building official.

Notes:

1. Where the building is served by a well and prior to conducting clearance tests, all outlets in piping served by the well should be capped or otherwise plugged to prevent contamination of the air sample.

2. To prevent siphoning and evaporation of the trap seals, fixtures should be capped or otherwise plugged to prevent sewer gases from contaminating the air sample.

W. Section 112.5.1.1.4 Final approval by the building official. Once remediation has been completed in accordance with this section, a certificate or letter of approval shall be issued by the building official. The certificate or letter shall state that the remediation and rebuilding is deemed to comply with this code.

X. Section 112.5.1.1.4.1 Approval of remediation occurring prior to these standards. The building official shall issue a certificate or letter of approval for remediation of defective drywall that occurred prior to the effective date of these standards provided post-rebuilding clearance testing has been performed in accordance with Section 112.5.1.1.3.11, by agencies and personnel complying with Section 112.5.1.1.3.9, and the clearance testing confirms that all airborne compounds associated with the defective drywall are at usual environmental background levels. The clearance testing report certifying compliance shall be submitted to the building official.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; Errata, 22:5 VA.R. 734 November 14, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 26, eff. August 29, 2011; Errata, 28:2 VA.R. 148 September 26, 2011; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-130. Section 113 Inspections.

A. Section 113.1 General. In accordance with § 36-105 of the Code of Virginia, any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than $2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. The building official shall coordinate all reports of inspections for compliance with the USBC, with inspections of fire and health officials delegated such authority, prior to the issuance of an occupancy permit.

B. Section 113.1.1 Equipment required. Any ladder, scaffolding or test equipment necessary to conduct or witness a requested inspection shall be provided by the permit holder.

C. Section 113.1.2 Duty to notify. When construction reaches a stage of completion that requires an inspection, the permit holder shall notify the building official.

D. Section 113.1.3 Duty to inspect. Except as provided for in Section 113.7, the building official shall perform the requested inspection in accordance with Section 113.6 when notified in accordance with Section 113.1.2.

E. Section 113.2 Prerequisites. The building official may conduct a site inspection prior to issuing a permit. When conducting inspections pursuant to this code, all personnel shall carry proper credentials.

F. Section 113.3 Minimum inspections. The following minimum inspections shall be conducted by the building official when applicable to the construction or permit:

1. Inspection of footing excavations and reinforcement material for concrete footings prior to the placement of concrete.

2. Inspection of foundation systems during phases of construction necessary to assure compliance with this code.

3. Inspection of preparatory work prior to the placement of concrete.

4. Inspection of structural members and fasteners prior to concealment.

5. Inspection of electrical, mechanical and plumbing materials, equipment and systems prior to concealment.

6. Inspection of energy conservation material prior to concealment.

7. Final inspection.

G. 113.3.1 Equipment changes. Upon the replacement or new installation of any fuel-burning appliances or equipment in existing Group R-5 occupancies, an inspection or inspections shall be conducted to ensure that the connected vent or chimney systems comply with the following:

1. Vent or chimney systems are sized in accordance with the IRC.

2. Vent or chimney systems are clean, free of any obstruction or blockages, defects, or deterioration, and are in operable condition. Where not inspected by the local building department, persons performing such changes or installations shall certify to the building official that the requirements of Items 1 and 2 of this section are met.

H. 113.3.2 Lowest floor elevation. In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 shall be submitted to the building official.

I. 113.3.3 Flood hazard documentation. If located in a flood hazard area, documentation of the elevation of the lowest floor as required in Section 1612.5 shall be submitted to the building official prior to the final inspection.

J. Section 113.4 Additional inspections. The building official may designate additional inspections and tests to be conducted during the construction of a building or structure and shall so notify the permit holder.

K. Section 113.5 In-plant and factory inspections. When required by the provisions of this code, materials, equipment or assemblies shall be inspected at the point of manufacture or fabrication. The building official shall require the submittal of an evaluation report of such materials, equipment or assemblies. The evaluation report shall indicate the complete details of the assembly including a description of the assembly and its components, and describe the basis upon which the assembly is being evaluated. In addition, test results and other data as necessary for the building official to determine conformance with the USBC shall be submitted. For factory inspections, an identifying label or stamp permanently affixed to materials, equipment or assemblies indicating that a factory inspection has been made shall be acceptable instead of a written inspection report, provided the intent or meaning of such identifying label or stamp is properly substantiated.

L. Section 113.6 Approval or notice of defective work. The building official shall either approve the work in writing or give written notice of defective work to the permit holder. Upon request of the permit holder, the notice shall reference the USBC section that serves as the basis for the defects and such defects shall be corrected and reinspected before any work proceeds that would conceal such defects. A record of all reports of inspections, tests, examinations, discrepancies and approvals issued shall be maintained by the building official and shall be communicated promptly in writing to the permit holder. Approval issued under this section may be revoked whenever it is discovered that such approval was issued in error or on the basis of incorrect information, or where there are repeated violations of the USBC. Notices issued pursuant to this section shall be permitted to be communicated electronically, provided the notice is reasonably calculated to get to the permit holder.

M. Section 113.7 Approved inspection agencies. The building official may accept reports of inspections and tests from individuals or inspection agencies approved in accordance with the building official's written policy required by Section 113.7.1. The individual or inspection agency shall meet the qualifications and reliability requirements established by the written policy. Under circumstances where the building official is unable to make the inspection or test required by Section 113.3 or 113.4 within two working days of a request or an agreed upon date or if authorized for other circumstances in the building official's written policy, the building official shall accept reports for review. The building official shall approve the report from such approved individuals or agencies unless there is cause to reject it. Failure to approve a report shall be in writing within two working days of receiving it stating the reason for the rejection. Reports of inspections conducted by approved third-party inspectors or agencies shall be in writing, shall indicate if compliance with the applicable provisions of the USBC have been met and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. Reports of inspections conducted for the purpose of verifying compliance with the requirements of the USBC for elevators, escalators, and related conveyances shall include the name and certification number of the elevator mechanic performing the tests witnessed by the third-party inspector or agency.

Exception: The licensed mechanical contractor installing the mechanical system shall be permitted to perform duct tests required by Section R403.3.3 of the IECC or Section N1103.3.3 of the IRC. The contractor shall have been trained on the equipment used to perform the test.

Note: Photographs, videotapes or other sources of pertinent data or information may be considered as constituting such reports and tests.

N. Section 113.7.1 Third-party inspectors. Each building official charged with the enforcement of the USBC shall have a written policy establishing the minimum acceptable qualifications for third-party inspectors. The policy shall include the format and time frame required for submission of reports, any prequalification or preapproval requirements before conducting a third-party inspection and any other requirements and procedures established by the building official.

O. Section 113.7.2 Qualifications. In determining third-party inspector qualifications, the building official may consider such items as DHCD inspector certification, other state or national certifications, state professional registrations, related experience, education and any other factors that would demonstrate competency and reliability to conduct inspections.

P. Section 113.8 Final inspection. Upon completion of construction for which a permit was issued, a final inspection shall be conducted to ensure that any defective work has been corrected and that all work complies with the USBC and has been approved, including any work associated with modifications under Section 106.3. The building official shall be permitted to require the electrical service to a building or structure to be energized prior to conducting the final inspection. Approval of the final inspection indicates that all work associated with the permit complies with this code and the permit is complete. Prior to occupancy or change of occupancy of a building or structure, a certificate of occupancy shall be issued in accordance with Section 116.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-140. Section 114 Stop work orders.

A. Section 114.1 Issuance of order. When the building official finds that work on any building or structure is being executed contrary to the provisions of this code or any pertinent laws or ordinances, or in a manner endangering the general public, a written stop work order may be issued. The order shall identify the nature of the work to be stopped and be given either to the owner of the property involved, to the owner's agent or to the person performing the work. Following the issuance of such an order, the affected work shall cease immediately. The order shall state the conditions under which such work may be resumed.

B. Section 114.2 Limitation of order. A stop work order shall apply only to the work identified in the order, provided that other work on the building or structure may be continued if not concealing the work covered by the order.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005.

13VAC5-63-150. Section 115 Violations.

A. Section 115.1 Violation a misdemeanor; civil penalty. In accordance with § 36-106 of the Code of Virginia, it shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any code provisions, to violate any such provisions. Any locality may adopt an ordinance that establishes a uniform schedule of civil penalties for violations of specified provisions of the code that are not abated or remedied promptly after receipt of a notice of violation from the local enforcement officer.

Note: See the full text of § 36-106 of the Code of Virginia for additional requirements and criteria pertaining to legal action relative to violations of the code.

B. Section 115.2 Notice of violation. The building official shall issue a written notice of violation to the permit holder if any violations of this code or any directives or orders of the building official have not been corrected or complied with within a reasonable time. The building official may also issue a notice of violation to other persons found to be responsible in addition to the permit holder. If the violations, directives, or orders involve work without a permit, the notice of violation shall be issued to the responsible party. The notice shall reference the code section upon which the notice is based and direct the correction of the violation or the compliance with such directive or order and specify a reasonable time period within which the corrections or compliance must occur. The notice shall be issued by either delivering a copy by mail to the last known address of the permit holder or responsible party, by delivering the notice in person, by leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place if the person in charge of the premises cannot be found. The notice of violation shall indicate the right of appeal by referencing the appeals section. When the owner of the building or structure or the tenants of such building or structure are not the party to whom the notice of violation is issued, then a copy of the notice shall also be delivered to the owner or tenants.

Note: A notice of unsafe building or structure for structures that become unsafe during the construction process are issued in accordance with Section 118.

C. Section 115.2.1 Notice not to be issued under certain circumstances. When violations are discovered more than two years after the certificate of occupancy is issued or the date of initial occupancy, whichever occurred later, or more than two years after the approved final inspection for an alteration or renovation, a notice of violation shall only be issued upon advice from the legal counsel of the locality that action may be taken to compel correction of the violation. When compliance can no longer be compelled by prosecution under § 36-106 of the Code of Virginia, the building official, when requested by the building owner, shall document in writing the existence of the violation noting the edition of the USBC the violation is under.

D. Section 115.3 Further action when violation not corrected. Upon failure to comply with the notice of violation, the building official may initiate legal proceedings by requesting the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality so authorizes, the building official may issue or obtain a summons or warrant. Compliance with a notice of violation notwithstanding, the building official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation within one calendar year for failure to obtain a required construction permit prior to commencement of work subject to this code.

Note: See § 19.2-8 of the Code of Virginia concerning the statute of limitations for building code prosecutions.

E. Section 115.4 Penalties and abatement. Penalties for violations of the USBC shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the USBC shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

F. Section 115.5 Transfer of ownership. In accordance with § 36-105 of the Code of Virginia, if the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50%, the pending enforcement action shall continue to be enforced against the owner.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-160. Section 116 Certificates of occupancy.

A. Section 116.1 General; when to be issued. Prior to occupancy or change of occupancy of a building or structure, a certificate of occupancy shall be obtained in accordance with this section. The building official shall issue the certificate of occupancy within five working days after approval of the final inspection and when the building or structure or portion thereof is determined to be in compliance with this code and any pertinent laws or ordinances, or when otherwise entitled.

Exceptions:

1. A certificate of occupancy is not required for an accessory structure as defined in the IRC.

2. A new certificate of occupancy is not required for an addition to an existing Group R-5 building that already has a certificate of occupancy.

B. Section 116.1.1 Temporary certificate of occupancy. Upon the request of a permit holder, a temporary certificate of occupancy may be issued before the completion of the work covered by a permit, provided that such portion or portions of a building of structure may be occupied safely prior to full completion of the building or structure without endangering life or public safety.

C. Section 116.2 Contents of certificate. A certificate of occupancy shall specify the following:

1. The edition of the USBC under which the permit is issued.

2. The group classification and occupancy in accordance with the provisions of Chapter 3.

3. The type of construction as defined in Chapter 6.

4. If an automatic sprinkler system is provided and whether or not such system was required.

5. Any special stipulations and conditions of the building permit and if any modifications were issued under the permit, there shall be a notation on the certificate that modifications were issued.

6. Group R-5 occupancies complying with Section R320.2 of the IRC shall have a notation of compliance with that section on the certificate.

D. Section 116.3 Suspension or revocation of certificate. A certificate of occupancy may be revoked or suspended whenever the building official discovers that such certificate was issued in error or on the basis of incorrect information, or where there are repeated violations of the USBC after the certificate has been issued or when requested by the code official under Section 106.6 of the VMC. The revocation or suspension shall be in writing and shall state the necessary corrections or conditions for the certificate to be reissued or reinstated in accordance with Section 116.3.1.

E. Section 116.3.1 Reissuance or reinstatement of certificate of occupancy. When a certificate of occupancy has been revoked or suspended, it shall be reissued or reinstated upon correction of the specific condition or conditions cited as the cause of the revocation or suspension and the revocation or suspension of a certificate of occupancy shall not be used as justification for requiring a building or structure to be subject to a later edition of the code than that under which such building or structure was initially constructed.

F. Section 116.4 When no certificate exists. When the local building department does not have a certificate of occupancy for a building or structure, the owner or owner's agent may submit a written request for a certificate to be created. The building official, after receipt of the request, shall issue a certificate provided a determination is made that there are no current violations of the VMC or the Virginia Statewide Fire Prevention Code (13VAC5-51) and the occupancy classification of the building or structure has not changed. Such buildings and structures shall not be prevented from continued use.

When the local building department has records indicating that a certificate did exist but does not have a copy of the certificate itself, then the building official may either verify in writing that a certificate did exist or issue a certificate based upon the records.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-170. Section 117 Temporary and moved buildings and structures; demolition.

A. Section 117.1 Temporary buildings and structures. The building official is authorized to issue a permit for temporary buildings or structures. Such permits shall be limited as to time of service, but shall not be permitted for more than one year, except that upon the permit holder's written request, the building official may grant one or more extensions of time, not to exceed one year per extension. The building official is authorized to terminate the approval and order the demolition or removal of temporary buildings or structures during the period authorized by the permit when determined necessary.

B. Section 117.1.1 Temporary uses within existing buildings and structures. The building official shall review and may approve conditions or modifications for temporary uses, including hypothermia and hyperthermia shelters, that may be necessary as long as the use meets the spirit and functional intent intended by this code. The building official is authorized to terminate the approval and order the discontinuance of the temporary use during the period authorized by the permit when determined necessary. The building official shall notify the appropriate fire official or fire chief of the approved temporary use.

C. Section 117.2 Moved buildings and structures. Any building or structure moved into a locality or moved to a new location within a locality shall not be occupied or used until the flood hazard documentation, if required by Section 1612.5 has been approved by the building official and a certificate of occupancy is issued for the new location. Such moved buildings or structures shall be required to comply with the requirements of the VEBC.

D. Section 117.3 Demolition of buildings and structures. Prior to the issuance of a permit for the demolition of any building or structure, the owner or the owner's agent shall provide certification to the building official that all service connections of utilities have been removed, sealed or plugged satisfactorily and a release has been obtained from the associated utility company. The certification shall further provide that written notice has been given to the owners of adjoining lots and any other lots that may be affected by the temporary removal of utility wires or the temporary disconnection or termination of other services or facilities relative to the demolition. In addition, the requirements of Chapter 33 of the IBC for any necessary retaining walls or fences during demolition shall be applicable and when a building or structure is demolished or removed, the established grades shall be restored.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-180. Section 118 Unsafe buildings or structures.

A. Section 118.1 Applicability. This section applies to unsafe buildings or structures.

Note: Existing buildings and structures other than those under construction or subject to this section are subject to the VMC, which also has requirements for unsafe conditions.

B. Section 118.2 Repair or removal of unsafe buildings or structures. Any unsafe building or structure shall be made safe through compliance with this code or shall be taken down and removed if determined necessary by the building official.

C. Section 118.3 Inspection report. The building official shall inspect any reported unsafe building or structure and shall prepare a report to be filed in the records of the local building department. In addition to a description of any unsafe conditions found, the report shall include the occupancy classification of the building or structure and the nature and extent of any damages caused by collapse or failure of any building components.

D. Section 118.4 Notice of unsafe building or structure. When a building or structure is determined by the building official to be an unsafe building or structure, a written notice of unsafe building or structure shall be issued by personal service to the owner, the owner's agent, or the person in control of such building or structure. The notice shall specify the corrections necessary to comply with this code and specify the time period within which the repairs must occur, or if the notice specifies that the unsafe building or structure is required to be demolished, the notice shall specify the time period within which demolition must occur.

Note: Whenever possible, the notice should also be given to any tenants or occupants of the unsafe building or structure.

E. Section 118.4.1 Vacating unsafe building or structure. If the building official determines there is actual and immediate danger to the occupants or public, or when life is endangered by the occupancy of an unsafe building or structure, the building official shall be authorized to order the occupants to immediately vacate the unsafe building or structure. When an unsafe building or structure is ordered to be vacated, the building official shall post a notice at each entrance that reads as follows:

"This Building (or Structure) is Unsafe and its Occupancy (or Use) is Prohibited by the Building Official."

After posting, occupancy or use of the unsafe building or structure shall be prohibited except when authorized to enter to conduct inspections, make required repairs, or as necessary to demolish the building or structure.

F. Section 118.5 Posting of notice. If the notice is unable to be issued by personal service as required by Section 118.4, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises.

G. Section 118.6 Posting of placard. In the case of an unsafe building or structure, if the notice is not complied with, a placard with the following wording shall be posted at the entrance to the building or structure:

"This Building (or Structure) is Unfit for Habitation and its Use or Occupancy has been Prohibited by the Building Official."

After an unsafe building or structure is placarded, entering the unsafe building or structure shall be prohibited except as authorized by the building official to make inspections, to perform required repairs, or to demolish the unsafe building or structure. In addition, the placard shall not be removed until the unsafe building or structure is determined by the building official to be safe to occupy. The placard shall not be defaced.

H. Section 118.7 Emergency repairs and demolition. To the extent permitted by the locality, the building official may authorize emergency repairs to unsafe buildings or structures when it is determined that there is an immediate danger of any portion of the unsafe building or structure collapsing or falling and when life is endangered. Emergency repairs may also be authorized when there is a code violation resulting in a serious and imminent threat to the life and safety of the occupants or public. The building official shall be permitted to authorize the necessary work to make the unsafe building or structure temporarily safe whether or not legal action to compel compliance has been instituted.

In addition, whenever an owner of an unsafe building or structure fails to comply with a notice to demolish issued under Section 118.4 in the time period stipulated, the building official shall be permitted to cause the unsafe building or structure to be demolished. In accordance with §§ 15.2-906 and 15.2-1115 of the Code of Virginia, the legal counsel of the locality may be requested to institute appropriate action against the property owner to recover the costs associated with any such emergency repairs or demolition and every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made and shall be enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia.

Note: Building officials and local governing bodies should be aware that other statutes and court decisions may impact on matters relating to demolition, in particular whether newspaper publication is required if the owner cannot be located and whether the demolition order must be delayed until the owner has been given the opportunity for a hearing.

I. Section 118.8 Closing of streets. When necessary for public safety, the building official shall be permitted to order the temporary closing of sidewalks, streets, public ways, or premises adjacent to unsafe buildings or structures and prohibit the use of such spaces.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014.

13VAC5-63-190. Section 119 Appeals.

A. Section 119.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local building department a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. In addition, as an authorization in this code, separate LBBCAs may be established to hear appeals of different enforcement areas such as electrical, plumbing or mechanical requirements. Each such LBBCA shall comply with the requirements of this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality.

B. Section 119.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

C. Section 119.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

D. Section 119.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

E. Section 119.5 Right of appeal; filing of appeal application. Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.

Note: To the extent that a decision of a building official pertains to amusement devices there may be a right of appeal under the VADR.

F. Section 119.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application if requested or by electronic means at least 14 calendar days prior to the date of the hearing unless a lesser time period is agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

G. Section 119.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

H. Section 119.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with Section 36-114 of the Code of Virginia, the State Review Board shall have the power and duty to hear all appeals from decisions arising under the application of the USBC and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. In accordance with § 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the building official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the building official's decision. For appeals from a LBBCA, a copy of the building official's decision and the written decision of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the building official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia.

I. Section 119.9 Hearings and decision. All hearings before the State Review Board shall be open meetings and the chair shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The State Review Board shall have the power to uphold, reverse, or modify the decision of the LBBCA by a concurring vote of a majority of those present. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that an informal conference pursuant to § 2.2-4019 of the Code of Virginia shall not be required. Decisions of the State Review Board shall be final if no further appeal is made. The decision of the State Review Board shall be explained in writing, signed by the chair and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording: "As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with the Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period."

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-200. Chapter 2 Definitions.

A. Add the following definitions to Section 202 of the IBC to read:

Aboveground liquid fertilizer storage tank (ALFST). A device that contains an accumulation of liquid fertilizer (i) constructed of nonearthen materials, such as concrete, steel or plastic, that provide structural support; (ii) having a capacity of 100,000 gallons (378,500 L) or greater; and (iii) the volume of which is more than 90% above the surface of the ground. The term does not include any wastewater treatment or wastewater storage tank, utility or industry pollution control equipment.

Building regulations. Any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

Chemical fume hood. A ventilated enclosure designed to contain and exhaust fumes, gases, vapors, mists, and particulate matter generated within the hood.

Construction. The construction, reconstruction, alteration, repair, or conversion of buildings and structures.

Day-night average sound level (Ldn). A 24-hour energy average sound level expressed in dBA, with a 10 decibel penalty applied to noise occurring between 10 p.m. and 7 a.m.

DHCD. The Virginia Department of Housing and Community Development.

Emergency communication equipment. Emergency communication equipment, includes two-way radio communications, signal booster, bi-directional amplifiers, radiating cable systems, or internal multiple antenna, or a combination of the foregoing.

Emergency public safety personnel. Emergency public safety personnel includes firefighters, emergency medical personnel, law-enforcement officers, and other emergency public safety personnel routinely called upon to provide emergency assistance to members of the public in a wide variety of emergency situations, including fires, medical emergencies, violent crimes, and terrorist attacks.

Emergency supplemental hardware. Any approved hardware used only for emergency events or drills to keep intruders from entering the room during an active shooter or hostile threat event or drill.

Equipment. Plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

Farm building or structure. A building or structure not used for residential purposes, located on property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm.

2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products.

3. Business or office uses relating to the farm operations.

4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm.

5. Storage or use of supplies and materials used on the farm.

6. Implementation of best management practices associated with farm operations.

Hospice facility. An institution, place, or building owned or operated by a hospice provider and licensed by the Virginia Department of Health as a hospice facility to provide room, board, and palliative and supportive medical and other health services to terminally ill patients and their families, including respite and symptom management, on a 24-hour basis to individuals requiring such care pursuant to the orders of a physician.

Industrialized building. A combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes shall not be considered industrialized buildings for the purpose of this code.

Laboratory suite. A fire-rated enclosed laboratory area that will provide one or more laboratory spaces, within a Group B educational occupancy, that are permitted to include ancillary uses such as offices, bathrooms, and corridors that are contiguous with the laboratory area and are constructed in accordance with Section 430.3.

LBBCA. Local board of building code appeals.

Liquid fertilizer. A fluid in which a fertilizer is in true solution. This term does not include anhydrous ammonia or a solution used in pollution control.

Local building department. The agency or agencies of any local governing body charged with the administration, supervision, or enforcement of this code, approval of construction documents, inspection of buildings or structures, or issuance of permits, licenses, certificates or similar documents.

Local governing body. The governing body of any city, county or town in this Commonwealth.

Locality. A city, county or town in this Commonwealth.

Manufactured home. A structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

Marina. Any installation, operating under public or private ownership, that has a structure providing dockage or moorage for boats, other than paddleboats or rowboats, and provides, through sale, rental, fee, or on a free basis, any equipment, supply, or service, including fuel, electricity, or water, for the convenience of the public or its lessees, renters, or users of its facilities. A dock or pier with or without slips that exclusively serves a single-family residential lot for the use of the owner of the lot is not a marina.

Night club. Any building in which the main use is a place of public assembly that provides exhibition, performance or other forms of entertainment; serves alcoholic beverages; and provides music and space for dancing.

Permissible fireworks. Any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

Short-term holding area. An area containing a holding cell, or a holding room, including associated rooms or spaces where the occupants are restrained or detained by the use of security measures not under the occupant's control for less than 24 hours.

Permit Holder. The person to whom the permit is issued.

Skirting. A weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

Slip. A berth or space where a boat may be secured to a fixed or floating structure, including a dock, finger pier, boat lift, or mooring buoy.

Sound transmission class (STC) rating. A single number characterizing the sound reduction performance of a material tested in accordance with ASTM E90-90, "Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions."

State regulated care facility (SRCF). A building occupied by persons in the care of others where program oversight is provided by the Virginia Department of Social Services, the Virginia Department of Behavioral Health and Developmental Services, the Virginia Department of Education, the Virginia Department of Health, or the Virginia Department of Juvenile Justice.

State Review Board. The Virginia State Building Code Technical Review Board as established under § 36-108 of the Code of Virginia.

Teaching and research laboratory. A building or portion of a building where hazardous materials are stored, used, and handled for the purpose of testing, analysis, teaching, research, or developmental activities on a nonproduction basis rather than in a manufacturing process.

Technical assistant. Any person employed by or under an extended contract to a local building department or local enforcing agency for enforcing the USBC, including inspectors, plans reviewers, and permit technicians. For the purpose of this definition, an extended contract shall be a contract with an aggregate term of 18 months or longer.

Tenable environmental. An environment in which the products of combustion, including smoke, toxic gases, particulates, and heat, are limited or otherwise restricted in order to maintain the impact on occupants, including those in the area of fire origin, to a level that is not life threatening and permits the rescue of occupants for a limited time.

Unsafe building or structure. Any building or structure that is under construction and has not received a permanent certificate of occupancy, final inspection, or for which a permit was never issued or has expired and has been determined by the building official to be of faulty construction that is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is likely, or any unfinished construction that does not have a valid permit, or the permit has been revoked, and the condition of the unfinished construction presents an immediate serious and imminent threat to the life and safety of the occupants or the public.

VADR. The Virginia Amusement Device Regulations (13VAC5-31).

VCS. The Virginia Certification Standards (13VAC5-21).

Working day. A day other than Saturday, Sunday or a legal local, state or national holiday.

B. Change the following definitions in Section 202 of the IBC to read:

Addition. An extension or increase in floor area, number of stories, or height of a building or structure.

Ambulatory care facility. Buildings or portions thereof used to provide medical care on less than a 24-hour basis that are licensed by the Virginia Department of Health as outpatient surgical hospitals.

Automatic fire-extinguishing system. An approved system of devices and equipment that automatically detects a fire and discharges an approved fire-extinguishing agent onto or in the area of a fire and includes among other systems an automatic sprinkler system, unless otherwise expressly stated.

Building. A combination of materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Building" shall not include roadway tunnels and bridges owned by the Virginia Department of Transportation, which shall be governed by construction and design standards approved by the Virginia Commonwealth Transportation Board.

Change of occupancy. See Section 202 of the VEBC.

Clinic, outpatient. Buildings or portions thereof used to provide medical care on less than a 24-hour basis that are not licensed by the Virginia Department of Health as outpatient surgical hospitals.

Custodial care. Assistance with day-to-day living tasks, such as assistance with cooking, taking medication, bathing, using toilet facilities, and other tasks of daily living. In other than in hospice facilities, custodial care includes occupants that have the ability to respond to emergency situations and evacuate at a slower rate or who have mental and psychiatric complications, or both.

Existing structure. A structure (i) for which a legal building permit has been issued under any edition of the USBC, (ii) that has been previously approved, or (iii) that was built prior to the initial edition of the USBC. For application of provisions in flood hazard areas, an existing structure is any building or structure for which the start of construction commenced before the effective date of the community's first flood plain management code, ordinance, or standard.

Owner. The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee or lessee in control of a building or structure.

Registered design professional (RDP). An architect or professional engineer, licensed to practice architecture or engineering, as defined under § 54.1-400 of the Code of Virginia.

Swimming pool. A pool or spa as defined in the International Swimming Pool and Spa Code (ISPSC).

Structure. An assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Structure" shall not include roadway tunnels and bridges owned by the Virginia Department of Transportation, which shall be governed by construction and design standards approved by the Virginia Commonwealth Transportation Board.

Wall. A vertical element with a horizontal length-to-thickness ratio greater than three used to enclose space.

C. Delete the following definitions from Section 202 of the IBC:

Agricultural building

Historic buildings

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-210. Chapter 3 Use and occupancy classification.

A. Change Sections 302.1 to read of the IBC to read:

302.1 General. Structures or portions of structures shall be classified with respect to occupancy in one or more of the groups listed in this section. A room or space that is intended to be occupied at different times for different purposes shall comply with all of the requirements that are applicable to each of the purposes for which the room or space will be occupied. Structures with multiple occupancies or uses shall be classified in the group that the occupancy most nearly resembles, according to the fire safety and relative hazard involved.

1. Assembly (see Section 303): Groups A-1, A-2, A-3, A-4, and A-5.

2. Business (see Section 304): Group B.

3. Educational (see Section 305): Group E.

4. Factory and Industrial (see Section 306): Groups F-1 and F-2.

5. High Hazard (see Section 307): Groups H-1, H-2, H-3, H-4, and H-5.

6. Institutional (see Section 308 and Section 313 for SRCFs).

7. Mercantile (see Section 309): Group M.

8. Residential (see Section 310 and Section 313 for SRCFs): Groups R-1, R-2, R-3, R-4, and R-5.

9. Storage (see Section 311): Groups S-1 and S-2.

10. Utility and Miscellaneous (see Section 312): Group U.

B. Change Sections 303.1.1 and 303.1.2 of the IBC to read:

303.1.1 Small buildings and tenant spaces. A building or tenant space used for assembly purposes with an occupant load of less than 50 persons shall be permitted to be classified as a Group B occupancy.

303.1.2 Small assembly spaces. The following rooms and spaces shall be permitted to be classified as Group B occupancies or as part of the assembly occupancy:

1. A room or space used for assembly purposes with an occupant load of less than 50 persons and ancillary to another occupancy.

2. A room or space used for assembly purposes that is less than 750 square feet (70 m^2) in area and ancillary to another occupancy.

C. Change Section 303.6 of the IBC to read:

303.6 Assembly Group A-5. Assembly uses intended for participation in or viewing outdoor activities including:

Amusement park structures

Bleachers

Grandstands

Stadiums

Swimming pools

D. Add Section 304.1.1 to the IBC to read:

304.1.1 Day support and day treatment facilities. Day support and day treatment facilities licensed by the Virginia Department of Behavioral Health and Developmental Services shall be permitted to be classified as Group B occupancies provided all of the following conditions are met:

1. Participants who may require physical assistance from staff to respond to an emergency situation shall be located on the level of exit discharge.

2. Any change in elevation within the exit access on the level of exit discharge shall be made by means of a ramp or sloped walkway.

3. Where the facilities are located more than two stories above grade, an automatic sprinkler system shall be provided throughout the building in accordance with Section 903.3.1.1.

E. Change Exception 14 of Section 307.1.1 of the IBC and add Exception 18 to Section 307.1.1 of the IBC to read:

14. The storage of black powder, smokeless propellant and small arms primers in Groups M, R-3 and R-5 and special industrial explosive devices in Groups B, F, M and S, provided such storage conforms to the quantity limits and requirements prescribed in the IFC, as amended in Section 307.9.

18. The storage of distilled spirits and wines in wooden barrels and casks. Distillation, blending, bottling, and other hazardous materials storage or processing shall be in separate control areas complying with Section 414.2.

F. Change the "Flammable liquid, combination (IA, IB, IC)" row in Table 307.1(1), add a new "Permissible fireworks" row to Table 307.1(1) of the IBC, and add footnote "r" to Table 307.1(1) of the IBC to read:

Flammable liquid, combination (IA, IB, IC)	NA	H-2 or H-3	NA	120[d,e,h]	NA	NA	120[d,h]	NA	NA	30[d,h,r]
Permissible	1.4G	H-3		NA	NA	NA	NA	NA	NA	NA

fireworks	125[d,e,l]	

r. The tabular value for distilled spirit distillation and blending rooms is 120 gallons.

G. Add Section 307.9 to the IBC to read:

307.9 Amendments. The following changes shall be made to the IFC for the use of Exception 14 in Section 307.1.1:

1. Change the following definition in Section 202 of the IFC to read:

Smokeless propellants. Solid propellants, commonly referred to as smokeless powders, or any propellants classified by DOTn as smokeless propellants in accordance with NA3178 (Smokeless Powder for Small Arms), used in small arms ammunition, firearms, cannons, rockets, propellant-actuated devices, and similar articles.

2. Change Section 314.1 of the IFC to read as follows:

314.1 General. Indoor displays constructed within any building or structure shall comply with Sections 314.2 through 314.5.

3. Add new Section 314.5 to the IFC to read as follows:

314.5 Smokeless powder and small arms primers. Vendors shall not store, display or sell smokeless powder or small arms primers during trade shows inside exhibition halls except as follows:

1. The amount of smokeless powder each vendor may store is limited to the storage arrangements and storage amounts established in Section 5606.5.2.1.

2. Smokeless powder shall remain in the manufacturer's original sealed container and the container shall remain sealed while inside the building. The repackaging of smokeless powder shall not be performed inside the building. Damaged containers shall not be repackaged inside the building and shall be immediately removed from the building in such manner to avoid spilling any powder.

3. There shall be at least 50 feet separation between vendors and 20 feet from any exit.

4. Small arms primers shall be displayed and stored in the manufacturer's original packaging and in accordance with the requirements of Section 5606.5.2.3.

4. Change Exception 4 and add Exceptions 10 and 11 to Section 5601.1 of the IFC as follows:

4. The possession, storage and use of not more than 15 pounds (6.75 kg) of commercially manufactured sporting black powder, 20 pounds (9 kg) of smokeless powder and any amount of small arms primers for hand loading of small arms ammunition for personal consumption.

10. The display of small arms primers in Group M when in the original manufacturer's packaging.

11. The possession, storage and use of not more than 50 pounds (23 kg) of commercially manufactured sporting black powder, 100 pounds (45 kg) of smokeless powder, and small arms primers for hand loading of small arms ammunition for personal consumption in Group R-3 or R-5, or 200 pounds (91 kg) of smokeless powder when stored in the manufacturer's original containers in detached Group U structures at least 10 feet (3048 mm) from inhabited buildings and are accessory to Group R-3 or R-5.

5. Change Section 5606.4 of the IFC to read as follows:

5606.4 Storage in residences. Propellants for personal use in quantities not exceeding 50 pounds (23 kg) of black powder or 100 pounds (45 kg) of smokeless powder shall be stored in original containers in occupancies limited to Groups R-3 and R-5 or 200 pounds (91 kg) of smokeless powder when stored in the manufacturer's original containers in detached Group U structures at least 10 feet (3048 mm) from inhabited buildings and are accessory to Group R-3 or R-5. In other than Group R-3 or R-5, smokeless powder in quantities exceeding 20 pounds (9 kg) but not exceeding 50 pounds (23 kg) shall be kept in a wooden box or cabinet having walls of at least one inch (25 mm) nominal thickness or equivalent.

6. Delete Sections 5606.4.1 and 5606.4.2 of the IFC.

7. Change Section 5606.5.1.1 of the IFC to read as follows:

5606.5.1.1 Smokeless propellant. No more than 100 pounds (45 kg) of smokeless propellants in containers of eight pounds (3.6 kg) or less capacity shall be displayed in Group M occupancies.

8. Delete Section 5606.5.1.3 of the IFC.

9. Change Section 5606.5.2.1 of the IFC as follows:

5606.5.2.1 Smokeless propellant. Commercial stocks of smokeless propellants shall be stored as follows:

1. Quantities exceeding 20 pounds (9 kg), but not exceeding 100 pounds (45 kg) shall be stored in portable wooden boxes having walls of at least one inch (25 mm) nominal thickness or equivalent.

2. Quantities exceeding 100 pounds (45 kg), but not exceeding 800 pounds (363 kg), shall be stored in storage cabinets having walls at least one inch (25 mm) nominal thickness or equivalent. Not more than 400 pounds (182 kg) shall be stored in any one cabinet, and cabinets shall be separated by a distance of at least 25 feet (7620 mm) or by a fire partition having a fire-resistance rating of at least one hour.

3. Storage of quantities exceeding 800 pounds (363 kg), but not exceeding 5,000 pounds (2270 kg) in a building shall comply with all of the following:

3.1. The warehouse or storage room is not open to unauthorized personnel.

3.2. Smokeless propellant shall be stored in nonportable storage cabinets having wood walls at least one inch (25 mm) nominal thickness or equivalent and having shelves with no more than 3 feet (914 mm) of vertical separation between shelves.

3.3. No more than 400 pounds (182 kg) is stored in any one cabinet.

3.4. Cabinets shall be located against walls with at least 40 feet (12,192 mm) between cabinets. The minimum required separation between cabinets may be reduced to 20 feet (6096 mm) provided that barricades twice the height of the cabinets are attached to the wall, midway between each cabinet. The barricades must extend a minimum of 10 feet (3048 mm) outward, be firmly attached to the wall, and be constructed of steel not less than 0.25 inch thick (6.4 mm), 2-inch (51 mm) nominal thickness wood, brick, or concrete block.

3.5. Smokeless propellant shall be separated from materials classified as combustible liquids, flammable liquids, flammable solids, or oxidizing materials by a distance of 25 feet (7620 mm) or by a fire partition having a fire-resistance rating of 1 hour.

3.6. The building shall be equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.

4. Smokeless propellants not stored according to Item 1, 2, or 3 above shall be stored in a Type 2 or 4 magazine in accordance with Section 5604 and NFPA 495.

H. Change Section 308.2 of the IBC to read:

308.2 Institutional Group I-1. This occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1, shall be classified as the occupancy condition indicated in Section 308.2.1 or 308.2.2. Assisted living facilities licensed by the Virginia Department of Social Services shall be classified as one of the occupancy conditions indicated in Section 308.2.1 or 308.2.2. T

I. Change Sections 308.2.1 and 308.2.2 of the IBC to read:

308.2.1 Condition 1. This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation. Not more than five of the residents may require physical assistance from staff to respond to an emergency situation when all residents who may require the physical assistance reside on a level of exit discharge and the path of egress to the exit does not include steps.

308.2.2 Condition 2. This occupancy condition shall include buildings in which there are persons receiving custodial care who require assistance by not more than one staff member while responding to an emergency situation to complete building evacuation. Five of the residents may require physical assistance from more than one staff member to respond to an emergency.

J. Change Section 308.3 of the IBC to read:

308.3 Institutional Group I-2. This occupancy shall include buildings and structures used for medical care on a 24-hour basis for more than five persons who are incapable of self-preservation.

K. Add an exception to Section 308.5 of the IBC to read:

Exception: Family day homes under Section 313.3.

L. Change Section 310.2 of the IBC to read:

310.2 Residential Group R-1. Residential occupancies containing sleeping units or more than two dwelling units, and:

1. The occupants are primarily transient, and

2. There are more than 10 occupants.

M. Change Section 310.3 of the IBC to read:

Residential Group R-2. Residential occupancies containing sleeping units or more than two dwelling units where the occupants are not primarily transient.

N. Change Sections 310.4, 310.4.1, 310.4.2, 310.5, and 310.5.1 and add Section 310.5.3 of the IBC to read:

310.4 Residential Group R-3. Residential occupancies containing no more than two dwelling units and where the occupancy is not classified as Group R-1, R-2, R-4, R-5, or I, and:

1. The occupants are not primarily transient, or

2. There are no more than 10 transient occupants per dwelling unit.

310.4.1 Radon-resistant construction. Group R-3 buildings and structures shall be subject to the radon-resistant construction requirements in Appendix F of the IRC in localities enforcing such requirements pursuant to Section R327 of the IRC.

310.4.2 Lodging houses. Owner-occupied or proprietor-occupied lodging houses and other transient boarding facilities not more than three stories above grade plane in height, with five or fewer guest rooms and 10 or fewer total occupants shall be permitted to be classified as either Group R-3 or R-5, provided that smoke alarms are installed in compliance with Section 907.2.11.2 for Group R-3 or Section R314 of the IRC for Group R-5.

310.5 Residential Group R-4. Residential occupancies with more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group R-4, other than assisted living facilities licensed by the Virginia Department of Social Services, shall be classified as the occupancy condition indicated in Section 310.5. Assisted living facilities licensed by the Virginia Department of Social Services shall be classified as one of the occupancy conditions indicated in Section 310.5.1 or 310.5.2.

310.5.1 Condition 1. This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation or, in which not more than five of the residents may require physical assistance from staff to respond to an emergency situation when all residents who may require the physical assistance from staff reside on a level of exit discharge and the path of egress to the exit does not include steps.

310.5.3 Radon-resistant construction. Group R-4 buildings and structures shall be subject to the radon-resistant construction requirements in Appendix F of the VRC in localities enforcing such requirements pursuant to Section R327 of the VRC.

O. Add Section 310.6 to the IBC to read:

310.6 Residential Group R-5. Residential occupancies within the scope of the VRC, other occupancies specifically permitted in this code to be classified as Group R-5, and manufactured homes in accordance with the Virginia Manufactured Home Safety Regulations (23VAC5-91).

The provisions of the International Residential Code for One- and Two-family Dwellings shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of the following when classified as Group R-5:

1. Detached single-family and two-family dwellings.

2. Townhouses.

3. Care facilities for five or fewer people.

4. Owner-occupied or proprietor-occupied lodging houses with no more than five guest rooms and 10 or fewer total occupants.

5. Accessory structures of Group R-5 occupancies.

The amendments to the IRC set out in Section 310.9 shall be made to the IRC for its use as part of this code. In addition, all references to the IRC and the IBC shall be considered to be references to this section.

P. Add Section 310.6.1 to the IBC to read:

310.6.1 Additional requirements. Methods of construction, materials, systems, equipment or components for Group R-5 structures not addressed by prescriptive or performance provisions of the IRC shall comply with applicable IBC requirements.

Q. Add Section 310.7 to the IBC to read:

310.7 Radon-resistant construction in Groups R-3 and R-4 structures. Groups R-3 and R-4 structures shall be subject to the radon-resistant construction requirements in Appendix F of the IRC in localities enforcing such requirements pursuant to Section R324 of the IRC.

R. Add Section 310.8 to the IBC to read:

310.8 Amendments to the IRC. The following changes shall be made to the IRC for its use as part of this code:

1. Add the following definitions to read:

Accessory dwelling unit. A dwelling unit in a two-family dwelling that is accessory to the primary dwelling unit. An accessory dwelling unit provides for separate living, sleeping, eating, cooking, and sanitation facilities for one or more occupants but may share living space, means of egress, utilities, or other components. An accessory dwelling unit fully complies with the requirements of this code for a dwelling unit except where specified otherwise.

Living area. Space within a dwelling unit utilized for living and entertainment, including family rooms, great rooms, living rooms, dens, media rooms, and similar spaces.

Nonpotable fixtures and outlets. Fixtures and outlets that are not dependent on potable water for the safe operation to perform their intended use. Such fixtures and outlets may include water closets, urinals, irrigation, mechanical equipment, and hose connections to perform operations, such as vehicle washing and lawn maintenance.

Nonpotable water systems. Water systems for the collection, treatment, storage, distribution, and use or reuse of nonpotable water. Nonpotable systems include reclaimed water, rainwater, and gray water systems.

Rainwater. Natural precipitation, including snow melt, from roof surfaces only.

Stormwater. Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. Substantial Improvement. Any repair, reconstruction, rehabilitation, alteration, addition or other improvement of a building or structure, the cost of which equals or exceeds 50% of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.

2. Any alteration of a historic structure, provided that the alteration will not preclude the building or structure's continued designation as a historic structure.

Two-family dwelling. A dwelling that includes two dwelling units or one dwelling unit and one accessory dwelling unit.

2. Change the following definitions to read:

Attic, habitable. A finished or unfinished area, not considered a story, complying with all of the following requirements:

1. The occupiable floor area is at least 70 square feet (17 m^2), in accordance with Section R304,

2. The occupiable floor area has a ceiling height in accordance with Section R305, and

3. The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.

Habitable attics greater than two-thirds of the area of the story below or over 400 square feet (37.16 m^2) shall not be permitted in dwellings or townhouses that are three stories above grade plane in height.

Gray water. Water discharged from lavatories, bathtubs, showers, clothes washers, and laundry trays.

Dwelling. Any building that contains one or two dwelling units, or one dwelling unity and one accessory dwelling unit, used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

3. Change table R301.2(2) to read:

Table R301.2(2)

COMPONENT AND CLADDING LOADS FOR A BUILDING WITH A MEAN ROOF HEIGHT OF 30 FEET LOCATED IN EXPOSURE B (ASD) (psf)[a,b,c,d,e,f,g]

	Zone	Effective Wind Areas ($feet^2$)	Ultimate Design Wind Speed, V_{ult}																									
			90		95		100		105		110		115		120		130		140		150		160		170		180	
			Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg	Pos	Neg
Flat and Gable Roof 0 to 7 degrees	1	10	3.6	-13.9	4.0	-15.5	4.4	-17.2	4.8	-19.0	5.3	-20.8	5.8	-22.7	6.3	-24.8	7.4	-29.1	8.6	-33.7	9.9	-38.7	11.2	-44.0	12.7	-49.7	14.2	-55.7
	1	20	3.3	-13.0	3.7	-14.5	4.1	-16.0	4.5	-17.7	5.0	-19.4	5.4	-21.2	5.9	-23.1	7.0	-27.1	8.1	-31.4	9.3	-36.1	10.5	-41.1	11.9	-46.4	13.3	-52.0
	1	50	3.0	-11.8	3.4	-13.1	3.8	-14.5	4.1	-16.0	4.5	-17.6	5.0	-19.2	5.4	-20.9	6.3	-24.5	7.4	-28.4	8.4	-32.6	9.6	-37.1	10.8	-41.9	12.2	-47.0
	1	100	2.8	-10.8	3.1	-12.1	3.5	-13.4	3.8	-14.7	4.2	-16.2	4.6	-17.7	5.0	-19.2	5.9	-22.6	6.8	-26.2	7.8	-30.0	8.9	-34.2	10.1	-38.6	11.3	-43.3
	2	10	3.6	-18.4	4.0	-20.5	4.4	-22.7	4.8	-25.0	5.3	-27.4	5.8	-30.0	6.3	-32.7	7.4	-38.3	8.6	-44.5	9.9	-51.0	11.2	-28.1	12.7	-65.6	14.2	-73.5
	2	20	3.3	-17.2	3.7	-19.2	4.1	-21.2	4.5	-23.4	5.0	-25.7	5.4	-28.1	5.9	-30.6	7.0	-35.9	8.1	-41.6	9.3	-47.8	10.5	-54.3	11.9	-61.4	13.3	-68.8
	2	50	3.0	-15.6	3.4	-17.4	3.8	-19.3	4.1	-21.3	4.5	-23.3	5.0	-25.5	5.4	-27.8	6.3	-32.6	7.4	-37.8	8.4	-43.4	9.6	-49.4	10.8	-55.8	12.2	-62.5
	2	100	2.8	-14.4	3.1	-16.1	3.5	-17.8	3.8	-19.7	4.2	-21.6	4.6	-23.6	5.0	-25.7	5.9	-30.1	6.8	-35.0	7.8	-40.1	8.9	-45.7	10.0	-51.5	11.3	-57.8
	3	10	3.6	-25.0	4.0	-27.9	4.4	-30.9	4.8	-34.1	5.3	-37.4	5.8	-40.9	6.3	-44.5	7.4	-52.2	8.6	-60.6	9.9	-69.6	11.2	-79.1	12.7	-89.4	14.2	-100.2
	3	20	3.3	-22.6	3.7	-25.2	4.1	-28.0	4.5	-30.8	5.0	-33.8	5.4	-37.0	5.9	-40.3	7.0	-47.2	8.1	-54.8	9.3	-62.9	10.5	-71.6	11.9	-80.8	13.3	-90.6
	3	50	3.0	-19.4	3.4	-21.7	3.8	-24.0	4.1	-26.5	4.5	-29.0	5.0	-31.7	5.4	-34.6	6.3	-40.6	7.4	-47.0	8.4	-54.0	9.6	-61.4	10.8	-69.4	12.2	-77.8
	3	100	2.8	-17.4	3.1	-19.0	3.5	-21.0	3.8	-23.2	4.2	-25.5	4.6	-27.8	5.0	-30.3	5.9	-35.6	6.8	-41.2	7.8	-47.3	8.9	-53.9	10.0	-60.8	11.3	-68.2
Gable Roof >7 to 20 degrees	1, 2e	10	5.4	-16.2	6.0	-18.0	6.7	-19.9	7.4	-22.0	8.1	-24.1	8.8	-26.4	9.6	-28.7	11.3	-33.7	13.1	-39.1	15.0	-44.9	17.1	-51.0	19.3	-57.6	21.6	-64.6
	1, 2e	20	4.9	-16.2	5.4	-18.0	6.0	-19.9	6.6	-22.0	7.2	-24.1	7.9	-26.4	8.6	-28.7	10.1	-33.7	11.7	-39.1	13.5	-44.9	15.3	-51.0	17.3	-57.6	19.4	-64.6
	1, 2e	50	4.1	-9.9	4.6	-11.0	5.1	-12.2	5.6	-13.4	6.1	-14.7	6.7	-16.1	7.3	-17.5	8.6	-20.6	10.0	-23.8	11.4	-27.4	13.0	-31.1	14.7	-35.2	16.4	-39.4
	1, 2e	100	3.6	-5.0	4.0	-5.6	4.4	-6.2	4.8	-6.9	5.3	-7.5	5.8	-8.2	6.3	-9.0	7.4	-10.5	8.6	-12.2	9.9	-14.0	11.2	-15.9	12.7	-18.0	14.2	-20.2
	2n, 2r, 3e	10	5.4	-23.6	6.0	-26.3	6.7	-29.1	7.4	-32.1	8.1	-35.2	8.8	-38.5	9.6	-41.9	11.3	-49.2	13.1	-57.0	15.0	-65.0	17.1	-74.5	19.3	-84.1	21.6	-94.2
	2n, 2r, 3e	20	4.9	-20.3	5.4	-22.7	6.0	-25.1	6.6	-27.7	7.2	-30.4	7.9	-33.2	8.6	-36.2	10.1	-42.4	11.7	-49.2	13.5	-56.5	15.3	-64.3	17.3	-72.6	19.4	-81.4
	2n, 2r, 3e	50	4.1	-16.0	4.6	-17.9	5.4	-19.8	5.6	-21.8	6.1	-24.0	6.7	-26.2	7.3	-28.5	8.6	-33.5	10.0	-38.8	11.4	-44.6	130	-50.7	14.7	-57.2	16.4	-64.2
	2n, 2r, 3e	100	3.6	-12.8	4.0	-14.3	4.4	-15.8	4.8	-17.4	5.3	-19.1	5.8	-20.9	6.3	-22.8	7.4	-26.7	8.6	-31.0	9.9	-35.6	11.2	-40.5	12.7	-45.7	14.2	-51.3
	3r	10	5.4	-28.0	6.0	-30.2	6.7	-34.6	7.4	-38.1	8.1	-41.8	8.8	-45.7	9.6	-49.8	11.3	-58.4	13.1	-67.8	15.0	-77.8	17.1	-88.5	19.3	-99.9	21.6	-112.0
	3r	20	4.9	-24.0	5.4	-26.7	6.0	-29.6	6.6	-32.7	7.2	-35.9	7.9	-39.2	8.6	-42.7	10.1	-50.1	11.7	-58.1	13.5	-66.7	15.3	-75.9	17.3	-85.6	19.4	-96.1
	3r	50	4.1	-18.7	4.6	-20.8	5.1	-23.1	5.6	-25.4	6.1	-27.9	6.7	-30.5	7.3	-33.2	8.6	-39.0	10.0	-45.2	11.4	-51.9	13.0	-59.0	14.7	-66.6	16.4	-74.7
	3r	100	3.6	-14.7	4.0	-16.3	4.4	-18.1	4.8	-20.0	5.3	-21.9	5.8	-24.0	6.3	-26.1	7.4	-30.6	8.6	-35.5	9.9	-40.8	11.2	-46.4	12.7	-52.3	14.2	-58.7
Gable Roof >20 to 27 degrees	1, 2e	10	6.5	-12.4	7.3	-13.9	8.0	-15.4	8.9	-16.9	9.7	-18.6	10.6	-20.3	11.6	-22.1	13.6	-26.0	15.8	-30.1	18.1	-34.6	20.6	-39.3	23.3	-44.4	26.1	-49.9
	1, 2e	20	5.6	-12.4	6.3	-13.9	7.0	-15.4	7.7	-16.9	8.4	-18.6	9.2	-20.3	10.0	-22.1	11.7	-26.0	13.6	-30.1	15.6	-34.6	17.8	-39.3	20.1	-44.4	22.5	-49.8
	1, 2e	50	4.4	-10.6	5.0	-11.8	5.5	-13.1	6.1	-14.4	6.6	-15.8	7.3	-17.3	7.9	-18.8	9.3	-22.1	10.8	-25.6	12.3	-29.4	14.0	-33.5	15.9	-37.8	17.8	-42.4
	1, 2e	100	3.6	-9.1	4.0	-10.2	4.4	-11.3	4.8	-12.4	5.3	-13.6	5.8	-14.9	6.3	-16.2	7.4	-19.0	8.6	-22.1	9.9	-25.3	11.2	-28.8	12.7	-32.5	14.2	-36.5
	2n, 2r, 3e	10	6.5	-19.9	7.3	-22.1	8.0	-24.5	8.9	-27.0	9.7	-29.7	10.6	-32.4	11.6	-35.3	13.6	-41.4	15.8	-48.0	18.1	-55.2	20.6	-62.8	23.3	-70.8	26.1	-79.4
	2n, 2r, 3e	20	5.6	-17.4	6.3	-19.4	7.0	-21.5	7.7	-23.7	8.4	-26.0	9.2	-28.4	10.0	-31.0	11.7	-36.3	13.6	-42.1	15.6	-48.4	17.8	-55.0	20.1	-62.1	22.5	-69.6
	2n, 2r, 3e	50	4.4	-14.2	5.0	-15.8	5.5	-17.5	6.1	-19.3	6.6	-21.1	7.3	-23.1	7.9	-25.2	9.3	-29.5	10.8	-34.2	12.3	-39.3	14.0	-44.7	15.9	-50.5	17.8	-56.6
	2n,	100	3.6	-11.7	4.0	-13.0	4.4	-14.5	4.8	-15.9	5.3	-17.5	5.8	-19.1	6.3	-20.8	7.4	-24.4	8.6	-28.3	9.9	-32.5	11.2	-37.0	12.7	-41.8	14.2	-46.8

	2r, 3e																											
	3r	10	6.5	-23.6	7.3	-26.3	8.0	-29.1	8.9	-32.1	9.7	-35.2	10.6	-38.5	11.6	-41.9	13.6	-49.2	15.8	-57.0	18.1	-65.4	20.6	-74.5	23.3	-84.1	26.1	-94.2
	3r	20	5.6	-19.9	6.3	-22.1	7.0	-24.5	7.7	-27.0	8.4	-29.7	9.2	-32.4	10.0	-35.3	11.7	-41.4	13.6	-48.0	15.6	-55.2	17.8	-62.8	20.1	-70.8	22.5	-79.4
	3r	50	4.4	-14.7	5.0	-16.3	5.5	-18.1	6.1	-20.0	6.6	-21.9	7.3	-24.0	7.9	-26.1	9.3	-30.6	10.8	-35.5	12.3	-40.8	14.0	-46.4	15.9	-52.3	17.8	-58.7
	3r	100	3.6	-14.7	4.0	-16.3	4.4	-18.1	4.8	-20.0	5.3	-21.9	5.8	-24.0	6.3	-26.1	7.4	-30.6	8.6	-35.5	9.9	-40.8	11.2	-46.4	12.7	-52.3	14.2	-58.7
Gable Roof >27 to 45 degrees	1, 2e, 2r	10	8.0	-14.7	8.9	-16.3	9.9	-18.1	10.9	-20.0	12.0	-21.9	13.1	-24.0	14.2	-26.1	16.7	-30.6	19.4	-35.5	22.2	-40.8	25.3	-46.4	28.5	-52.3	32.0	-58.7
	1, 2e, 2r	20	7.1	-12.7	7.9	-13.9	8.8	-15.4	9.7	-16.9	10.6	-18.6	11.6	-20.3	12.6	-22.1	14.8	-26.0	17.2	-30.1	19.8	-34.6	22.5	-39.3	25.4	-44.4	28.5	-49.8
	1, 2e, r	50	5.9	-9.5	6.6	-10.6	7.3	-11.7	8.1	-12.9	8.9	-14.2	9.7	-15.5	10.5	-16.9	12.4	-19.8	14.3	-22.9	16.5	-26.3	18.7	-30.0	21.1	-33.8	23.7	-37.9
	1, 2e, 2r	100	5.0	-7.3	5.6	-8.1	6.2	-9.0	6.9	-9.9	7.5	-10.8	8.2	-11.9	9.0	-12.9	10.5	-15.1	12.2	-17.6	14.0	-20.2	15.9	-22.9	18.0	-25.9	20.2	-29.0
	2n, 3r	10	8.0	-16.2	8.9	-18.0	9.9	-19.9	10.9	-22.0	12.0	-24.1	13.1	-26.4	14.2	-28.7	16.7	-33.7	19.4	-39.1	22.2	-44.9	25.3	-51.0	28.5	-57.6	32.0	-64.6
	2n, 3r	20	7.1	-14.4	7.9	-16.1	8.8	-17.8	9.7	-19.7	10.6	-21.6	11.6	-23.6	12.6	-25.7	14.8	-30.1	17.2	-34.9	19.8	-40.1	22.5	-45.6	25.4	-51.5	28.5	-57.8
	2n, 3r	50	5.9	-12.2	6.6	-13.5	7.3	-15.0	8.1	-16.5	8.9	-18.2	9.7	-19.9	10.5	-21.6	12.4	-25.4	14.3	-29.4	16.5	-33.8	18.7	-38.4	21.1	-43.4	23.7	-48.6
	2n, 3r	100	5.0	-10.4	5.6	-11.6	6.2	-12.9	6.9	-14.2	7.5	-15.6	8.2	-17.1	9.0	-18.6	10.5	-21.8	12.2	-25.3	14.0	-29.0	15.9	-33.0	18.0	-37.3	20.0	-41.8
	3e	10	8.0	-19.9	8.9	-22.1	9.9	-24.5	10.9	-27.0	12.0	-29.7	13.1	-32.4	14.2	-35.3	16.7	-41.4	19.4	-48.0	22.2	-55.2	25.3	-62.8	28.8	-70.8	32.0	-79.4
	3e	20	7.1	-17.6	7.9	-19.6	8.8	-21.8	9.7	-24.0	10.6	-26.3	11.6	-28.8	12.6	-31.3	14.8	-36.8	17.2	-42.7	19.8	-49.0	22.5	-55.7	25.4	-62.9	28.5	-70.5
	3e	50	5.9	-14.7	6.6	-16.3	7.3	-18.1	8.1	-20.0	8.9	-21.9	9.7	-24.0	10.5	-26.1	12.4	-30.6	14.3	-35.5	16.5	-40.8	18.7	-46.4	21.1	-52.3	23.7	-58.7
	3e	100	5.0	-12.4	5.5	-13.9	6.2	-15.4	6.9	-16.9	7.5	-18.6	8.2	-20.3	9.0	-22.1	10.5	-26.0	12.2	-30.1	14.0	-34.6	15.9	-39.3	18.0	-44.4	20.2	-49.8
Hipped Roof >7 to 20 degree	1	10	6.5	-14.7	7.3	-16.3	8.0	-18.1	8.9	-20.0	9.7	-21.9	10.6	-24.0	11.6	-26.1	13.6	-30.6	15.8	-35.5	18.1	-40.8	20.6	-46.4	23.3	-52.3	26.1	-58.7
	1	20	5.6	-14.7	6.3	-16.3	7.0	-18.1	7.7	-20.0	8.4	-21.9	9.2	-24.0	10.0	-26.1	11.7	-30.6	13.6	-35.5	15.6	-40.8	17.8	-46.4	20.1	-52.3	22.5	-58.7
	1	50	4.4	-11.3	5.0	-12.6	5.5	-14.0	6.1	-15.4	6.6	-16.9	7.3	-18.5	7.9	-20.2	9.3	-23.7	10.8	-27.4	12.3	-31.5	14.0	-35.8	15.9	-40.4	17.8	-45.3
	1	100	3.6	-8.7	4.0	-9.7	4.4	-10.8	4.8	-11.9	5.3	-13.1	5.8	-14.3	6.3	-15.5	7.4	-18.2	8.6	-21.2	9.9	-24.3	11.2	-27.6	12.7	-31.2	14.2	-35.0
	2r	10	6.5	-19.1	7.3	-21.3	8.0	-23.6	8.9	-26.0	9.7	-28.6	10.6	-31.2	11.6	-34.0	13.6	-39.9	15.8	-46.3	18.1	-53.1	20.6	-60.4	23.3	-68.2	26.1	-76.5
	2r	20	5.6	-17.2	6.3	-19.2	7.0	-21.3	7.7	-23.4	8.4	-25.7	9.2	-28.1	10.0	-30.6	11.7	-35.9	13.6	-41.7	15.6	-47.9	17.8	-54.4	20.1	-61.5	22.1	-68.9
	2r	50	4.4	-14.7	5.0	-16.4	5.5	-18.2	6.1	-20.0	6.6	-22.0	7.3	-24.0	7.9	-26.1	9.3	-30.7	10.8	-35.6	12.3	-40.9	14.0	-46.5	15.9	-52.5	17.8	-58.8
	2r	100	3.6	-12.8	4.0	-14.3	4.4	-15.8	4.8	-17.4	5.3	-19.1	5.8	-20.9	6.3	-22.8	7.4	-26.7	8.6	-31.0	9.9	-35.6	11.2	-40.5	12.7	-45.7	14.2	-51.3
	2e, 3	10	6.5	-20.6	7.3	-22.9	8.0	-25.4	8.9	-28.0	9.7	-30.8	10.6	-33.6	11.6	-36.6	13.6	-43.0	15.8	-49.8	18.1	-57.2	20.6	-65.1	23.3	-73.5	26.1	-82.4
	2e, 3	20	5.6	-18.5	6.3	-20.6	7.0	-22.9	7.7	-25.2	8.4	-27.7	9.2	-30.3	10.0	-32.9	11.7	-38.7	13.6	-44.8	15.6	-51.5	17.8	-58.6	20.1	-66.1	22.5	-74.1
	2e, 3	50	4.4	-15.8	5.0	-17.6	5.5	-19.5	6.1	-21.5	6.6	-23.6	7.3	-25.8	7.9	-28.0	9.3	-32.7	10.8	-38.2	12.3	-43.8	14.0	-49.9	15.9	-56.3	17.8	-63.1
	2e, 3	100	3.6	-13.7	4.0	-15.3	4.4	-16.9	4.8	-18.7	5.3	-20.5	5.8	-22.4	6.3	-24.4	7.4	-28.6	8.6	-33.2	9.9	-38.1	11.2	-43.3	12.7	-48.9	14.2	-54.8
Hipped Roof >20 to 27 degrees	1	10	6.5	-11.7	7.3	-13.0	8.0	-14.5	8.9	-15.9	9.7	-17.5	10.6	-19.1	11.6	-20.8	13.6	-24.4	15.8	-28.3	18.1	-32.5	20.6	-37.0	23.3	-41.8	26.1	-46.8
	1	20	5.6	-10.4	6.3	-11.6	7.0	-12.8	7.7	-14.1	8.4	-15.5	9.2	-16.9	10.0	-18.4	11.7	-21.6	13.6	-25.1	15.6	-28.8	17.8	-32.8	20.1	-37.0	22.5	-41.5
	1	50	4.4	-8.6	5.0	-9.6	5.5	-10.6	6.1	-11.7	6.6	-12.8	7.3	-14.0	7.9	-15.3	9.3	-17.9	10.8	-20.8	12.3	-23.9	14.0	-27.2	15.9	-30.7	17.8	-34.4
	1	100	3.6	-7.3	4.0	-8.1	4.4	-9.0	4.8	-9.9	5.3	-10.8	5.8	-11.9	6.3	-12.9	7.4	-15.1	8.6	-17.6	9.9	-20.2	11.2	-22.9	12.7	-25.9	14.2	-29.0
	2e, 2r, 3	10	6.5	-16.2	7.3	-18.0	8.0	-19.9	8.9	-22.0	9.7	-24.1	10.2	-26.4	11.6	-28.7	13.6	-33.7	15.8	-39.1	18.1	-44.9	20.6	-51.0	23.3	-57.6	26.1	-64.6
	2e, 2r, 3	20	5.6	-14.4	6.3	-16.1	7.0	-17.8	7.7	-19.7	8.4	-21.6	8.9	-23.6	10.0	-25.7	11.7	-30.1	13.6	-34.9	15.6	-40.1	17.8	-45.6	20.1	-51.5	22.5	-57.8
	2e, 2r, 3	50	4.4	-12.2	5.0	-13.5	5.5	-15.0	6.1	-16.5	6.6	-18.2	7.3	-19.9	7.9	-21.6	9.3	-25.4	10.8	-29.4	12.3	-33.8	14.0	-38.4	15.9	-43.4	17.8	-48.6
	2e, 2r, 3	100	3.6	-10.4	4.0	-11.6	4.4	-12.9	4.8	-14.2	5.3	-15.6	5.8	-17.1	6.3	-18.6	7.4	-21.8	8.6	-25.3	9.9	-29.0	11.2	-33.0	12.7	-37.3	14.2	-41.8
Hipped Roof >27 to 45 degrees	1	10	6.2	-12.4	6.9	-13.9	7.7	-15.4	8.5	-16.9	9.3	-18.6	10.2	-20.3	11.1	-22.1	13.0	-26.0	15.1	-30.1	17.3	-34.6	19.7	-39.3	22.2	-44.4	24.9	-49.8
	1	20	5.4	-11.0	6.0	-12.3	6.7	-13.6	7.4	-15.0	8.1	-16.5	8.9	-18.0	9.6	-19.6	11.3	-23.0	13.1	-26.7	15.1	-30.7	17.1	-34.9	19.4	-39.4	21.7	-44.2
	1	50	4.4	-9.2	4.9	-10.2	5.4	-11.3	5.9	-12.5	6.5	-13.7	7.1	-15.0	7.7	-16.3	9.1	-19.2	10.5	-22.2	12.1	-25.5	13.8	-29.0	15.5	-32.8	17.4	-36.7
	1	100	3.6	-7.8	4.0	-8.7	4.4	-9.6	4.8	-10.6	5.3	-11.6	5.8	-12.7	6.3	-13.8	7.4	-16.2	8.6	-18.8	9.9	-21.6	11.2	-24.6	12.7	-27.8	14.2	-31.1
	2e	10	6.2	-14.8	6.9	-16.5	7.7	-18.3	8.5	-20.2	9.3	-22.1	10.2	-24.2	11.1	-26.3	13.0	-30.9	15.1	-35.9	17.3	-41.2	19.7	-46.8	22.2	-52.9	24.9	-59.3
	2e	20	5.4	-11.7	6.0	-13.0	6.7	-14.5	7.4	-15.9	8.1	-17.5	8.9	-19.1	9.6	-20.8	11.3	-24.4	13.1	-28.3	15.1	-32.5	17.1	-37.0	19.4	-41.8	21.7	-46.8
	2e	50	4.4	-7.3	4.9	-8.1	5.4	-9.0	5.9	-9.9	6.5	-10.8	7.1	-11.9	7.7	-12.9	9.1	-15.1	10.5	-17.6	12.1	-20.2	13.8	-22.9	15.5	-25.9	17.4	-29.0
	2e	100	3.6	-7.3	4.0	-8.1	4.4	-9.0	4.8	-9.9	5.3	-10.8	5.8	-11.9	6.3	-12.9	7.4	-15.1	8.6	-17.6	9.9	-20.2	11.2	-22.9	12.7	-25.9	14.2	-29.0

	2r	10	6.2	-18.7	6.9	-20.9	7.7	-23.1	8.5	-25.5	9.3	-28.0	10.2	-30.6	11.1	-33.3	13.0	-39.1	15.1	-45.4	17.3	-52.1	19.7	-59.2	22.2	-66.9	24.9	-75.0
	2r	20	5.4	-15.7	6.0	-17.5	6.7	-19.4	7.4	-21.4	8.1	-23.5	8.9	-25.7	9.6	-28.0	11.3	-32.8	13.1	-38.1	15.1	-43.7	17.1	-49.8	19.4	-56.2	21.7	-63.0
	2r	50	4.4	-11.7	4.9	-13.1	5.4	-14.5	5.9	-16.0	6.5	-17.5	7.1	-19.2	7.7	-20.9	9.1	-24.5	10.5	-28.4	12.1	-32.6	13.8	-37.1	15.5	-41.9	17.4	-47.0
	2r	100	3.6	-8.7	4.0	-9.7	4.4	-10.8	4.8	-11.9	5.3	-13.1	5.8	-14.3	6.3	-15.5	7.4	-18.2	8.6	-21.2	9.9	-24.3	11.2	-27.6	12.7	-31.2	14.2	-35.0
	3	10	6.2	-20.0	6.9	-22.3	7.7	-24.7	8.5	-27.2	9.3	-29.9	10.2	-32.7	11.1	-35.6	13.0	-41.7	15.1	-48.4	17.3	-55.6	19.7	-63.2	22.2	-71.4	24.9	-80.0
	3	20	5.4	-15.0	6.0	-16.8	6.7	-18.6	7.4	-20.5	8.1	-22.5	8.9	-24.6	9.6	-26.7	11.3	-31.4	13.1	-36.4	15.1	-41.8	17.1	-47.5	19.4	-53.8	21.7	-60.2
	3	50	4.4	-8.7	4.9	-9.7	5.4	-10.8	5.9	-11.9	6.5	-13.1	7.1	-14.3	7.7	-15.5	9.1	-18.2	10.5	-21.2	12.1	-24.3	13.8	-27.6	15.5	-31.2	17.4	-35.0
	3	100	3.6	-8.7	4.0	-9.7	4.4	-10.8	4.8	-11.9	5.3	-13.1	5.8	-14.3	6.3	-15.5	7.4	-18.2	8.6	-21.2	9.9	-24.3	11.2	-27.6	12.7	-31.2	14.2	-35.0
Wall	4	10	8.7	-9.5	9.7	-10.6	10.8	-11.7	11.9	-12.9	13.1	-14.2	14.3	-15.5	15.5	-16.9	18.2	-19.8	21.2	-22.9	24.3	-26.3	27.6	-30.0	31.2	-33.8	35.0	-37.9
	4	20	8.3	-9.1	9.3	-10.1	10.3	-11.2	11.4	-12.4	12.5	-13.6	13.6	-14.8	14.8	-16.2	17.4	-19.0	20.2	-22.0	23.2	-25.3	26.4	-28.7	29.8	-32.4	33.4	-36.4
	4	50	7.8	-8.6	8.7	-9.5	9.7	-10.6	10.7	-11.7	11.7	-12.8	12.8	-14.0	13.9	-15.2	16.3	-17.9	18.9	-20.7	21.7	-23.8	24.7	-27.1	27.9	-30.6	31.3	-34.3
	4	100	7.4	-8.2	8.3	-9.1	9.2	-10.1	10.1	-11.1	11.1	-12.2	12.1	-13.3	13.2	-14.5	15.5	-17.1	18.0	-19.8	20.6	-22.7	23.5	-25.8	26.5	-29.2	29.7	-32.7
	4	500	6.5	-7.3	7.3	-8.1	8.0	-9.0	8.9	-9.9	9.7	-10.8	10.6	-11.9	11.6	-12.9	13.5	-15.1	15.8	-17.6	18.1	-20.2	20.6	-22.9	23.3	-25.9	26.1	-29.0
	5	10	8.7	-11.8	9.7	-13.0	10.8	-14.5	11.9	-15.9	13.1	-17.5	14.3	-19.1	15.5	-20.8	18.2	-24.4	21.2	-28.3	24.3	-32.5	27.6	-37.0	31.2	-41.8	35.0	-46.8
	5	20	8.3	-10.9	9.3	-12.2	10.3	-13.5	11.4	-14.9	12.5	-16.3	13.6	-17.8	14.8	-19.4	17.4	-22.8	20.2	-26.4	23.2	-30.3	26.4	-34.5	29.8	-39.0	33.4	-43.7
	5	50	7.8	-9.9	8.7	-11.0	9.7	-12.2	10.7	-13.4	11.7	-14.7	12.8	-16.1	13.9	-17.5	16.3	-20.6	18.9	-23.9	21.7	-27.4	24.7	-31.2	27.9	-35.2	31.3	-39.5
	5	100	7.4	-9.1	8.3	-10.1	9.2	-11.2	10.1	-12.4	11.1	-13.6	12.1	-14.8	13.2	-16.1	15.5	-19.0	18.0	-22.0	20.6	-25.2	23.5	-28.7	26.5	-32.4	29.7	-36.3
	5	500	6.5	-7.3	7.3	-8.1	8.0	-9.0	8.9	-9.9	9.7	-10.8	10.6	-11.9	11.6	-12.9	13.6	-15.1	15.8	-17.6	18.1	-20.2	20.6	-22.9	23.3	-25.9	26.1	-29.0

For SI: 1 foot = 304.8mm, 1 square foot = $0.0929 m^2$, 1 mile per hour = 0.447 m/s, 1 pound per square foot = 0.0479 kPa

a. The effective wind area shall be equal to the span length multiplied by an effective width. This shall be permitted to be not less than one-third the span length. For cladding fasteners, the effective wind area shall not be greater than the area that is tributary to an individual fastener.

b. For effective areas between those given, the load shall be interpolated or the load associated with the lower effective area shall be used.

c. Table values shall be adjusted for height and exposure by multiplying the adjustment coefficient in Table R301.2(3).

d. See Figure R301.2(7) for location of zones.

e. Plus and minus signs signify pressures acting toward and away from the building surfaces.

f. Positive and negative design wind pressures shall be not less than 10 psf.

g. Where the ratio of the building mean roof height to the building length or width is less than 0.8, uplift loads shall be permitted to be calculated in accordance with ASCE 7.

4. Change table R301.2(3) to read:

Table R301.2(3)

HEIGHT AND EXPOSURE ADJUSTMENT COEFFICIENTS FOR TABLE R301.2(2)

	EXPOSURE		
MEAN ROOF HEIGHT	**B**	**C**	**D**
15	0.82	1.21	1.47
20	0.89	1.29	1.55
25	0.94	1.35	1.61
30	1.00	1.40	1.66
35	1.05	1.45	1.70
40	1.09	1.49	1.74
45	1.12	1.53	1.78
50	1.16	1.56	1.81
55	1.19	1.59	1.84
60	1.22	1.62	1.87

5. Change Section R301.2.1 to read:

R301.2.1 Wind design criteria. Buildings and portions thereof shall be constructed in accordance with the wind provisions of this code using the ultimate design wind speed in Table R301.2(1) as determined from Figure R301.2(5)A. The structural provisions of this code for wind loads are not permitted where wind design is required as specified in Section R301.2.1.1. Where different construction methods and structural materials are used for various portions of a building, the applicable requirements of this section for each portion shall apply. Where not otherwise specified, the wind loads listed in Table R301.2(2) adjusted for height and exposure using Table R301.2(3) shall be used to determine design load performance requirements for wall coverings, curtain walls, roof coverings, exterior windows, skylights, garage doors, and exterior doors. Asphalt shingles shall be designed for wind speeds in accordance with Section R905.2.4. A continuous load path shall be provided to transmit the applicable uplift forces in Section R802.11.1 from the roof assembly to the foundation. Where ultimate design wind speeds in Figure R301.2(4)A are less than the lowest wind speed indicated in the prescriptive provisions of this code, the lowest wind speed indicated in the prescriptive provisions of this code shall be used. Wind speeds for localities in special wind regions, near mountainous terrain, and near gorges shall be based on elevation. Areas at 4,000 feet in elevation or higher shall use the nominal design wind speed of 140 mph (62.6 m/s and areas under 4,000 feet in elevation shall use nominal design wind speed of 110 mph (49.2

m/s). Gorge areas shall be based on the highest recorded speed per locality or in accordance with local jurisdiction requirements determined in accordance with Section 26.5.2 of ASCE 7.

6. Change section R 301.2.1.1 to read:

R301.2.1.1 Wind limitations and wind design required. The wind provisions of this code shall not apply to the design of buildings where wind design is required in accordance with Figure R301.2(5)B or where the ultimate design wind speed, V_{alt} in Figure R301.2(5)A equals or exceeds 140 mph in a special wind region.

Exceptions:

1. For concrete construction, the wind provisions of this code shall apply in accordance with the limitations of Sections R404 and R608.

2. For structural insulated panels, the wind provisions of this code shall apply in accordance with the limitations of Section R610.

3. For cold-formed steel light-frame construction, the wind provisions of this code shall apply in accordance with the limitations of Sections R505, R603, and R804.

In regions where wind design is required in accordance with Figure R301.2(5)B or where the ultimate design wind speed V_{alt} in Figure R301.2(5)A equals or exceeds 140 mph in a special wind region, the design of buildings for wind loads shall be in accordance with one or more of the following methods:

1. AWC Wood Frame Construction Manual (WFCM).

2. ICC Standard for Residential Construction in High-Wind Regions (ICC 600).

3. ASCE Minimum Design Loads for Buildings and Other Structures (ASCE 7).

4. AISI Standard for Cold-Formed Steel Framing - Prescriptive Method for One- and Two-Family Dwellings (AISI S230).

5. International Building Code.

The elements of design not addressed by the methods in Items 1 through 5 shall be in accordance with the provisions of this code.

Where ASCE 7 or the International Building Code is used for the design of the building, the wind speed map and exposure category requirements as specified in ASCE 7 and the International Building Code shall be used.

7. Change Figure R301.2(5)A to read:

Note: Crosshatching on map indicates Special Wind Region

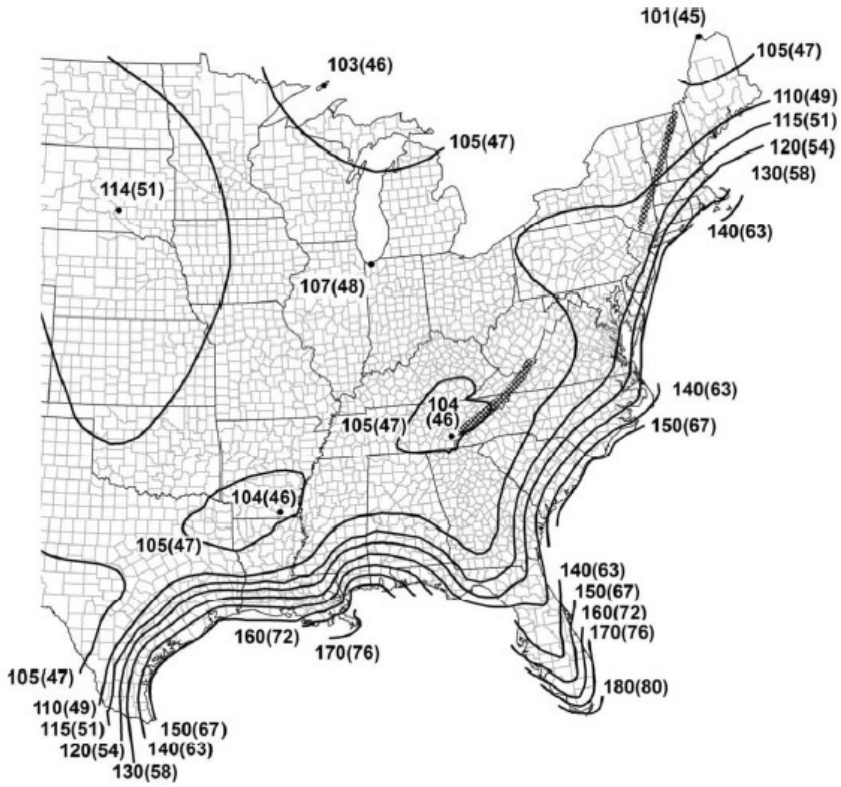


Figure R301.2(5)A ULTIMATE DESIGN WIND SPEEDS

8. Change Figure R301.2(5)B to read:

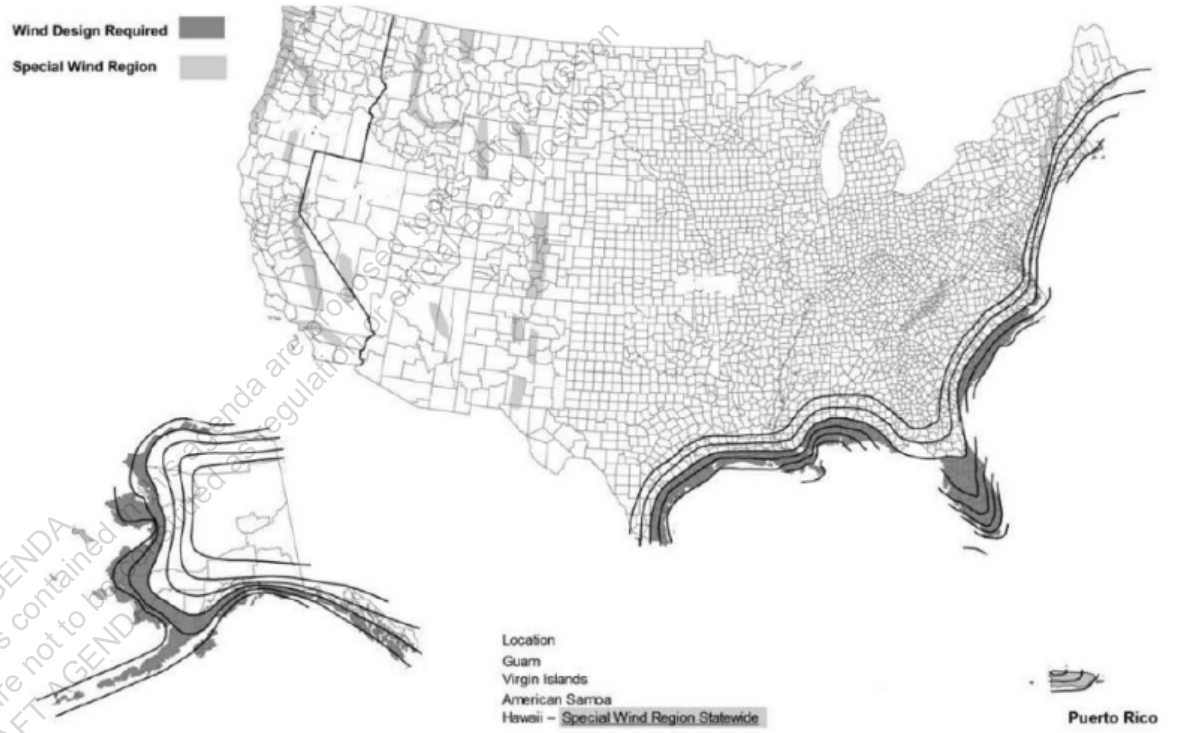


Figure R301.2(5)B REGIONS WHERE WIND DESIGN IS REQUIRED

9. Change Figure R301.2(8) to read:

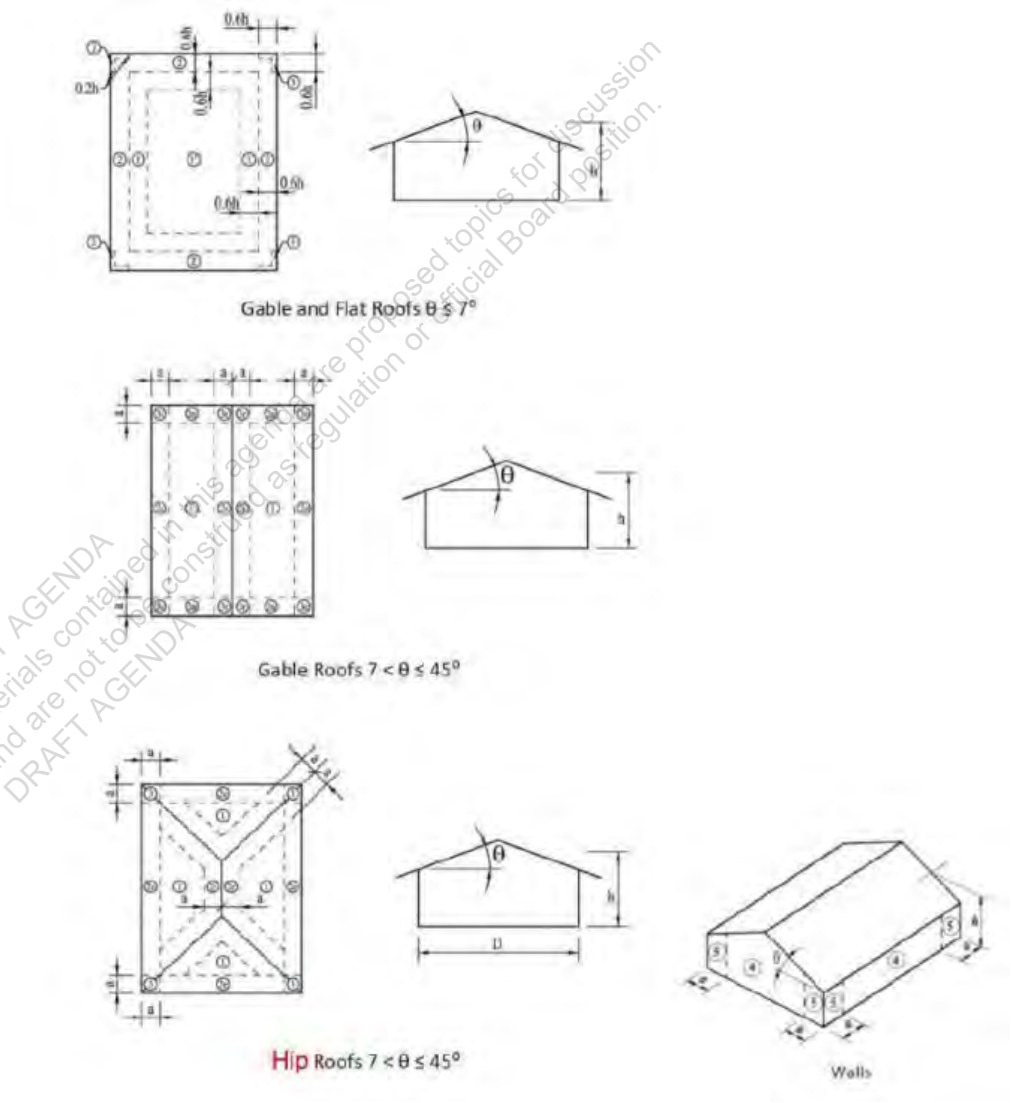


Figure R301.2(8) COMPONENT AND CLADDING PRESSURE ZONES

10. Add Exceptions 6 and 7 to Section R302.1 to read:

6. Decks and open porches.

7. Walls of dwellings and accessory structures located on lots in subdivisions or zoning districts where building setbacks established by local ordinance prohibit the walls of the structures on adjacent lots from being closer than 10 feet (3048 mm) to each other at any point along the exterior walls.

11. Change the Projections row of table R302.1(1) to remove the top row and change the Minimum Fire Separation Distance for Fire-resistance rated Exterior Wall Elements to less than five feet.

12. Change Section R302.2 to read:

R302.2 Townhouses. Wall separating townhouse units shall be constructed in accordance with Section R302.2.1 or R302.2.2 and shall comply with Sections 302.2.3 through 302.2.5.

13. Change Section R302.2.2 to read:

R302.2.2 Common walls. Common walls separating townhouses shall be assigned a fire-resistance rating in accordance with Item 1 or 2. The common wall shared by two townhouses shall be constructed without plumbing or mechanical equipment, ducts or vents, other than water-filled fire sprinkler piping, in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be in accordance with Chapters 34 through 43. Penetrations of the membrane of common walls for electrical outlet boxes shall be in accordance with Section R302.4.

1. Where a fire sprinkler system in accordance with Section P2904 is provided, the common wall shall be not less than a one-hour fire-resistance-rated wall assembly tested in accordance with ASTM E119, UL 263, or Section 703.3 of the International Building Code.

2. Where a fire sprinkler system in accordance with Section P2904 is not provided, the common wall shall be not less than a two-hour fire-resistance-rated wall assembly in accordance with ASTM E119, UL 263, or Section 703.3 of the International Building Code.

14. Add exception 6 to Section R302.2.6 to read:

6. Townhouses protected by a fire sprinkler system complying with Section P2904, NFPA 13, NFPA 13R, or NFPA 13D.

15. Add the following sentence to the end of Section R302.3 to read:

Dwelling unit separation wall assemblies that are constructed on a lot line shall be constructed as required in Section R302.2 for townhouses.

16. Change the first exception in R302.3 to read:

1. A fire-resistance rating of 1/2 hour shall be permitted in buildings equipped throughout with an automatic sprinkler system installed in accordance with NFPA 13, NFPA 13R, or Section P2904.

17. Add a third exception in R302.3 to read:

3. Fire resistant rated assemblies are not required to separate a dwelling unit and accessory dwelling unit where both units are located on the same lot and comply with Sections R314.7 and R315.5.

18. Change the exceptions to R302.4.1 to read:

Exceptions:

1. Where the penetrating items are steel, ferrous, or copper pipes, tubes, or conduits, the annular space shall be protected as follows:

1.1 In Concrete or masonry wall or floor assemblies, concrete, grout, or mortar shall be permitted where installed to the full thickness of the wall or floor assembly or the thickness required to maintain the fire-resistance rating, provided both of the following are complied with:

1.1.1 The nominal diameter of the penetrating item is not more than 6 inches (152 mm.

1.1.2 The area of the opening through the wall does not exceed 144 square inches (92,900 mm^2).

1.2 The material used to fill the annular space shall prevent the passage of flame and hot gasses sufficient to ignite cotton waste where subjected to ASTEM E119 or UL 263 time temperature fire conditions under a positive pressure differential of not less than 0.01 inch of water (3 Pa) at the location of the penetration for the time period equivalent to the fire-resistance rating of the construction penetrated.

2. The annular space created by the penetration of water-filled fire sprinkler piping, provided the annular space is filled using a material complying with Exception 1.2.

19. Change exception 3 of Section R302.4.2 to read:

3. The annular space created by the penetration of a fire sprinkler or water-filled fire sprinkler piping, provided that the annular space is covered by a metal escutcheon plate.

20. Change Section R302.5.1 to read:

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1-3/8 inches (35 mm) thickness, solid or honeycomb-core steel doors not less than 1-3/8 inches (35 mm) thick, or 20-minute fire-rated doors.

21. Delete Section R302.13 in its entirety.

22. Change Section R303.4 to read:

R303.4 Mechanical ventilation. Dwelling units shall be provided with mechanical ventilation in accordance with Section M1505.

23. Add an exception to Section R303.10 to read:

Exception: Seasonal structures not used as a primary residence for more than 90 days per year, unless rented, leased or let on terms expressed or implied to furnish heat, shall not be required to comply with this section.

24. Add Section R303.10.1 to read:

R303.10.1 Nonowner occupied required heating. Every dwelling unit or portion thereof which is to be rented, leased or let on terms either expressed or implied to furnish heat to the occupants thereof shall be provided with facilities in accordance with Section R303.10 during the period from October 15 to May 1.

25. Add Section R303.11 to read:

R303.11 Insect screens. Every door, window and other outside opening required for ventilation purposes shall be supplied with approved tightly fitted screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device.

26. Add Section R306.5 to read:

R306.5 Water supply sources and sewage disposal systems. The water and drainage system of any building or premises where plumbing fixtures are installed shall be connected to a public or private water supply and a public or private sewer system. As provided for in Section 103.5 of Part I of the Virginia Uniform Statewide Building Code (13VAC5-63), for functional design, water supply sources and sewage disposal systems are regulated and approved by the Virginia Department of Health and the Virginia Department of Environmental Quality.

Note: See also the Memorandums of Agreement in the "Related Laws Package," which is available from the Virginia Department of Housing and Community Development.

27. Change Section R308.4.5 to read:

R308.4.5 Glazing and wet surfaces. Glazing in walls, enclosures, or fences containing or facing hot tubs, spas, whirlpools, saunas, steam rooms, bathtubs, showers, and indoor or outdoor swimming pools shall be considered a hazardous location if located less than 60 inches (1524 mm) measured horizontally, in a straight line,

from the water's edge and the bottom exposed edge of the glazing is less than 60 inches (1524 mm) measured vertically above any standing or walking surface. This shall apply to single glazing and each pane in multiple glazing.

28. Change section R309.3 to read:

R309.3 Flood hazard areas. Garages and carports located in flood hazard areas as established by Table R301.2(1) shall be constructed in accordance with Section R322.

29. Change Section R310.1 to read:

R310.1 Emergency escape and rescue opening required. Basements, habitable attics, and every sleeping room designated on the construction documents shall have not less than one operable emergency escape and rescue opening. Where basements contain one or more sleeping rooms, an emergency egress and rescue opening shall be required in each sleeping room. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

Exceptions:

1. Dwelling units equipped throughout with an approved automatic sprinkler system installed in accordance with NFPA 13, 13R, or 13D or Section P2904.

2. Storm shelters and basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m^2).

30. Change Section R310.2.1 to read:

R310.2.1 Minimum opening area. Emergency and escape rescue openings shall have a net clear opening of not less than 5.7 square feet (0.530 m^2). The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside, including the tilting or removal of the sash as the normal operation. The net clear height opening shall be not less than 24 inches (610 mm), and the net clear width shall be not less than 20 inches (508 mm).

Exception: Grade floor or below grade openings shall have a net clear opening of not less than 5 square feet (0.465 m^2).

31. Change Section R311.1 to read:

R311.1 Means of egress. Dwellings, and each dwelling unit in a two-family dwelling, shall be provided with a means of egress in accordance with this section. The means of egress shall provide a continuous and unobstructed path of vertical and horizontal egress travel from all portions of the dwelling to the required egress door without requiring travel through a garage. The required egress door shall open directly into a public way or to a yard or court that opens to a public way.

32. Change the exception to Section R311.3.1 to read:

Exception: The landing or floor on the exterior side shall not be more than 8-1/4 inches (210 mm) below the top of the threshold provided the door does not swing over the landing or floor.

33. Change Section R311.3.2 to read:

R311.3.2 Floor elevations for other exterior doors. Doors other than the required egress door shall be provided with landings or floors not more than 8-1/4 inches (210 mm) below the top of the threshold.

Exception: A top landing is not required where a stairway of not more than two risers is located on the exterior side of the door, provided that the door does not swing over the stairway.

34. Change Section R311.7.5.1 to read:

R311.7.5.1 Risers. The riser height shall be not more than 8-1/4 inches (210 mm). The riser shall be measured vertically between the leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Risers shall be vertical or sloped from the underside of the nosing of the tread above at an angle not more than 30 degrees (0.51 rad) from the vertical. Open risers are permitted provided that the openings located more than 30 inches (763 mm), as measured vertically, to the floor or grade below do not permit the passage of a 4-inch-diameter (102 mm) sphere.

Exceptions:

1. The opening between adjacent treads is not limited on spiral stairways.

2. The riser height of spiral stairways shall be in accordance with Section R311.7.10.1.

35. Change Section R311.7.5.2 to read:

R311.7.5.2 Treads. The tread depth shall be not less than 9 inches (229 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

36. Change Section R311.7.7 to read:

R311.7.7 Stairway walking surface. The walking surface of treads and landings of stairways shall be level or sloped no steeper than one unit vertical in 48 units horizontal (2.0% slope).

37. Change Section R312.2.1 to read:

R312.2.1 Window sills. In dwelling units, where the top of the sill of an operable window opening is located less than 18 inches (457 mm) above the finished floor and greater than 72 inches (1829 mm) above the finished grade or other surface below on the exterior of the building, the operable window shall comply with one of the following:

1. Operable windows with openings that will not allow a 4-inch-diameter (102 mm) sphere to pass through the opening where the opening is in its largest opened position.

2. Operable windows that are provided with window fall prevention devices that comply with ASTM F 2090.

3. Operable windows that are provided with window opening control devices that comply with Section R312.2.2.

38. Replace Section R313 with the following:

Section R313.

Automatic Fire Sprinkler Systems.

R313.1 Townhouse automatic fire sprinkler systems. Notwithstanding the requirements of Section 103.3, where installed, an automatic residential fire sprinkler system for townhouses shall be designed and installed in accordance with NFPA 13D or Section P2904.

Exception: An automatic residential fire sprinkler system shall not be required when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed.

39. Change Section R13.1.1 to read:

R313.1.1 Design and installation. Automatic residential fire sprinkler systems for townhouses shall be designed and installed in accordance with Section P2904 or NFPA 13D, 13, or 13R.

R313.2 One-family and two-family dwellings automatic fire sprinkler systems. Notwithstanding the requirements of Section 103.3, where installed, an automatic residential fire sprinkler system shall be designed and installed in accordance with NFPA 13D, 13, 13R, or Section P2904.

Exception: An automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic residential fire sprinkler system.

40. Change section R313.2.1 to read:

R313.2.1 Design and installation. Automatic residential fire sprinkler systems shall be designed and installed in accordance with Section P2904 or NFPA 13D, 13, or 13R.

41. Delete Section R314.2.2.

42. Change R314.6 to read:

R314.6 Power source. Smoke alarms shall receive their primary power from the building wiring where such wiring is served from a commercial source and, where primary power is interrupted, shall receive power from a battery. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection.

Exception:

Smoke alarms shall be permitted to be battery operated with a minimum 10-year battery where installed in buildings without commercial power.

43. Change Section R314.7 to read:

R314.7 Fire alarm systems. A fire alarm system complying with Sections R314.7.1 through R314.7.4 shall be installed within a two-family dwelling that is constructed without fire separations in accordance with Exception 3 of Section R302.3 and shall be installed in such a manner that the actuation of an alarm will activate all notification appliances within both dwelling units. Fire alarm systems shall be permitted to be used in other dwelling units in lieu of smoke alarms and shall comply with Sections R314.7.1 through R314.7.4.

44. Change Section R314.7.3 to read:1

R314.7.3 Permanent fixture. Where a household fire alarm system is installed, it shall become a permanent fixture of the dwelling unit.

45. Change Section R315.1.1 to read:

R315.1.1 Listings. Carbon monoxide alarms shall be hard wired, plug-in or battery type; listed as complying with UL 2034; and installed in accordance with this code and the manufacturer's installation instructions. Combination carbon monoxide and smoke alarms shall be listed in accordance with UL 2034 and UL 217.

46. Change Section R315.2 to read:

R315.2 Where required. Carbon monoxide alarms shall be provided in accordance with this section.

47. Delete Section R315.2.2.

48. Change Section R315.5 to read:

R315.5 Interconnectivity. Where more than one carbon monoxide alarm is required to be installed within an individual dwelling unit in accordance with Section R315.3, the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the dwelling. Alarm devices within a two-family dwelling constructed without fire separations in accordance with Exception 3 of Section R302.3 shall be interconnected in such a manner that the actuation of one alarm within either unit will activate all alarms within both dwelling units. Physical interconnection of carbon monoxide alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm.

Exception: Interconnection of carbon monoxide alarms in existing areas shall not be required where alterations or repairs do not result in removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space, or basement available that could provide access for interconnection without the removal of interior finishes.

49. Delete Section R315.6.

50. Change Section R315.7.3 to read:

R315.7.3 Permanent fixture. Where a household carbon monoxide detection system is installed, it shall become a permanent fixture of the occupancy.

51. Add Section R320.2 to read:

R320.2 Universal design features for accessibility in dwellings. Dwellings constructed under the IRC not subject to Section R320.1 may comply with Section 1109.16 of the USBC and be approved by the local building department as dwellings containing universal design features for accessibility.

52. Change section R322.2.1 to read:

R.322.2.1 Elevation requirements.

1. Buildings and structures in floor hazard areas, including flood hazard areas not designated as Coastal A Zones, shall have the lowest floors elevated to or above the base flood elevation plus 1 foot (305 mm), or the design flood elevation, whichever is higher.

2. In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated to a height above the highest adjacent grade of not less than the depth number specified in feet (mm) on the FIRM plus 1 foot (305 mm), or not less than 3 feet (915 mm) if a depth number is not specified.

3. Basement floors that are below grade on all sides shall be elevated to or above base flood elevation plus 1 foot (305 mm), or the design flood elevation, whichever is higher.

4. Garage and carport floors shall comply with one of the following:

4.1 They shall be elevated to or above the elevations required in Item 1 or Item 2, as applicable

4.2 They shall be at or above grade on not less than one side. Where a garage or carport is enclosed by walls, the garage or carport shall be used solely for parking, building access or storage.

Exception: Enclosed areas below the elevation required by this section, including basements with floors that are not below grade on all sides, shall meet the requirements of Section R322.2.2

53. Change section R322.3.2 to read:

R322.3.2 Elevation Requirements.

1. Buildings and structures erected within coastal high-hazard areas and Coastal A Zones, shall be elevated so that the bottom of the lowest horizontal structural members supporting the lowest floor, with the exception of piling, pile caps, columns, grade beams and bracing, is elevated to or above the base flood elevation plus 1 foot (305 mm) or the design flood elevation, whichever is higher.

2. Basement floors that are below grade on all sides are prohibited.

3. Garages used solely for parking, building access or storage and carports, shall comply with Item 1 or shall be at or above grade on not less than one side, and where enclosed with walls. Such walls shall comply with Item 6.

4. The use of fill or structural support is prohibited.

5. Minor grading, and the placement of minor quantities of fill, shall be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios, and walkways.

6. Walls and partitions enclosing areas below the elevation required in this section shall meet the requirements of Sections R322.3.5 and R322.3.6

54. Change R322.3.3 to read:

R322.3.3 Foundations. Buildings and structures erected in coastal high-hazard areas and Coastal A Zones shall be supported on pilings or columns and shall be adequately anchored to such pilings or columns.

1. The space below the elevated building shall be either free of obstruction or, if enclosed with walls, the walls shall meet the requirements of Section R322.3.5.

2. Pilings shall have adequate soil penetrations to resist the combined wave and wind loads (lateral and uplift). Pile embedment shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the piling.

3. Columns and their supporting foundations shall be designed to resist combined wave and wind loads, lateral and uplift, and shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the columns. Spread footing, mat, raft, or other foundations that support columns shall not be permitted where soil investigations that are required in accordance with Section R401.4 indicate that soil material under the spread footing, mat, raft, or other foundation is subject to scour or erosion from wave-velocity flow conditions. If permitted, spread footing, mat, raft, or other foundations that support columns shall be designed in accordance with ASCE 24.

4. Flood and wave loads shall be associated with the design flood. Wind loads shall be those required by this code.

5. Foundation designs and construction documents shall be prepared and sealed in accordance with Section R322.3.9.

Exception: In Coastal A zones, stem wall foundations supporting a floor system above and backfilled with soil or gravel to the underside of the floor system shall be permitted provided that the foundations are designed to account for wave action, debris impact, erosion and local scour. Where soils are susceptible to erosion and local scour, stem wall foundations shall have deep footings to account for the loss of soil.

55. Change R324.6.2.1 to read:

R324.6.2.1 Alternative setback at ridge. Where an automatic sprinkler system is installed within the dwelling in accordance with NFPA 13D, 13,13R, or Section P2904, setbacks at ridges shall comply with one of the following:

1. For photovoltaic arrays occupying not more than 66% of the plan view total roof area, not less than an 18-inch (457 mm) clear setback is required on both sides of a horizontal ridge.

2. For photovoltaic arrays occupying more than 66% of the plan view total roof area, not less than a 36-inch (914 mm) clear setback is required on both sides of a horizontal ridge.

56. Add Section R326.1.1 to read:

R326.1.1 Changes to the ISPSC. The following change shall be made to the ISPSC:

1. Change Section 305.2.9 to read:

305.2.9 Equipment clear zone. Equipment, including pool equipment such as pumps, filters, and heaters shall not be installed within 36 inches (914 mm) of the exterior of the barrier when located on the same property.

57. Add Section R328 Radon-Resistant Construction.

58. Add Section R328.1 to read:

R328.1 Local enforcement of radon requirements. Following official action under Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia by a locality in areas of high radon potential, as indicated by Zone 1 on the U.S. EPA Map of Radon Zones (IRC Figure AF101), such locality shall enforce the provisions contained in Appendix F.

Exception: Buildings or portions thereof with crawl space foundations which are ventilated to the exterior shall not be required to provide radon-resistant construction.

59. Add Section R329 Patio Covers.

60. Add Section R329.1 to read:

R329.1 Use of Appendix H for patio covers. Patio covers shall comply with the provisions in Appendix H.

61. Add Section R330 Sound Transmission.

62. Add Section R330.1 to read:

R330.1 Sound transmission between dwelling units. Construction assemblies separating dwelling units shall provide airborne sound insulation as required in Appendix K.

63. Add Section R330.2 to read:

R330.2 Airport noise attenuation. This section applies to the construction of the exterior envelope of detached one-family and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress within airport noise zones when enforced by a locality pursuant to § 15.2-2295 of the Code of Virginia. The exterior envelope of such structures shall comply with Section 1206.4 of the state amendments to the IBC.

64. Add Section R331 Fire Extinguishers.

65. Add Section R331.1 to read:

R331.1 Kitchen areas. Other than where the dwelling is equipped with an approved sprinkler system in accordance with Section R313, a fire extinguisher having a rating of 2-A:10-B:C or an approved equivalent type of fire extinguisher shall be installed in the kitchen area.

66. Add Section R332 Interior Passage.

67. Add Sections R332.1 through R332.6 to read:

R332.1 General. This section applies to new dwelling units that have both a kitchen and a living area on the same floor level as the egress door required by Section R311.2. This section is not applicable to additions, reconstruction, alteration, or repair.

R332.2 Kitchen. One interior passage route from the egress door to the kitchen shall comply with R332.6.

R332.3 Living area. One interior passage route from the egress door to at least one living area shall comply with R332.6.

R332.4 Bedroom. Where the dwelling unit has a bedroom on the same floor level as the egress door, one interior passage route from the egress door to at least one bedroom shall comply with R332.6.

R332.5 Bathroom. Where a dwelling unit has a bathroom on the same floor level as the egress door, and the bathroom contains a water closet, lavatory, and bathtub or shower, one interior passage route from the egress door to at least one bathroom shall comply with R332.6. Bathroom fixture clearances shall comply with R307 and access to fixtures is not required to comply with R332.6.

R332.6 Opening widths. Opening widths along the interior passage route required by this section shall comply with the following:

1. Cased openings shall provide a minimum 34 inch (864 mm) clear width.

2. Doors shall be a nominal 34 inch (864 mm) minimum width. Double doors are permitted to be used to meet this requirement.

68. Add Section R333 Tiny Houses.

69. Add Section R333.1 to read:

R333.1 General. Appendix Q may be used as an alternative to the requirements of this code where a dwelling is 400 square feet (37 m^2) or less in floor area.

70. Change Section R401.3 to read:

R401.3 Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard to the dwelling unit. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall a minimum of six inches (152 mm) within the first 10 feet (3048 mm).

Exception: Where lot lines, walls, slopes or other physical barriers prohibit six inches (152 mm) of fall within 10 feet (3048 mm), drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of 1.0% away from the building.

71. Add the following exceptions to Section R403.1 to read:

Exceptions:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, not exceeding 256 square feet (23.7824 m^2) of building area, provided all of the following conditions are met:

1.1. The building eave height is 10 feet or less.

1.2. The maximum height from the finished floor level to grade does not exceed 18 inches.

1.3. The supporting structural elements in direct contact with the ground shall be placed level on firm soil and when such elements are wood they shall be approved pressure preservative treated suitable for ground contact use.

1.4. The structure is anchored to withstand wind loads as required by this code.

1.5. The structure shall be of light-frame construction whose vertical and horizontal structural elements are primarily formed by a system of repetitive wood or light gauge steel framing members, with walls and roof of light weight material, not slate, tile, brick or masonry.

2. Footings are not required for ramps serving dwelling units in Groups R-3 and R-5 occupancies where the height of the entrance is no more than 30 inches (762 mm) above grade.

72. Change Section R403.1.6 to read:

R403.1.6 Foundation anchorage. Wood sill plates and wood walls supported directly on continuous foundations shall be anchored to the foundation in accordance with this section.

Cold-formed steel framing shall be anchored directly to the foundation or fastened to wood sill plates in accordance with Section R505.3.1 or R603.3.1, as applicable. Wood sill plates supporting cold-formed steel framing shall be anchored to the foundation in accordance with this section.

Wood foundation plates or sills shall be bolted or anchored to the foundation with not less than 1/2-inch-diameter (12.7 mm) steel bolts or approved anchors spaced to provide equivalent anchorage as the steel bolts. Bolts shall be embedded not less than 7 inches (178 mm) into concrete or grouted cells of concrete masonry units. The centerline of the bolts shall be located a minimum of 1.75 inches (44.5mm) from the edge of the sill plate. Bolts shall be spaced not more than 6 feet (1829 mm) on center and there shall be not less than two bolts or anchor straps per piece with one bolt or anchor strap located not more than 12 inches (305 mm) or less than 4 inches (102 mm) from each end of each piece. A properly sized nut and washer shall be tightened on each bolt to the plate. Interior bearing wall sole plates on monolithic slab foundation that are not part of a braced wall panel shall be positively anchored with approved fasteners. Sill plates and sole plates shall be protected against decay and termites where required by Sections R317 and R318.

Exceptions:

1. Walls 24 inches (610 mm) total length or shorter connecting offset braced wall panels shall be anchored to the foundation with not fewer than one anchor bolt located in the center third of the plate section and shall be attached to adjacent braced wall panels at corners as shown in Item 9 of Table R602.3(1).

2. Connection of walls 12 inches (305 mm) total length or shorter connecting offset braced wall panels to the foundation without anchor bolts shall be permitted. The wall shall be attached to adjacent braced wall panels at corners as shown in Item 9 of Table R602.3(1).

73. Delete Section R404.1.9.2.

74. Change Sections R408.1, R408.2, and R408.3 to read:

R408.1 Moisture control. The under-floor space between the bottom of the floor joists and the earth under any building (except space occupied by a basement) shall comply with Section R408.2 or R408.3.

R408.2 Openings for under-floor ventilation. Ventilation openings through foundation or exterior walls surrounding the under-floor space shall be provided in accordance with this section. The minimum net area of ventilation openings shall be not less than 1 square foot (0.0929 m^2) for each 150 square feet (14 m^2) of under-floor area. One ventilation opening shall be within 3 feet (915 mm) of each external corner of the under-floor space. Ventilation openings shall be covered for their height and width with any of the following materials provided that the least dimension of the covering shall not exceed 1/4 inch (6.4 mm), and operational louvers are permitted:

1. Perforated sheet metal plates not less than 0.070 inch (1.8 mm) thick.

2. Expanded sheet metal plates not less than 0.047 inch (1.2 mm) thick.

3. Cast-iron grill or grating.

4. Extruded load-bearing brick vents.

5. Hardware cloth of 0.035 inch (0.89 mm) wire or heavier.

6. Corrosion-resistant wire mesh, with the least dimension being 1/8 inch (3.2 mm) thick.

Exceptions:

1. The total area of ventilation openings shall be permitted to be reduced to 1/1,500 of the under-floor area where the ground surface is covered with an approved Class I vapor retarder material.

2. Where the ground surface is covered with an approved Class I vapor retarder material, ventilation openings are not required to be within 3 feet (915 mm) of each external corner of the under-floor space provided the openings are placed to provide cross ventilation of the space.

R408.3 Unvented crawl space. For unvented under-floor spaces the following items shall be provided:

1. Exposed earth shall be covered with a continuous Class I vapor retarder. Joints of the vapor retarder shall overlap by 6 inches (152 mm) and shall be sealed or taped. The edges of the vapor retarder shall extend not less than 6 inches (152 mm) up the stem wall and shall be attached and sealed to the stem wall or insulation.

2. One of the following shall be provided for the under-floor space:

2.1. Continuously operated mechanical exhaust ventilation at a rate equal to 1 cubic foot per minute (0.47 L/s) for each 50 square feet (4.7 m^2) of crawl space floor area, including an air pathway to the common area (such as a duct or transfer grille), and perimeter walls insulated in accordance with Section N1102.2.11 of this code.

2.2. Conditioned air supply sized to deliver at a rate equal to 1 cubic foot per minute (0.47 L/s) for each 50 square feet (4.7 m^2) of under-floor area, including a return air pathway to the common area (such as a duct or transfer grille), and perimeter walls insulated in accordance with Section N1102.2.11 of this code.

2.3. Plenum in existing structures complying with Section M1601.5, if under-floor space is used as a plenum.

2.4. Dehumidification sized to provide 70 pints (33 liters) of moisture removal per day for every 1,000 square feet (93 m^2) of crawl space floor area.

75. Change the exception to Section R408.2 to read:

Exception: The total area of ventilation openings shall be permitted to be reduced to 1/1,500 of the under-floor area where the ground surface is covered with an approved Class I vapor retarder material and the required openings are placed to provide cross ventilation of the space. The installation of operable louvers shall not be prohibited nor shall the required openings need to be within three feet (915 mm) of each corner provided there is cross ventilation of the space.

76. Add Section R408.3.1 to read:

R408.3.1 Termite inspection. Where an unvented crawl space is installed and meets the criteria in Section R408, the vertical face of the sill plate shall be clear and unobstructed and an inspection gap shall be provided below the sill plate along the top of any interior foundation wall covering. The gap shall be a minimum of one inch (25.4 mm) and a maximum of two inches (50.8 mm) in width and shall extend throughout all parts of any foundation that is enclosed. Joints between the sill plate and the top of any interior wall covering may be sealed.

Exceptions:

1. In areas not subject to damage by termites as indicated by Table R301.2(1).

2. Where other approved means are provided to inspect for potential damage.

Where pier and curtain foundations are installed as depicted in Figure R404.1.5(1), the inside face of the rim joist and sill plate shall be clear and unobstructed except for construction joints which may be sealed.

Exception: Fiberglass or similar insulation may be installed if easily removable.

77. Change Section R506.2.1 to read:

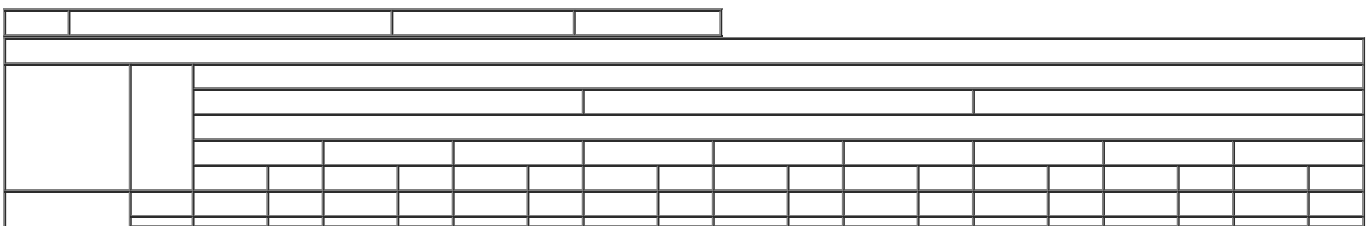
R506.2.1 Fill. Fill material shall be free of vegetation and foreign material and shall be natural nonorganic material that is not susceptible to swelling when exposed to moisture. The fill shall be compacted to assure uniform support of the slab, and except where approved, the fill depth shall not exceed 24 inches (610 mm) for clean sand or gravel and 8 inches (203 mm) for earth.

Exception: Material other than natural material may be used as fill material when accompanied by a certification from an RDP and approved by the building official.

78. Change Section R506.2.2 to read:

R506.2.2 Base. A 4-inch-thick (102 mm) base course consisting of clean graded sand, gravel or crushed stone passing a 2-inch (51 mm) sieve shall be placed on the prepared subgrade when the slab is below grade.

Exception: A base course is not required when the concrete slab is installed on well drained or sand-gravel mixture soils classified as Group I according to the United Soil Classification System in accordance with Table R405.1. Material other than natural material may be used as base course material when accompanied by a certification from an RDP and approved by the building official.



79. Change Section R602.10 to read:

R602.10 Wall bracing. Buildings shall be braced in accordance with this section or Section R602.12. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in this section, those portions shall be designed and constructed in accordance with Section R301.1.

The building official shall be permitted to require the permit applicant to identify braced wall lines and braced wall panels on the construction documents as described in this section and provide associated analysis. The building official shall be permitted to waive the analysis of the upper floors where the cumulative length of wall openings of each upper floor wall is less than or equal to the length of the openings of the wall directly below.

80. Change Section R602.10.9 to read:

R602.10.9 Braced wall panel support. Braced wall panel support shall be provided as follows:

1. Cantilevered floor joists complying with Section R502.3.3 shall be permitted to support braced wall panels.

2. Raised floor system post or pier foundations supporting braced wall panels shall be designed in accordance with accepted engineering practice.

3. Masonry stem walls with a length of 48 inches (1219 mm) or less supporting braced wall panels shall be reinforced in accordance with Figure R602.10.9. Masonry stem walls with a length greater than 48 inches (1219 mm) supporting braced wall panels shall be constructed in accordance with Section R403.1 Methods ABW and PFH shall not be permitted to attach to masonry stem walls.

4. Concrete stem walls with a length of 48 inches (1219 mm) or less, greater than 12 inches (305 mm) tall and less than 6 inches (152 mm) thick shall have reinforcement sized and located in accordance with Figure R602.10.9.

Exception: For masonry stem walls, an approved post-installed adhesive anchoring system shall be permitted as an alternative to the Optional Stem Wall Reinforcement detail in Figure R602.10.9. A minimum of two anchors shall be installed as indicated in Figure R602.10.9. Anchors shall be located not more than 4 inches (102 mm) from each end of the stem wall. Anchors shall be installed into the concrete footing as follows:

1. Five-eighth inch (16 mm) treaded rod using a 3/4 inch (19 mm) diameter drilled hole with a minimum embedment of 6 inches (152 mm).

2. Number 4 size reinforcing bar using a 5/8-inch (16 mm) diameter drilled hole with a minimum embedment of 4-1/2 inches (114 mm).

A minimum footing thickness of 8 inches (203 mm) is required and the minimum distance from each anchor to the edge of the footing shall be 3-3/4 inches (95 mm). The anchoring adhesive and anchors shall be installed in accordance with the manufacturer's instructions and have a minimum tensile capacity of 5,000 lbs. (22 kN). The bond beam reinforcement and attachment of braced wall panels to the stem wall shall be as shown in Figure R602.10.9.

81. Replace Section R602.12, including all subsections, with the following:

R602.12 Practical wall bracing. All buildings in Seismic Design Categories A and B and detached buildings in Seismic Design Category C shall be permitted to be braced in accordance with this section as an alternative to the requirements of Section R602.10. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in this section, those portions shall be designed and constructed in accordance with Section R301.1. The use of other bracing provisions of Section R602.10, except as specified herein, shall not be permitted.

The building official shall be permitted to require the permit applicant to identify bracing on the construction documents and provide associated analysis. The building official shall be permitted to waive the analysis of the upper floors where the cumulative length of wall openings of each upper floor wall is less than or equal to the length of the openings of the wall directly below.

R602.12.1 Sheathing materials. The following materials shall be permitted for use as sheathing for wall bracing. Exterior walls shall be sheathed on all sheathable surfaces, including infill areas between bracing locations, above and below wall openings, and on gable end walls.

1. Wood structural panels with a minimum thickness of 7/16 inch (9.5 mm) fastened in accordance with Table R602.3(3).

2. Structural fiberboard sheathing with a minimum thickness of 1/2 inch (12.7 mm) fastened in accordance with Table R602.3(1).

3. Gypsum board with a minimum thickness of 1/2 inch (12.7 mm) fastened in accordance with Table R702.3.5 on interior walls only.

R602.12.2 Braced wall panels. Braced wall panels shall be full-height wall sections sheathed with the materials listed in Section R602.12.1 and complying with the following:

1. Exterior braced wall panels shall have a minimum length based on the height of the adjacent opening as specified in Table R602.12.2. Panels with openings on both sides of differing heights shall be governed by the taller opening when determining panel length.

2. Interior braced wall panels shall have a minimum length of 48 inches (1220 mm) when sheathing material is applied to one side. Doubled-sided applications shall be permitted to be considered two braced wall panels.

3. Braced wall panels shall be permitted to be constructed of Methods ABW, PFH, PFG, and CS-PF in accordance with Section R602.10.4.

4. Exterior braced wall panels, other than the methods listed in Item 3 above shall have a finish material installed on the interior. The finish material shall consist of 1/2 inch (12.7 mm) gypsum board or equivalent and shall be permitted to be omitted where the required length of bracing, as determined in Section R602.12.4, is multiplied by 1.40, unless otherwise required by Section R302.6.

5. Vertical sheathing joints shall occur over and be fastened to common studs.

6. Horizontal sheathing joints shall be edge nailed to 1-1/2 inch (38 mm) minimum thick common blocking.

Table R602.12.2
Braced Wall Panel Lengths

Location	Wall Height (feet)				
	8	9	10	11	12
	Minimum Panel Length (inches)				
Adjacent garage door of one-story garage[a]	24	27	30	33	36
Adjacent all other openings[b]					
Clear opening height (inches) ≤ 64	24	27	30	33	36
Clear opening height (inches) ≤ 72	27	27	30	33	36
Clear opening height (inches) ≤ 80	30	30	30	33	36
Clear opening height (inches) > 80	36	36	36	40	40

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

a. Braced wall panels supporting a gable end wall or roof load only.

b. Interpolation shall be permitted.

R602.12.3 Circumscribed rectangle. Required length of bracing shall be determined by circumscribing one or more rectangles around the entire building or portions thereof as shown in Figure R602.12.3. Rectangles shall surround all enclosed offsets and projections such as sunrooms and attached garages. Chimneys, partial height projections, and open structures, such as carports and decks, shall be excluded from the rectangle. Each rectangle shall have no side greater than 80 feet (24,384 mm) with a maximum 3:1 ratio between the long and short side. Rectangles shall be permitted to be skewed to accommodate angled projections as shown in Figure R602.12.4.3.

R602.12.4 Required length of bracing. The required length of bracing for each side of a circumscribed rectangle shall be determined using Table R602.12.4. Where multiple rectangles share a common side or sides, the required length of bracing shall equal the sum of the required lengths from all shared rectangle sides.

Table R602.12.4
Required Length of Bracing Along Each Side of a Circumscribed Rectangle[a,b,c]

Wind Speed	Eave-to-Ridge Height (feet)	Number of Floor Levels Above[e,f]	Required Length of Bracing on Front/Rear Side (feet)								Required Length of Bracing on Left/Right Side (feet)							
			Length of Left/Right Side (feet)								Length of Front/Rear Side (feet)							
			10	20	30	40	50	60	70	80	10	20	30	40	50	60	70	80
115	10	0	2.0	3.5	5.0	6.0	7.5	9.0	10.5	12.0	2.0	3.5	5.0	6.0	7.5	9.0	10.5	12.0
			3.5	6.5	9.0	12.0	14.5	17.0	19.8	22.6	3.5	6.5	9.0	12.0	14.5	17.0	19.8	22.6

		1[d]																
		2[d]	5.0	9.5	13.5	17.5	21.5	25.0	29.2	33.4	5.0	9.5	13.5	17.5	21.5	25.0	29.2	33.4
	15	0	2.6	4.6	6.5	7.8	9.8	11.7	13.7	15.7	2.6	4.6	6.5	7.8	9.8	11.7	13.7	15.7
		1[d]	4.0	7.5	10.4	13.8	16.7	19.6	22.9	26.2	4.0	7.5	10.4	13.8	16.7	19.6	22.9	26.2
		2[d]	5.5	10.5	14.9	19.3	23.7	27.5	32.1	36.7	5.5	10.5	14.9	19.3	23.7	27.5	32.1	36.7
	20	0	2.9	5.2	7.3	8.8	11.1	13.2	15.4	17.6	2.9	5.2	7.3	8.8	11.1	13.2	15.4	17.6
		1[d]	4.5	8.5	11.8	15.6	18.9	22.1	25.8	29.5	4.5	8.5	11.8	15.6	18.9	22.1	25.8	29.5
		2[d]	6.2	11.9	16.8	21.8	27.3	31.1	36.3	41.5	6.2	11.9	16.8	21.8	27.3	31.1	36.3	41.5
130	10	0	2.5	4.0	6.0	7.5	9.5	11.0	12.8	14.6	2.5	4.0	6.0	7.5	9.5	11.0	12.8	14.6
		1[d]	4.5	8.0	11.0	14.5	18.0	21.0	24.5	28.0	4.5	8.0	11.0	14.5	18.0	21.0	24.5	28.0
		2[d]	6.0	11.5	16.5	21.5	26.5	31.0	36.2	41.4	6.0	11.5	16.5	21.5	26.5	31.0	36.2	41.4
	15	0	3.4	5.2	7.8	9.8	12.4	14.3	16.7	19.1	3.4	5.2	7.8	9.8	12.4	14.3	16.7	19.1
		1[d]	5.2	9.2	12.7	16.7	20.7	24.2	28.2	32.2	5.2	9.2	12.7	16.7	20.7	24.2	28.2	32.2
		2[d]	6.6	12.7	18.2	23.7	29.2	34.1	39.8	45.5	6.6	12.7	18.2	23.7	29.2	34.1	39.8	45.5
	20	0	3.8	5.9	8.8	11.1	14.0	16.2	18.9	21.6	3.8	5.9	8.8	11.1	14.0	16.2	18.9	21.6
		1[d]	5.9	10.4	14.4	18.9	23.4	27.3	31.8	36.3	5.9	10.4	14.4	18.9	23.4	27.3	31.8	36.3
		2[d]	7.5	14.4	20.6	26.8	33.0	38.5	44.9	51.3	7.5	14.4	20.6	26.8	33.0	38.5	44.9	51.3

For SI: 1 ft = 304.8 mm.

a. Interpolation shall be permitted; extrapolation shall be prohibited.

b. For Exposure Category C, multiply the required length of bracing by a factor of 1.20 for a one-story building, 1.30 for a two-story building, and 1.40 for a three-story building.

c. For wall height adjustments multiply the required length of bracing by the following factors: 0.90 for 8 feet (2438 mm), 0.95 for 9 feet (2743 mm), 1.0 for 10 feet (3048 mm), 1.05 for 11 feet (3353 mm), and 1.10 for 12 feet (3658 mm).

d. Where braced wall panels supporting stories above have been sheathed in wood structural panels with edge fasteners spaced at 4 inches (102 mm) on center, multiply the required length of bracing by 0.83.

e. A floor level, habitable or otherwise, contained wholly within the roof rafters or trusses shall not be considered a floor level for purposes of determining the required length of bracing.

f. A rectangle side with differing number of floor levels above shall use the greatest number when determining the required length of bracing.

R602.12.4.1 Braced wall panel assignment to rectangle sides. Braced wall panels shall be assigned to the applicable rectangle side and contribute to its required length of bracing. Panels shall be assigned as specified below and as shown in Figure R602.12.4.1.

1. Exterior braced wall panels shall be assigned to the parallel rectangle side on which they are located or in which they face.

2. Interior braced wall panels shall be assigned to the parallel rectangle side on which they are located or in which they face up to 4 feet (1220 mm) away. Interior braced wall panels more than 4 feet (1220 mm) away from a parallel rectangle side shall not contribute.

3. The projections of angled braced wall panels shall be assigned to the adjacent rectangle sides.

R602.12.4.2 Contributing length. The cumulative contributing length of braced wall panels assigned to a rectangle side shall be greater than or equal to the required length of bracing as determined in Section R602.12.4. The contributing length of a braced wall panel shall be as specified below. When applying contributing length to angled braced wall panels, apply the requirements below to each projection:

1. Exterior braced wall panels shall contribute their actual length.

2. Interior braced wall panels shall contribute one-half of their actual length.

3. The contributing length of Methods ABW, PFH, PFG, and CS-PF shall be in accordance with Table R602.10.5.

R602.12.4.3 Common sides with skewed rectangles. Braced wall panels located on a common wall where skewed rectangles intersect, as shown in Figure R602.12.4.3, shall be permitted to be assigned to the parallel rectangle side, and their projections shall be permitted to be assigned to the adjacent skewed rectangle sides.

R602.12.5 Cripple walls and framed walls of walk-out basements. For rectangle sides with cripple walls having a maximum height of 48 inches (1220 mm), the required length of bracing shall be as determined in Section R602.12.4. For rectangle sides with cripple walls having a height greater than 48 inches (1220 mm) at any location or framed walls of a walk-out basement, the required length of bracing shall be determined using Table R602.12.4. Braced wall panels within cripple walls and walls of walk-out basements shall comply with Item 4 of Section R602.12.2.

R602.12.6 Distribution of braced wall panels. Braced wall panels shall be distributed in accordance with the following requirements as shown in Figure R602.12.6.

1. The edge of a braced wall panel shall be no more than 12 feet (3658 mm) from any building corner or rectangle corner.

2. The distance between adjacent edges of braced wall panels shall be no more than 20 feet (6096 mm).

3. Segments of exterior walls greater than 8 feet (2438 mm) in length shall have a minimum of one braced wall panel.

4. Segments of exterior wall 8 feet (2438 mm) or less in length shall be permitted to have no braced wall panels.

R602.12.6.1 Panels adjacent to balloon framed walls. Braced wall panels shall be placed on each side of each story adjacent to balloon framed walls designed in accordance with Section R602.3 with a maximum height of two stories.

R602.12.7 Braced wall panel connection. Braced wall panels shall be connected to other structural elements in accordance with Section R602.10.8.

R602.12.8 Braced wall panel support. Braced wall panels shall be supported in accordance with Section R602.10.9.

82. Change Section R609.4 to read:

R609.4 Garage doors. Garage doors shall be tested in accordance with either ASTM E330 or ANSI/DASMA 108, and shall meet the pass/fail criteria of ANSI/DASMA 108.

83. Add Section R609.4.1 to read:

R609.4.1 Garage door labeling. Garage doors shall be labeled with a permanent label affixed to the garage door by the manufacturer. The label shall identify the garage door manufacturer, the garage door model/series number, the positive and negative design wind pressure rating, the installation instruction drawing reference number, and the applicable test standard.

84. Delete Section R905.2.8.5.

85. Change Section R1001.8 to read:

R1001.8 Smoke chamber. Smoke chamber walls shall be constructed of solid masonry units, hollow masonry units grouted solid, stone, or concrete. The total minimum thickness of front, back, and side walls shall be 8 inches (203 mm) of solid masonry. When the inside surface of the smoke chamber is formed by corbelled

masonry, the inside surface shall be parged smooth. When a lining of firebrick at least 2 inches (51 mm) thick, or a lining of vitrified clay at least 5/8 inch (16 mm) thick, is provided, the total minimum thickness of front, back, and side walls shall be 6 inches (152 mm) of solid masonry, including the lining. Firebrick shall conform to ASTM C 1261 and shall be laid with medium duty refractory mortar conforming to ASTM C 199. Vitrified clay linings shall conform to ASTM C 315.

86. Change Section N1101.13 (R401.2) to read:

N1101.13 (R401.2) Compliance. Projects shall comply with all provisions of Chapter 11 labeled "Mandatory" and one of the following:

1. Sections N1101.14 through N1104.

2. Section N1105.

3. Section N1106.

4. The most recent version of REScheck, keyed to the 2018 IECC.

87. Change Section N1101.14 (R401.3). to read:

N1101.14 (R401.3) Certificate mandatory. A permanent certificate shall be completed by the builder or other approved party and posted on a wall in the space where the furnace is located, a utility room or an approved location inside the building. Where located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. The certificate shall indicate the predominant R-values of insulation installed in or on ceilings, roofs, walls, or foundation components, such as slabs, basement walls, crawl space walls, and floors and ducts outside conditioned spaces; U-factors of fenestration and the solar heat gain coefficient (SHGC) of fenestration; and the results from any required duct system and building envelope air leakage testing performed on the building. Where there is more than one value for each component, the certificate shall indicate the value covering the largest area. The certificate shall indicate the types and efficiencies of heating, cooling, and service water heating equipment. Where a gas-fired unvented room heater, electric furnace, or baseboard electric heater is installed in the residence, the certificate shall indicate "gas-fired unvented room heater," "electric furnace," or "baseboard electric heater," as appropriate. An efficiency shall not be indicated for gas-fired unvented room heaters, electric furnaces, and electric baseboard heaters.

88. Change the wood frame wall R-value categories for climate zone "4 except Marine" in Table N1102.1.2 (R402.1.2) to read:

		Wood Frame Wall R-Value
		15 or 13 1[h]

89. Change the frame wall U-factor categories for climate zone "4 except Marine" in Table N1102.1.4 (R402.1.4) to read:

		Frame Wall U-Factor
		0.079

90. Change Section N1102.2.4 (R402.2.4) to read:

N1102.2.4 (R402.2.4) Access hatches and doors. Access doors from conditioned spaces to unconditioned spaces (e.g., attics and crawl spaces) shall be weatherstripped and insulated in accordance with the following values:

1. Hinged vertical doors shall have a minimum overall R-5 insulation value;

2. Hatches and scuttle hole covers shall be insulated to a level equivalent to the insulation on the surrounding surfaces; and

3. Pull down stairs shall have a minimum of 75% of the panel area having R-5 rigid insulation.

Access shall be provided to all equipment that prevents damaging or compressing the insulation. A wood framed or equivalent baffle or retainer is required to be provided when loose fill insulation is installed, the purpose of which is to prevent the loose fill insulation from spilling into the living space when the attic access is opened, and to provide a permanent means of maintaining the installed R-value of the loose fill insulation.

91. Change Sections N1102.4 (R402.4) and N1102.4.1.1 (R402.4.1.1) to read:

N1102.4 (R402.4) Air leakage. The building thermal envelope shall be constructed to limit air leakage in accordance with the requirements of Sections N1102.4.1 through N1102.4.5.

N1102.4.1.1 (R402.4.1.1) Installation (Mandatory). The components of the building thermal envelope as listed in Table N1102.4.1.1 shall be installed in accordance with the manufacturer's instructions and the criteria listed in Table N1102.4.1.1, as applicable to the method of construction. Where required by the code official, an approved third party shall inspect all components and verify compliance.

92. Change the title of the "Insulation Installation Criteria" category of Table N1102.4.1.1 (R402.4.1.1); change the "Shower/tub on exterior wall" category of Table N1102.4.1.1 (R402.4.1.1), and add footnotes "b" and "c" to Table N1102.4.1.1 (R402.4.1.1) to read:

Component	Air Barrier Criteria	Insulation Installation Criteria[b]
Shower/tub on exterior wall[c]	The air barrier installed at exterior walls adjacent to showers and tubs shall be installed on the interior side and separate the exterior walls from the showers and tubs.	Exterior walls adjacent to showers and tubs shall be insulated.
b. Structural integrity of headers shall be in accordance with the applicable		

building code. c. Air barriers used behind showers and tubs on exterior walls shall be of a permeable material that does not cause the entrapment of moisture in the stud cavity.

93. Change Section N1102.4.1.2 (R402.4.1.2) to read:

N1102.4.1.2 (R402.4.1.2)

Testing. The building or dwelling unit shall be tested and verified as having an air leakage rate not exceeding five air changes per hour in Climate Zone 4. Testing shall be conducted in accordance with RESNET/ICC 380, ASTM E 779, or ASTM E 1827 and reported at a pressure of 0.2 inches w.g. (50 Pa). A written report of the results of the test shall be signed by the party conducting the test and provided to the building official. Testing shall be conducted by a Virginia licensed general contractor, a Virginia licensed HVAC contractor, a Virginia licensed home inspector, a Virginia registered design professional, a certified BPI Envelope Professional, a certified HERS rater, or a certified duct and envelope tightness rater. The party conducting the test shall have been trained on the equipment used to perform the test. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

Note: Should additional sealing be required as a result of the test, consideration may be given to the issuance of temporary certificate of occupancy in accordance with Section 116.1.1.

During testing:

1. Exterior windows and doors and fireplace and stove doors shall be closed, but not sealed beyond the intended weatherstripping or other infiltration control measures;

2. Dampers, including exhaust, intake, makeup air, backdraft, and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;

3. Interior doors, if installed at the time of the test, shall be open;

4. Exterior doors for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;

5. Heating and cooling systems, if installed at the time of the test, shall be turned off; and

6. Supply and return registers, if installed at the time of the test, shall be fully open.

94. Change Section N1103.3.3 (R403.3.3) to read:

N1103.3.3 (R403.3.3) Duct testing (Mandatory). Ducts shall be pressure tested to determine air leakage by one of the following methods:

1. Rough-in test: Total leakage shall be measured with a pressure differential of 0.1 inch w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure if installed at the time of the test. All registers shall be taped or otherwise sealed during the test.

2. Postconstruction test: Total leakage shall be measured with a pressure differential of 0.1 inch w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. Registers shall be taped or otherwise sealed during the test.

Exception: A duct air leakage test shall not be required where the ducts and air handlers are located entirely within the building thermal envelope.

A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. The licensed mechanical contractor installing the mechanical system shall be permitted to perform the duct testing. The contractor shall have been trained on the equipment used to perform the test.

95. Delete Section N1103.3.5 (R403.3.5).

96. Change Section N1103.7 (R403.7) to read:

N1103.7 (R403.7) Equipment and appliance sizing. Heating and cooling equipment and appliances shall be sized in accordance with ACCA Manual S or other approved sizing methodologies based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies.

Exception: Heating and cooling equipment and appliance sizing shall not be limited to the capacities determined in accordance with Manual S or other approved sizing methodologies where any of the following conditions apply:

1. The specified equipment or appliance utilizes multi-stage technology or variable refrigerant flow technology and the loads calculated in accordance with the approved heating and cooling methodology fall within the range of the manufacturer's published capacities for that equipment or appliance.

2. The specified equipment or appliance manufacturer's published capacities cannot satisfy both the total and sensible heat gains calculated in accordance with the approved heating and cooling methodology and the next larger standard size unit is specified.

3. The specified equipment or appliance is the lowest capacity unit available from the specified manufacturer.

97. Change footnote for Table N1106.4 (R406.4) to read:

a. When onsite renewable energy is included for compliance using the ERI analysis per Section N1106.4 (R406.4), the building shall meet the mandatory requirements of Section N1106.2 (R406.2) and the building thermal envelope shall be greater than or equal to levels of energy efficiency and solar heat gain coefficient in Table N1102.1.2 (R402.1.2), with a ceiling R-value of 49 and a wood frame wall R-value of 20 or 13 5, or Table N1102.1.4 (R402.1.4), with a ceiling U-factor of 0.026 and a frame wall U-factor of 0.060.	

98. Change Section N1107.1 (R501.1) and delete Sections N1107.1.1 (R501.1.1) through N1107.6 (R501.6).

N1107.1 (R501.1) Scope. The provisions of the Virginia Existing Building Code shall control the alteration, repair, addition, and change of occupancy of existing buildings and structures.

99. Change Section N1108.1 (R502.1) and delete Sections N1108.1.1 (R502.1.1) through N1108.1.2 (R502.1.2).

N1108.1 (R502.1.1) General. Additions to an existing building, building system or portion thereof shall conform to the provisions of Section 811 of the VEBC.

100. Change Section N1109.1 (R503.1) and delete Sections N1109.1.1 (R503.1.1) through N1109.2 (R503.2).

N1109.1 (R503.1) General. Alterations to any building or structure shall comply with the requirements of Chapter 6 of the VEBC.

101. Change Section N1110.1 (R504.1) and delete Section N1110.2 (R504.2).

N1110.1 (R504.1) General. Buildings and structures, and parts thereof, shall be repaired in compliance with Section 510 of the VEBC.

102. Delete Section N1109.1.1.1 (R503.1.1.1).

103. Change Section M1401.3 to read:

M1401.3 Equipment and appliance sizing. Heating and cooling equipment and appliances shall be sized in accordance with ACCA Manual S or other approved sizing methodologies based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies.

Exception: Heating and cooling equipment and appliance sizing shall not be limited to the capacities determined in accordance with Manual S or other approved sizing methodologies where any of the following conditions apply:

1. The specified equipment or appliance utilizes multi-stage technology or variable refrigerant flow technology and the loads calculated in accordance with the approved heating and cooling methodology fall within the range of the manufacturer's published capacities for that equipment or appliance.

2. The specified equipment or appliance manufacturer's published capacities cannot satisfy both the total and sensible heat gains calculated in accordance with the approved heating and cooling methodology, and the next larger standard size unit is specified.

3. The specified equipment or appliance is the lowest capacity unit available from the specified manufacturer.

104. Add Section M1501.2 to read:

M1501.2 Transfer air. Air transferred from occupiable spaces other than kitchens, baths, and toilet rooms shall not be prohibited from serving as makeup air for exhaust systems. Transfer openings between spaces shall be of the same cross-sectional area as the free area of the makeup air openings. Where louvers and grilles are installed, the required size of openings shall be based on the net free area of each opening. Where the design and free area of louvers and grilles are not known, it shall be assumed that wood louvers will have 25% free area and metal louvers and grilles will have 75% free area.

105. Change Section M1502.4.2 to read:

M1502.4.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and shall be secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct. Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

106. Change Section M1503.6 to read:

M1503.6 Makeup air required. Exhaust hood systems capable of exhausting more than 400 cubic feet per minute (0.19 m^3/s) shall be provided with makeup air at a rate approximately equal to the exhaust air rate in excess of 400 cubic feet per minute (0.19 m^3/s). Such makeup air systems shall be equipped with a means of closure and shall be automatically controlled to start and operate simultaneously with the exhaust system.

Exception: Intentional openings for makeup air are not required for kitchen exhaust systems capable of exhausting not greater than 600 cubic feet per minute (0.28 m^3/s) provided that one of the following conditions is met:

1. Where the floor area within the air barrier of a dwelling unit is at least 1,500 square feet (139.35 m^2), and where natural draft or mechanical draft space-heating or water-heating appliances are not located within the air barrier.

2. Where the floor area within the air barrier of a dwelling unit is at least 3,000 square feet (278.71 m^2), and where natural draft space-heating or water-heating appliances are not located within the air barrier.

107. Add an exception to item 7 in Section M1602.2 to read:

Exception: The return air within a two-family dwelling constructed without fire separations in accordance with Exception 3 of Section R302.3 shall be permitted to discharge into either dwelling unit.

108. Add Section M1801.1.1 to read:

M1801.1.1 Equipment changes. Upon the replacement or new installation of any fuel-burning appliances or equipment in existing buildings, an inspection or inspections shall be conducted to ensure that the connected vent or chimney systems comply with the following:

1. Vent or chimney systems are sized in accordance with this code.

2. Vent or chimney systems are clean, free of any obstruction or blockages, defects or deterioration and are in operable condition.

Where not inspected by the local building department, persons performing such changes or installations shall certify to the building official that the requirements of Items 1 and 2 of this section are met.

109. Change Sections G2411.1 and G2411.2 to read:

G2411.1 Pipe and tubing. Each above-group portion of a gas piping system that is likely to become energized shall be electrically continuous and bonded to an effective ground-fault current path. Gas piping shall be considered to be bonded where it is connected to appliances that are connected to the equipment grounding conductor of the circuit supplying that appliance. Corrugated stainless steel tubing (CSST) piping systems listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26 shall comply with this section. Where any CSST segments of a piping system are not listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26, Section G2411.2 shall apply.

G2411.2 CSST without arc resistant jacket or coating system. CSST gas piping systems and piping systems containing one or more segments of CSST not listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26 shall be bonded to the electrical service grounding electrode system or, where provided, the lightning protection electrode system and shall comply with Sections G2411.2.1 through G2411.2.5.

110. Add Section G2425.1.1 to read:

G2425.1.1 Equipment changes. Upon the replacement or new installation of any fuel-burning appliances or equipment in existing buildings, an inspection or inspections shall be conducted to ensure that the connected vent or chimney systems comply with the following:

1. Vent or chimney systems are sized in accordance with this code.

2. Vent or chimney systems are clean, free of any obstruction or blockages, defects, or deterioration and are in operable condition.

Where not inspected by the local building department, persons performing such changes or installations shall certify to the building official that the requirements of Items 1 and 2 of this section are met.

111. Change Section G2439.7.2 to read:

G2439.7.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct. Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

112. Change Section P2601.2 to read:

P2601.2 Connections. Plumbing fixtures, drains and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the sanitary drainage system of the building or premises, in accordance with the requirements of this code. This section shall not be construed to prevent indirect waste systems.

Exception: Bathtubs, showers, lavatories, clothes washers and laundry trays shall not be required to discharge to the sanitary drainage system where such fixtures discharge to an approved nonpotable gray water system in accordance with the applicable provisions of Sections P2910, P2911, and P2912.

113. Change Section P2602.1 to read:

P2602.1 General. The water and drainage system of any building or premises where plumbing fixtures are installed shall be connected to a public or private water supply and a public or private sewer system. As provided for in Section 103.5 of Part I of the Virginia Uniform Statewide Building Code (13VAC5-63) for functional design, water supply sources and sewage disposal systems are regulated and approved by the Virginia Department of Health and the Virginia Department of Environmental Quality.

Note: See also the Memorandums of Agreement in the "Related Laws Package," which is available from the Virginia Department of Housing and Community Development.

114. Add Section P2602.3 to read:

P2602.3 Tracer wire. Nonmetallic water service piping that connects to public systems shall be locatable. An insulated copper tracer wire, 18 AWG minimum in size and suitable for direct burial or an equivalent product, shall be utilized. The wire shall be installed in the same trench as the water service piping and within 12 inches (305 mm) of the pipe and shall be installed to within five feet (1524 mm) of the building wall to the point where the building water service pipe intersects with the public water supply. At a minimum, one end of the wire shall terminate above grade to provide access to the wire in a location that is resistant to physical damage, such as with a meter vault or at the building wall.

115. Change Section P2801.6 to read:

P2801.6 Required pan. Where a storage tank-type water heater or a hot water storage tank is installed in a location where water leakage from the tank will cause damage, the tank shall be installed in a pan constructed of one of the following:

1. Galvanized steel or aluminum of not less than 0.0236 inch (0.6010 mm) in thickness.

2. Plastic not less than 0.036 inch (0.9 mm) in thickness.

3. Other approves materials.

A plastic pan shall not be installed beneath a gas-fired water heater.

116. Add Section P2901.1.1 to read:

P2901.1.1 Nonpotable fixtures and outlets. Nonpotable water shall be permitted to serve nonpotable type fixtures and outlets in accordance with the applicable provisions of Sections P2910, P2911, and P2912.

P2902.6 Location of backflow preventers. Access for inspection, testing, service, repair, and replacement shall be provided to backflow prevention assemblies. Backflow prevention assemblies shall be installed between 12 inches (305 mm) and 60 inches (1525 mm) from grade, floor level or service platform and as specified by the manufacturer's instructions. Where the manufacturer's listed installation height conflicts with this requirement, the manufacturer's listed heights shall apply. Access shall be provided to backflow prevention devices and as specified by the manufacturer's instructions.

117. Change Section P2903.5 to read:

P2903.5 Water hammer. The flow velocity of the water distribution system shall be controlled to reduce the possibility of water hammer. A water-hammer arrestor shall be installed where quick-closing valves are utilized, unless otherwise approved. Water hammer arrestors shall be installed in accordance with manufacturer's specifications. Water hammer arrestors shall conform to ASSE 1010.

118. Change Section P2904.1 to read:

P2904.1 General. The design and installation of residential fire sprinkler systems shall be in accordance with NFPA 13D, 13, 13R, or Section P2904, which shall be considered to be equivalent to NFPA 13D. Partial residential sprinkler systems shall be permitted to be installed only in buildings not required to be equipped with a residential sprinkler system. Section P2904 shall apply to stand-alone and multipurpose wet-pipe sprinkler systems that do not include the use of antifreeze. A multipurpose fire sprinkler system shall provide domestic water to both fire sprinklers and plumbing fixtures. A stand-alone sprinkler system shall be separate and independent from the water distribution system. A backflow preventer shall not be required to separate a sprinkler system from the water distribution system, provided that the sprinkler system complies with all of the following:

1. The system complies with NFPA 13D, 13, 13R, or Section P2904.

2. The piping material complies with Section P2906.

3. The system does not contain antifreeze.

4. The system does not have a fire department connection.

119. Change Section P2906.2.1 to read:

P2906.2.1 Lead content of drinking water pipe and fittings. Pipe, pipe fittings, joints, valves, faucets, and fixture fittings utilized to supply water for drinking or cooking purposes shall comply with NSF 372.

120. Change Sections P2910.1 through P2910.14, including subsections, to read:

P2910.1 Scope. The provisions of this section shall govern the materials, design, construction, and installation of nonpotable water systems subject to this code.

P2910.1.1 Design of nonpotable water systems. All portions of nonpotable water systems subject to this code shall be constructed using the same standards and requirements for the potable water systems or drainage systems as provided for in this code unless otherwise specified in this section or Section P2911 or P2912, as applicable.

P2910.2 Makeup water. Makeup water shall be provided for all nonpotable water supply systems. The makeup water system shall be designed and installed to provide supply of water in the amounts and at the pressures specified in this code. The makeup water supply shall be potable and be protected against backflow in accordance with the applicable requirements of Section P2902.

P2910.2.1 Makeup water sources. Nonpotable water shall be permitted to serve as makeup water for gray water and rainwater systems.

P2910.2.2 Makeup water supply valve. A full-open valve shall be provided on the makeup water supply line.

P2910.2.3 Control valve alarm. Makeup water systems shall be fitted with a warning mechanism that alerts the user to a failure of the inlet control valve to close correctly. The alarm shall activate before the water within the storage tank begins to discharge into the overflow system.

P2910.3 Sizing. Nonpotable water distribution systems shall be designed and sized for peak demand in accordance with approved engineering practice methods that comply with the applicable provisions of this chapter.

P2910.4 Signage required. All nonpotable water outlets, other than water closets and urinals, such as hose connections, open ended pipes, and faucets shall be identified at the point of use for each outlet with signage that reads as follows: "Nonpotable water is utilized for (insert application name). Caution: nonpotable water. DO NOT DRINK." The words shall be legibly and indelibly printed on a tag or sign constructed of corrosion-resistant waterproof material or shall be indelibly printed on the fixture. The letters of the words shall be not less than 0.5 inches (12.7 mm) in height and in colors in contrast to the background on which they are applied. The pictograph shown in Figure P2910.4 shall appear on the signage required by this section.

P2910.5 Potable water supply system connections. Where a potable water supply system is connected to a nonpotable water system, the potable water supply shall be protected against backflow in accordance with the applicable provisions of Section P2902.

P2910.6 Nonpotable water system connections. Where a nonpotable water system is connected and supplies water to another nonpotable water system, the nonpotable water system that supplies water shall be protected against backflow in accordance with the applicable provisions of Section P2902.

P2910.7 Approved components and materials. Piping, plumbing components, and materials used in the nonpotable water drainage and distribution systems shall be approved for the intended application and compatible with the water and any disinfection or treatment systems used.

P2910.8 Insect and vermin control. Nonpotable water systems shall be protected to prevent the entrance of insects and vermin into storage and piping systems. Screen materials shall be compatible with system material and shall not promote corrosion of system components.

P2910.9 Freeze protection. Nonpotable water systems shall be protected from freezing in accordance with the applicable provisions of Chapter 26.

P2910.10 Nonpotable water storage tanks. Nonpotable water storage tanks shall be approved for the intended application and comply with Sections P2910.10.1 through P2910.10.12.

P2910.10.1 Sizing. The holding capacity of storage tanks shall be sized for the intended use.

P2910.10.2 Inlets. Storage tank inlets shall be designed to introduce water into the tank and avoid agitating the contents of the storage tank. The water supply to storage tanks shall be controlled by fill valves or other automatic supply valves designed to stop the flow of incoming water before the tank contents reach the overflow pipes.

P2910.10.3 Outlets. Outlets shall be located at least 4 inches (102 mm) above the bottom of the storage tank and shall not skim water from the surface.

P2910.10.4 Materials and location. Storage tanks shall be constructed of material compatible with treatment systems used to treat water. Above grade storage vessels shall be constructed using opaque, UV-resistant materials such as tinted plastic, lined metal, concrete, or wood or painted to prevent algae growth. Above grade storage tanks shall be protected from direct sunlight unless their design specifically incorporates the use of the sunlight heat transfer. Wooden storage tanks shall be provided with a flexible liner. Storage tanks and their manholes shall not be located directly under soil or waste piping or sources of contamination.

P2910.10.5 Foundation and supports. Storage tanks shall be supported on a firm base capable of withstanding the storage tank's weight when filled to capacity. Storage tanks shall be supported in accordance with the applicable provisions of the IBC.

P2910.10.5.1 Ballast. Where the soil can become saturated, an underground storage tank shall be ballasted, or otherwise secured, to prevent the effects of buoyancy. The combined weight of the tank and hold down ballast shall meet or exceed the buoyancy force of the tank. Where the installation requires a foundation, the foundation shall be flat and shall be designed to support the storage tank weight when full, consistent with the bearing capability of adjacent soil.

P2910.10.5.2 Structural support. Where installed below grade, storage tank installations shall be designed to withstand earth and surface structural loads without damage.

P2910.10.6 Overflow. The storage tank shall be equipped with an overflow pipe having a diameter not less than that shown in Table P2910.10.6. The overflow outlet shall discharge at a point not less than 6 inches (152 mm) above the roof or roof drain, floor or floor drain, or over an open water-supplied fixture. The overflow outlet shall terminate through a check valve. Overflow pipes shall not be directed on walkways. The overflow drain shall not be equipped with a shutoff valve. A minimum of one cleanout shall be provided on each overflow pipe in accordance with the applicable provisions of Section P3005.2.

	Table P2910.10.6 Sizes for Overflow Pipes for Water Supply Tanks	
	Maximum Capacity of Water Supply Line to Tank (gpm)	Diameter of Overflow Pipe (inches)
	0 - 50	2
	50 - 150	2-1/2
	150 - 200	3
	200 - 400	4
	400 - 700	5
	700 - 1,000	6
	Over 1,000	8
	For SI: 1 inch = 25.4 mm, 1 gallon per minute = 3.785 L/m.	

P2910.10.7 Access. A minimum of one access opening shall be provided to allow inspection and cleaning of the tank interior. Access openings shall have an approved locking device or other approved method of securing access. Below grade storage tanks, located outside of the building, shall be provided with either a manhole not less than 24 inches (610 mm) square or a manhole with an inside diameter not less than 24 inches (610 mm). The design and installation of access openings shall prohibit surface water from entering the tank. Each manhole cover shall have an approved locking device or other approved method of securing access.

Exception: Storage tanks under 800 gallons (3028 L) in volume installed below grade shall not be required to be equipped with a manhole, but shall have an access opening not less than 8 inches (203 mm) in diameter to allow inspection and cleaning of the tank interior.

P2910.10.8 Venting. Storage tanks shall be vented. Vents shall not be connected to the sanitary drainage system. Vents shall be at least equal in size to the internal diameter of the drainage inlet pipe or pipes connected to the tank. Where installed at grade, vents shall be protected from contamination by means of a U-bend installed with the opening directed downward. Vent outlets shall extend a minimum of 12 inches (304.8 mm) above grade, or as necessary to prevent surface water from entering the storage tank. Vent openings shall be protected against the entrance of vermin and insects. Vents serving gray water tanks shall terminate in accordance with the applicable provisions of Sections P3103 and P2910.8.

P2910.10.9 Drain. Where drains are provided, they shall be located at the lowest point of the storage tank. The tank drain pipe shall discharge as required for overflow pipes and shall not be smaller in size than specified in Table P2910.10.6. A minimum of one cleanout shall be provided on each drain pipe in accordance with Section P3005.2.

P2910.10.10 Labeling and signage. Each nonpotable water storage tank shall be labeled with its rated capacity and the location of the upstream bypass valve. Underground and otherwise concealed storage tanks shall be labeled at all access points. The label shall read: "CAUTION: NONPOTABLE WATER - DO NOT DRINK." Where an opening is provided that could allow the entry of personnel, the opening shall be marked with the words: "DANGER - CONFINED SPACE." Markings shall be indelibly printed on a tag or sign constructed of corrosion-resistant waterproof material mounted on the tank or shall be indelibly printed on the tank. The letters of the words shall be not less than 0.5 inches (12.7 mm) in height and shall be of a color in contrast with the background on which they are applied.

P2910.10.11 Storage tank tests. Storage tanks shall be tested in accordance with the following:

1. Storage tanks shall be filled with water to the overflow line prior to and during inspection. All seams and joints shall be left exposed and the tank shall remain water tight without leakage for a period of 24 hours.

2. After 24 hours, supplemental water shall be introduced for a period of 15 minutes to verify proper drainage of the overflow system and verify that there are no leaks.

3. Following a successful test of the overflow system, the water level in the tank shall be reduced to a level that is at 2 inches (50.8 mm) below the makeup water offset point. The tank drain shall be observed for proper operation. The makeup water system shall be observed for proper operation, and successful automatic shutoff of the system at the refill threshold shall be verified. Water shall not be drained from the overflow at any time during the refill test.

4. Air tests shall be permitted in lieu of water testing as recommended by the tank manufacturer or the tank standard.

P2910.10.12 Structural strength. Storage tanks shall meet the applicable structural strength requirements of the IBC.

P2910.11 Trenching requirements for nonpotable water system piping. Underground nonpotable water system piping shall be horizontally separated from the building sewer and potable water piping by 5 feet (1524 mm) of undisturbed or compacted earth. Nonpotable water system piping shall not be located in, under, or above sewage systems cesspools, septic tanks, septic tank drainage fields, or seepage pits. Buried nonpotable water system piping shall comply with the requirements of this code for the piping material installed.

Exceptions:

1. The required separation distance shall not apply where the bottom of the nonpotable water pipe within 5 feet (1524 mm) of the sewer is equal to or greater than 12 inches (305 mm) above the top of the highest point of the sewer and the pipe materials conforms to Table P3002.2.

2. The required separation distance shall not apply where the bottom of the potable water service pipe within 5 feet (1524 mm) of the nonpotable water pipe is a minimum of 12 inches (305 mm) above the top of the highest point of the nonpotable water pipe and the pipe materials comply with the requirements of Table P2906.5.

3. Nonpotable water pipe is permitted to be located in the same trench with building sewer piping, provided that such sewer piping is constructed of materials that comply with the requirements of Table P3002.1(2).

4. The required separation distance shall not apply where a nonpotable water pipe crosses a sewer pipe, provided that the pipe is sleeved to at least 5 feet (1524 mm) horizontally from the sewer pipe centerline on both sides of such crossing with pipe materials that comply with Table P3002.1(2).

5. The required separation distance shall not apply where a potable water service pipe crosses a nonpotable water pipe provided that the potable water service pipe is sleeved for a distance of at least 5 feet (1524 mm) horizontally from the centerline of the nonpotable pipe on both sides of such crossing with pipe materials that comply with Table P3002.1(2).

P2910.12 Outdoor outlet access. Sillcocks, hose bibs, wall hydrants, yard hydrants, and other outdoor outlets that are supplied by nonpotable water shall be located in a locked vault or shall be operable only by means of a removable key.

P2910.13 Drainage and vent piping and fittings. Nonpotable drainage and vent pipe and fittings shall comply with the applicable material standards and installation requirements in accordance with provisions of Chapter 30.

P2910.13.1 Labeling and marking. Identification of nonpotable drainage and vent piping shall not be required.

P2910.14 Pumping and control system. Mechanical equipment, including pumps, valves, and filters, shall be accessible and removable in order to perform repair, maintenance, and cleaning. The minimum flow rate and flow pressure delivered by the pumping system shall be designed for the intended application in accordance with the applicable provisions of Section P2903.

121. Add Sections P2910.15 through P2910.18, including subsections, to read:

P2910.15 Water-pressure reducing valve or regulator. Where the water pressure supplied by the pumping system exceeds 80 psi (552 kPa) static, a pressure-reducing valve shall be installed to reduce the pressure in the nonpotable water distribution system piping to 80 psi (552 kPa) static or less. Pressure-reducing valves shall be specified and installed in accordance with the applicable provisions of Section P2903.3.1.

P2910.16 Distribution pipe. Distribution piping utilized in nonpotable water stems shall comply with Sections P2910.16.1 through P2910.16.4.

P2910.16.1 Materials, joints, and connections. Distribution piping and fittings shall comply with the applicable material standards and installation requirements in accordance with applicable provisions of Chapter 29.

P2910.16.2 Design. Distribution piping shall be designed and sized in accordance with the applicable provisions of Chapter 29.

P2910.16.3 Labeling and marking. Distribution piping labeling and marking shall comply with Section P2901.2.

P2910.16.4 Backflow prevention. Backflow preventers shall be installed in accordance with the applicable provisions of Section P2902.

P2910.17 Tests and inspections. Tests and inspections shall be performed in accordance with Sections P2910.17.1 through P2910.17.5.

P2910.17.1 Drainage and vent pipe test. Drain, waste, and vent piping used for gray water and rainwater nonpotable water systems shall be tested in accordance with the applicable provisions of Section P2503.

P2910.17.2 Storage tank test. Storage tanks shall be tested in accordance with the Section P2910.10.11.

P2910.17.3 Water supply system test. Nonpotable distribution piping shall be tested in accordance with Section P2503.7.

P2910.17.4 Inspection and testing of backflow prevention assemblies. The testing of backflow preventers and backwater valves shall be conducted in accordance with Section P2503.8.

P2910.17.5 Inspection of vermin and insect protection. Inlets and vent terminations shall be visually inspected to verify that each termination is installed in accordance with Section P2910.10.8.

P2910.18 Operation and maintenance manuals. Operations and maintenance materials for nonpotable water systems shall be provided as prescribed by the system component manufacturers and supplied to the owner to be kept in a readily accessible location.

122. Change the title of Section P2911 to "Gray Water Nonpotable Water Systems."

123. Change Sections P2911.1 through P2911.6, including subsections, to read:

P2911.1 Gray water nonpotable water systems. This code is applicable to the plumbing fixtures, piping or piping systems, storage tanks, drains, appurtenances, and appliances that are part of the distribution system for gray water within buildings and to storage tanks and associated piping that are part of the distribution system for gray water outside of buildings. This code does not regulate equipment used for, or the methods of, processing, filtering, or treating gray water, which may be regulated by the Virginia Department of Health or the Virginia Department of Environmental Quality.

P2911.1.1 Separate systems. Gray water nonpotable water systems, unless approved otherwise under the permit from the Virginia Department of Health, shall be separate from the potable water system of a building with no cross connections between the two systems except as permitted by the Virginia Department of Health.

P2911.2 Water quality. Each application of gray water reuse shall meet the minimum water quality requirements set forth in Sections P2911.2.1 through P2911.2.4 unless otherwise superseded by other state agencies.

P2911.2.1 Disinfection. Where the intended use or reuse application for nonpotable water requires disinfection or other treatment or both, it shall be disinfected as needed to ensure that the required water quality is delivered at the point of use or reuse.

P2911.2.2 Residual disinfectants. Where chlorine is used for disinfection, the nonpotable water shall contain not more than 4 parts per million (4 mg/L) of free chlorine, combined chlorine, or total chlorine. Where ozone is used for disinfection, the nonpotable water shall not exceed 0.1 parts per million (by volume) of ozone at the point of use.

P2911.2.3 Filtration. Water collected for reuse shall be filtered as required for the intended end use. Filters shall be accessible for inspection and maintenance. Filters shall utilize a pressure gauge or other approved method to indicate when a filter requires servicing or replacement. Shutoff valves installed immediately upstream and downstream of the filter shall be included to allow for isolation during maintenance.

P2911.2.4 Filtration required. Gray water utilized for water closet and urinal flushing applications shall be filtered by a 100 micron or finer filter.

P2911.3 Storage tanks. Storage tanks utilized in gray water nonpotable water systems shall comply with Section P2910.10.

P2911.4 Retention time limits. Untreated gray water shall be retained in storage tanks for a maximum of 24 hours.

P2911.5 Tank location. Storage tanks shall be located with a minimum horizontal distance between various elements as indicated in Table P2911.5.1.

	Table P2911.5.1 Location of Nonpotable Gray Water Reuse Storage Tanks	
	Element	Minimum Horizontal Distance from Storage Tank (feet)
	Lot line adjoining private lots	5
	Sewage systems	5
	Septic tanks	5
	Water wells	50
	Streams and lakes	50
	Water service	5
	Public water main	10

P2911.6 Valves. Valves shall be supplied on gray water nonpotable water drainage systems in accordance with Sections P2911.6.1 and P2911.6.2.

P2911.6.1 Bypass valve. One three-way diverter valve certified to NSF 50 or other approved device shall be installed on collection piping upstream of each storage tank, or drainfield, as applicable, to divert untreated gray water to the sanitary sewer to allow servicing and inspection of the system. Bypass valves shall be installed downstream of fixture traps and vent connections. Bypass valves shall be labeled to indicate the direction of flow, connection, and storage tank or drainfield connection. Bypass valves shall be provided with access for operation and maintenance. Two shutoff valves shall not be installed to serve as a bypass valve.

P2911.6.2 Backwater valve. Backwater valves shall be installed on each overflow and tank drain pipe to prevent unwanted water from draining back into the storage tank. If the overflow and drain piping arrangement is installed to physically not allow water to drain back into the tank, such as in the form of an air gap, backwater valves shall not be required. Backwater valves shall be constructed and installed in accordance with Section P3008.

124. Delete Sections P2911.7 through P2911.13, including subsections.

125. Change the title of Section P2912 to "Rainwater Nonpotable Water Systems."

126. Change Sections P2912.1 through P2912.10, including subsections, to read:

P2912.1 General. The provisions of this section shall govern the design, construction, installation, alteration, and repair of rainwater nonpotable water systems for the collection, storage, treatment, and distribution of rainwater for nonpotable applications. The provisions of CSA B805/ICC 805 shall be permitted as an alternative to the provisions contained in this section for the design, construction, installation, alteration, and repair of rainwater nonpotable water systems for the collection, storage, treatment, and distribution of rainwater for nonpotable applications. Roof runoff or stormwater runoff collection surfaces shall be limited to roofing materials, public pedestrian accessible roofs, and subsurface collection identified in CSA B805/ICC 805 Table 7.1. Stormwater runoff shall not be collected from any other surfaces.

P2912.2 Water quality. Each application of rainwater reuse shall meet the minimum water quality requirements set forth in Sections P2912.2.1 through P2912.2.4 unless otherwise superseded by other state agencies.

P2912.2.1 Disinfection. Where the intended use or reuse application for nonpotable water requires disinfection or other treatment or both, it shall be disinfected as needed to ensure that the required water quality is delivered at the point of use or reuse.

P2912.2.2 Residual disinfectants. Where chlorine is used for disinfection, the nonpotable water shall contain not more than 4 parts per million (4 mg/L) of free chlorine, combined chlorine, or total chlorine. Where ozone is used for disinfection, the nonpotable water shall not exceed 0.1 parts per million (by volume) of ozone at the point of use.

P2912.2.3 Filtration. Water collected for reuse shall be filtered as required for the intended end use. Filters shall be accessible for inspection and maintenance. Filters shall utilize a pressure gauge or other approved method to indicate when a filter requires servicing or replacement. Shutoff valves installed immediately upstream and downstream of the filter shall be included to allow for isolation during maintenance.

P2912.2.4 Filtration required. Rainwater utilized for water closet and urinal flushing applications shall be filtered by a 100 micron or finer filter.

P2912.3 Collection surface. Rainwater shall be collected only from aboveground impervious roofing surfaces constructed from approved materials. Overflow or discharge piping from appliances or equipment or both, including evaporative coolers, water heaters, and solar water heaters shall not discharge onto rainwater collection surfaces.

P2912.4 Collection surface diversion. At a minimum, the first 0.04 inches (1.016 mm) of each rain event of 25 gallons (94.6 L) per 1,000 square feet (92.9 m^2) shall be diverted from the storage tank by automatic means and not require the operation of manually operated valves or devices. Diverted water shall not drain onto other collection surfaces that are discharging to the rainwater system or to the sanitary sewer. Such water shall be diverted from the storage tank and discharged in an approved location.

P2912.5 Pre-tank filtration. Downspouts, conductors, and leaders shall be connected to a pre-tank filtration device. The filtration device shall not permit materials larger than 0.015 inches (0.4 mm).

P2912.6 Roof gutters and downspouts. Gutters and downspouts shall be constructed of materials that are compatible with the collection surface and the rainwater quality for the desired end use. Joints shall be made watertight.

P2912.6.1 Slope. Roof gutters, leaders, and rainwater collection piping shall slope continuously toward collection inlets. Gutters and downspouts shall have a slope of not less than 1 unit in 96 units along their entire length, and shall not permit the collection or pooling of water at any point.

P2912.6.2 Size. Gutters and downspouts shall be installed and sized in accordance with local rainfall rates.

P2912.6.3 Cleanouts. Cleanouts or other approved openings shall be provided to permit access to all filters, flushes, pipes, and downspouts.

P2912.7 Storage tanks. Storage tanks utilized in rainwater nonpotable water systems shall comply with Section P2910.10.

P2912.8 Location. Storage tanks shall be located with a minimum horizontal distance between various elements as indicated in Table P2912.8.1.

	Table P2912.8.1 Location of Rainwater Storage Tanks	
	Element	Minimum Horizontal Distance from Storage Tank (feet)
	Lot line adjoining private lots	5
	Sewage systems	5
	Septic tanks	5

P2912.9 Valves. Valves shall be installed in collection and conveyance drainage piping of rainwater nonpotable water systems in accordance with Sections P2912.9.1 and P2912.9.2.

P2912.9.1 Influent diversion. A means shall be provided to divert storage tank influent to allow maintenance and repair of the storage tank system.

P2912.9.2 Backwater valve. Backwater valves shall be installed on each overflow and tank drain pipe to prevent unwanted water from draining back into the storage tank. If the overflow and drain piping arrangement is installed to physically not allow water to drain back into the tank, such as in the form of an air gap, backwater valves shall not be required. Backwater valves shall be constructed and installed in accordance with Section P3008.

P2912.10 Tests and inspections. Tests and inspections shall be performed in accordance with Sections P2912.10.1 and P2912.10.2.

P2912.10.1 Roof gutter inspection and test. Roof gutters shall be inspected to verify that the installation and slope is in accordance with Section P2912.6.1. Gutters shall be tested by pouring a minimum of one gallon of water into the end of the gutter opposite the collection point. The gutter being tested shall not leak and shall not retain standing water.

P2912.10.2 Collection surface diversion test. A collection surface diversion test shall be performed by introducing water into the gutters or onto the collection surface area. Diversion of the first quantity of water in accordance with the requirements of Section P2912.4 shall be verified.

127. Delete Sections P2912.11 through P2912.16, including subsections.

128. Delete Section P2913 in its entirety.

129. Add Section P3002.2.2 to read:

P3002.2.2 Tracer wire. Nonmetallic sanitary sewer piping that discharges to public systems shall be locatable. An insulated copper tracer wire, 18 AWG minimum in size and suitable for direct burial or an equivalent product, shall be utilized. The wire shall be installed in the same trench as the sewer within 12 inches (305 mm) of the pipe and shall be installed from within five feet of the building wall to the point where the building sewer intersects with the public system. At a minimum, one end of the wire shall terminate above grade in an accessible location that is resistant to physical damage, such as with a cleanout or at the building wall.

130. Add Section P3012 Relining Building Sewers and Building Drains.

131. Add Sections P3012.1 through P3012.10 to read:

P3012.1 General. This section shall govern the relining of existing building sewers and building draining piping.

P3012.2 Applicability. The relining of existing building sewer and building drainage piping shall be limited to gravity drainage piping that is 4 inches (102 mm) in diameter and larger. The relined piping shall be of the same nominal size as the existing piping.

P3012.3 Pre-installation requirements. Prior to commencement of the relining installation, the existing piping sections to be relined shall be descaled and cleaned. After the cleaning process has occurred and water has been flushed through the system, the piping shall be inspected internally by a recorded video camera survey.

P3012.3.1 Pre-installation recorded video camera survey. The video survey shall include verification of the project address location. The video shall include notations of the cleanout and fitting locations, and the approximate depth of the existing piping. The video shall also include notations of the length of piping at intervals no greater than 25 feet.

P3012.4 Permitting. Prior to permit issuance, the code official shall review and evaluate the pre-installment recorded video camera survey to determine if the piping system is capable to be relined in accordance with the proposed lining system manufacturer's installation requirements and applicable referenced standards.

P3012.5 Prohibited applications. Where review of the pre-installation recorded video camera survey reviews that piping systems are not installed correctly or defects exist, relining shall not be permitted. The defective portions of piping shall be exposed and repaired with pipe and fittings in accordance with this code. Defects shall include backgrade or insufficient slope, complete pipe wall deterioration, or complete separations such as from tree root invasion or improper support.

P3012.6 Relining materials. The relining materials shall be manufactured in compliance with applicable standards and certified as required in Section 303. Fold-and-form pipe reline materials shall be manufactured in compliance with ASTM F1504 or ASTM F1871.

P3012.7 Installation. The installation of relining materials shall be performed in accordance with the manufacturer's installation instructions, applicable referenced standards, and this code.

P3012.7.1 Material data report. The installer shall record the data as required by the relining material manufacture and applicable standards. The recorded data shall include the location of the project, relining material type, amount of product installed, and conditions of the installation. A copy of the data report shall be provided to the code official prior to final approval.

P3012.8 Post-installation recorded video camera survey. The completed relined piping system shall be inspected internally by a recorded video camera survey after the system has been flushed and flow tested with water. The video survey shall be submitted to the code official prior to finalization of the permit. The video survey shall be reviewed and evaluated to provide verification that no defects exist. Any defects identified shall be repaired and replaced in accordance with this code.

P3012.9 Certification. A certification shall be provided in writing to the code official, from the permit holder, that the relining materials have been installed in accordance with the manufacturer's installation instructions, the applicable standards and this code.

P3012.10 Approval. Upon verification of compliance with the requirements of Sections P3011.1 through P3011.9, the code official shall approve the installation.

132. Add an exception to Section P3301.1 to read:

Exception: Rainwater nonpotable water systems shall be permitted in accordance with the applicable provisions of Sections P2910 and P2912.

133. Delete the exception for Section P3003.9.2.

134. Add Section E3601.8 to read:

E3601.8 Energizing service equipment. The building official shall give permission to energize the electrical service equipment of a one-family or two-family dwelling unit when all of the following requirements have been approved:

1. The service wiring and equipment, including the meter socket enclosure, shall be installed and the service wiring terminated.

2. The grounding electrode system shall be installed and terminated.

3. At least one receptacle outlet on a ground fault protected circuit shall be installed and the circuit wiring terminated.

4. Service equipment covers shall be installed.

5. The building roof covering shall be installed.

6. Temporary electrical service equipment shall be suitable for wet locations unless the interior is dry and protected from the weather.

135. Change Section E3802.4 to read:

E3802.4 In unfinished basements. Where Type SE or NM cable is run at angles with joists in unfinished basements, cable assemblies containing two or more conductors of sizes 6 AWG and larger and assemblies containing three or more conductors of sizes 8 AWG and larger shall not require additional protection where attached directly to the bottom of the joists. Smaller cables shall be run either through bored holes in joists or on running boards. Type NM or SE cable installed on the wall of an unfinished basement shall be permitted to be installed in a listed conduit or tubing or shall be protected in accordance with Table E3802.1. Conduit or

tubing shall be provided with a suitable insulating bushing or adapter at the point the where cable enters the raceway. The sheath of the Type NM or SE cable shall extend through the conduit or tubing and into the outlet or device box not less than 1/4 inch (6.4 mm). The cable shall be secured within 12 inches (305 mm) of the point where the cable enters the conduit or tubing. Metal conduit, tubing, and metal outlet boxes shall be connected to an equipment grounding conductor complying with Section E3908.13.

136. Change Section E3902.16 to read:

E3902.16 Arc-fault circuit interrupter protection. Branch circuits that supply 120-volt, single phase, 15-ampere and 20-ampere outlets installed in kitchens, family rooms, dining rooms, living rooms, parlors, libraries dens, bedrooms, sunrooms, recreation rooms, closets, hallways, laundry areas, and similar rooms or areas shall be protected by any of the following:

1. A listed combination-type arc-fault circuit interrupter installed to provide protection of the entire branch circuit.

2. A listed branch/feeder-type AFCI installed at the origin of the branch-circuit in combination with a listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet box on the branch circuit. The first outlet box in the branch circuit shall be marked to indicate that it is the first outlet of the circuit.

3. A listed supplemental arc protection circuit breaker installed at the origin of the branch circuit in combination with a listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet box on the branch circuit where all of the following conditions are met:

3.1. The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit interrupter.

3.2. The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 feet (15.2 m) for 14 AWG conductors and 70 feet (21.3 m) for 12 AWG conductors.

3.3. The first outlet box on the branch circuit shall be marked to indicate that it is the first outlet on the circuit.

4. A listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet on the branch circuit in combination with a listed branch-circuit overcurrent protective device where all of the following conditions are met:

4.1. The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit interrupter.

4.2. The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 feet (15.2 m) for 14 AWG conductors and 70 feet (21.3 m) for 12 AWG conductors.

4.3. The first outlet box on the branch circuit shall be marked to indicate that it is the first outlet on the circuit.

4.4. The combination of the branch-circuit overcurrent device and outlet branch-circuit AFCI shall be identified as meeting the requirements for a system combination-type AFCI and shall be listed as such.

5. Where metal outlet boxes and junction boxes and RMC, IMC, EMT, Type MC or steel-armored Type AC cables meeting the requirements of Section E3908.8, metal wireways or metal auxiliary gutters are installed for the portion of the branch circuit between the branch-circuit overcurrent device and the first outlet, a listed branch-circuit type AFCI installed at the first outlet shall be considered as providing protection for the remaining portion of the branch circuit.

6. Where a listed metal or nonmetallic conduit or tubing or Type MC cable is encased in not less than two inches (50.8 mm) of concrete for the portion of the branch circuit between the branch-circuit overcurrent device and the first outlet, a listed outlet branch-circuit type AFCI installed at the first outlet shall be considered as providing protection for the remaining portion of the branch circuit.

Exceptions:

1. AFCI protection is not required for an individual branch circuit supplying only a fire alarm system where the branch circuit is wired with metal outlet and junction boxes and RMC, IMC, EMT or steel-sheathed armored cable Type AC, or Type MC meeting the requirements of Section E3908.8.

2. AFCI protection is not required where GFCI protection is required in accordance with E3902 and NEC 210.8(A)

137. Change the referenced standards in Chapter 44 as follows (standards not shown remain the same):

	Standard Reference Number	Title	Referenced in Code Section Number
	ANSI LC1/CSA 6.26-18	Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing (CSST)	G2411.1, G2411.1.1, G2414.5.3
	ASTM F1504-14	Standard Specification for Folded/Formed Poly (Vinyl Chloride) (PVC) for Existing Sewer and Conduit Rehabilitation	P3012.4, P3012.6
	ASTM F1871-11	Standard Specification for Folded/Formed Poly (Vinyl Chloride) Pipe Type A for Existing Sewer and Conduit Rehabilitation	P3012.4, P3012.6
	CSA B805-18/ICC 805-18	Rainwater Harvesting Systems	P2912.1
	NFPA 13 - 16	Standard for Installation of	R302.2.6

		Sprinkler Systems	
	NFPA 13D - 16	Standard for the Installation of Sprinkler Systems in one- and Two-family Dwellings and Manufactured Homes	R302.2.6, R302.13, R325.5, P2904.1, P2904.6.1
	NFPA 13R - 16	Standard for the Installation of Sprinkler Systems in Low Rise Residential Occupancies	R302.2.6, R302.3, R325.5

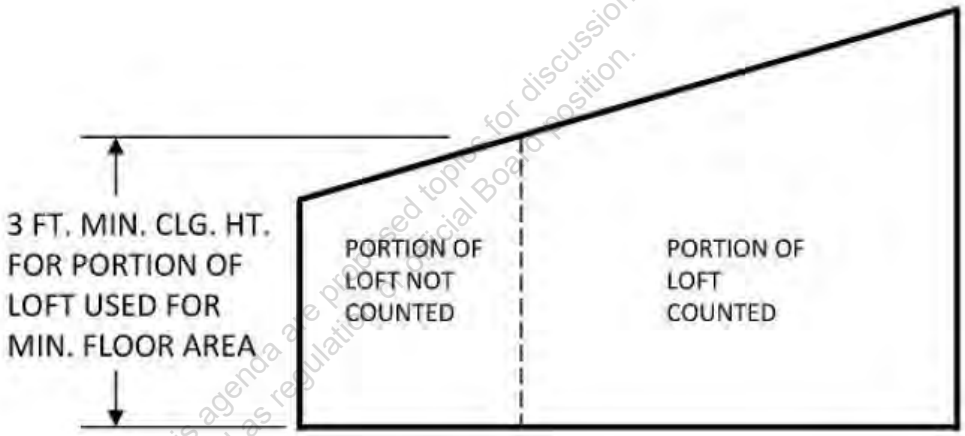
138. Change Section AQ104.1.2 to read:

AQ104.1.2 Minimum horizontal dimensions. Lofts shall be not less than 5 feet (1524 mm) in any horizontal dimension.

139. Change the exception to Section AQ104.1.3 to read:

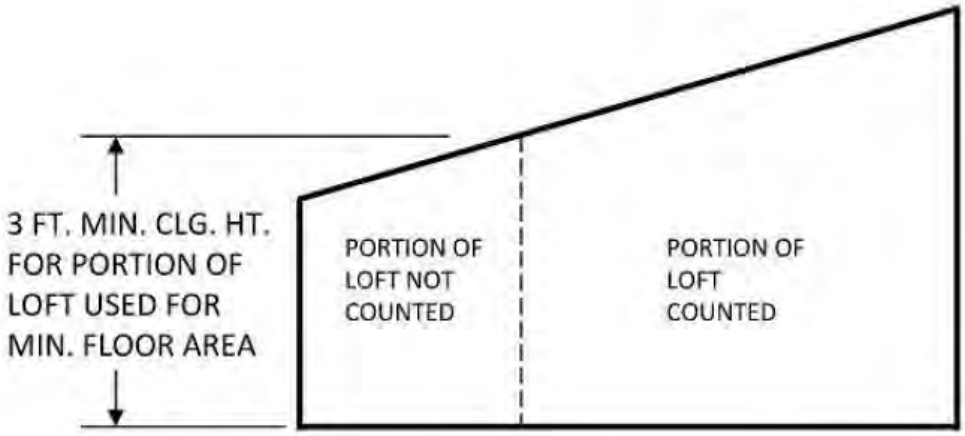
Exception: Under gable roofs with a minimum slope of 6 units vertical in 12 units horizontal (50% slope), portions of a loft with a sloped ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft. See Figure AQ104.1.3.

140. Add Figure AQ104.1.3 Loft Ceiling Height.



For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm

Figure AQ104.1.3
Loft Ceiling Height



For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm

Figure AQ104.1.3
Loft Ceiling Height

141. Change Sections AQ104.2, AQ104.2.1, and AQ 104.2.1.2 to read:

AQ104.2 Loft access and egress. The access to and primary egress from lofts shall be of any type described in Sections AQ104.2.1 through AQ104.2.4. The loft access and egress element along its required minimum width shall meet the loft where its ceiling height is not less than 3 feet (914 mm).

AQ104.2.1 Stairways. Stairways accessing lofts shall comply with this code or with Sections AQ104.2.1.1 through AQ104.2.1.7.

AQ104.2.1.2 Headroom. The headroom above stairways accessing a loft shall be not less than 6 feet 2 inches (1880 mm), as measured vertically, from a sloped line connecting the tread, landing, or landing platform nosings in the center of their width, and vertically from the landing platform along the center of its width.

142. Change Sections AQ104.2.1.4 through AQ104.2.1.6 to read:

AQ104.2.1.4 Landings. Intermediate landings and landings at the bottom of stairways shall comply with Section R311.7.6, except that the depth in direction of travel shall be not less than 24 inches (610 mm).

AQ104.2.1.5 Landing platforms. The top tread and riser of stairways accessing lofts shall be constructed as a landing platform where the loft ceiling height is less than 6 feet 2 inches (1880 mm) where the stairway meets the loft. The landing platform shall be not less than 20 inches (508 mm) in width and in depth measured horizontally from and perpendicular to the nosing of the landing platform. The landing platform riser height to the loft floor shall be not less than 16 inches (406 mm) and not greater than 18 inches (457 mm).

AQ104.2.1.6 Handrails. Handrails shall comply with Section R311.7.8.

143. Add Section AQ104.2.1.7 to read:

AQ104.2.1.7 Stairway guards. Guards at open sides of stairways, landings, and landing platforms shall comply with Section R312.1.

144. Change Sections AQ 104.2.2.1 and AQ104.2.5 to read:

AQ104.2.2.1 Size and capacity. Ladders accessing lofts shall have a rung width of not less than 12 inches (305 mm), with 10-inch (254 mm) to 14-inch (356 mm) spacing between rungs. Ladders shall be capable of supporting a 300-pound (136 kg) load on any rung. Rung spacing shall be uniform within 3/8 inch (9.5 mm).

AQ104.2.5 Loft Guards. Loft guards shall be located along the open side of lofts. Loft guards shall be not less than 36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less. Loft guards shall comply with Section R312.1.3 and Table R301.5 for their components.

S. Add "Marinas" to the list of occupancies in Section 312.1 of the IBC.

T. Add Section 313 State regulated care facilities (SRCF) to the IBC to read:

313.1 General. Notwithstanding any other requirements of this code, this section applies to the use and occupancy classification of state regulated care facilities addressed in this section.

313.2 Assisted living facilities. Assisted living facilities licensed by the Virginia Department of Social Services shall be classified as one of the occupancies specified in Sections 313.2.1 through 313.2.6.

313.2.1 Group I-1 Condition 1. Facilities with more than 16 persons receiving care, in which all persons receiving care, without any assistance, are capable of responding to an emergency situation to complete building evacuation, shall be classified as Group I-1 Condition 1. Not more than five of the persons may require physical assistance from staff to respond to an emergency, provided all persons requiring assistance reside on a level of exit discharge and the path of egress to the exit does not include steps.

313.2.2 Group I-1 Condition 2. Facilities with more than 16 persons receiving care, in which there are persons who require assistance by not more than one staff member while responding to an emergency situation to complete building evacuation, shall be classified as Group I-1 Condition 2. Not more than five of the persons may require physical assistance from more than one staff member to respond to an emergency situation.

313.2.3 Group I-2 Condition 1. Facilities with more than five persons receiving care who require assistance by more than one staff member when responding to an emergency situation to complete building evacuation, shall be classified as Group I-2 Condition 1.

313.2.4 Group R-4 Condition 1. Facilities with nine to 16 persons receiving care, where all persons receiving care, without any assistance, are capable of responding to an emergency situation to complete building evacuation shall be classified as R-4 Condition 1. Not more than five of the persons may require physical assistance from staff to respond to an emergency, provided all persons requiring assistance reside on a level of exit discharge and the path of egress to the exit does not include steps.

313.2.5 Group R-4 Condition 2. Buildings with nine to 16 persons receiving care, who may require assistance by not more than one staff member when responding to an emergency situation to complete building evacuation, shall be classified as Group R-4 Condition 2. Not more than five of the persons may require physical assistance from staff to respond to an emergency situation.

313.2.6 Group R-2, R-3, or R-5. Facilities with no more than eight persons receiving care, with one or more resident counselors, and all persons are capable of respond to an emergency situation without physical assistance from staff, may be classified as Group R-2, R-3, or R-5. Up to five of the persons may require physical assistance from staff to respond to an emergency situation when in compliance with the following:

1. All residents that require physical assistance from staff reside on a level of exit discharge and the path of egress to the exit does not include steps.

2. The building is protected by an automatic sprinkler system installed in accordance with Section 903.3 or Section P2904 of the IRC.

313.3 Family day homes. Family day homes registered or licensed by the Virginia Department of Social Services shall be classified as Group R-2, R-3, or R-5.

313.4 Group homes. Group Homes licensed by the Virginia Department of Behavioral Health and Developmental Services shall be classified as one of the occupancies specified in Sections 313.4.1 through 313.4.3.

313.4.1 Groups R-2, R-3, R-4 Condition 1 or 2, or R-5. Facilities with no more than eight persons receiving care, with one or more resident counselors, shall be classified as Group R-2, R-3, R-4 (Condition 1 or 2), or R-5. Not more than five of the persons may require physical assistance from staff to respond to an emergency situation.

313.4.2 Group R-4 Condition 1. Facilities with eight to 16 persons receiving care, where all persons, without any assistance, are capable of responding to an emergency situation to complete building evacuation shall be classified as Group R-4 Condition 1. Not more than five of the persons may require physical assistance from staff to respond to an emergency, provided all persons requiring assistance reside on a level of exit discharge and the path of egress to the exit does not include steps.

313.4.3 Group R-4 Condition 2. Facilities with eight to 16 persons receiving care or facilities with more than five persons requiring physical assistance from staff to respond to an emergency situation shall be classified as Group R-4 Condition 2.

313.5 Hospice facilities. Hospice facilities licensed by the Virginia Department of Health shall be classified as one of the occupancies specified in Sections 313.5.1 through 313.5.3.

313.5.1 Group I-2. Facilities with 16 or more persons receiving care shall be classified as Group I-2.

313.5.2 Group R-4 Condition 1. Facilities with less than 16 persons receiving care shall be classified as Group R-4 Condition 1.

313.5.3 Group R-5. Facilities with five or fewer persons receiving care are permitted to be classified as Group R-5.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; Errata, 22:5 VA.R. 734 November 14, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Errata, 24:16 VA.R. 2293-2294 April 14, 2008; amended, Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 27, Issue 12, eff. March 1, 2011; Volume 30, Issue 16, eff. July 14, 2014; Errata, 30:17 VA.R. 2305 April 21, 2014; Errata, 30:20 VA.R. 2498-2499 June 2, 2014; amended, Virginia Register Volume 30, Issue 21, eff. July 14, 2014; Errata, 30:22 VA.R. 2545 June 30, 2014; Errata, 30:23 VA.R. 2590 July 14, 2014; amended, Virginia Register Volume 30, Issue 25, eff. September 1, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 35, Issue 3, eff. November 1, 2018; Errata, 37:3 VA.R. 524 September 28, 2020; amended, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-220. Chapter 4 Special detailed requirements based on use and occupancy.

A. Delete Section 403.4.5 of the IBC.

B. Change Section 407.4.1.1 of the IBC to read:

407.4.1.1 Special locking arrangement. Means of egress doors shall be permitted to contain locking devices restricting the means of egress in areas in which the clinical needs of the patients require restraint of movement, where all of the following conditions are met:

1. The locks release upon activation of the fire alarm system or the loss of power.

2. The building is equipped with an approved automatic sprinkler system in accordance with Section 903.3.1.1.

3. A manual release device is provided at a nursing station responsible for the area.

4. A key-operated switch or other manual device is provided adjacent to each door equipped with the locking device. Such switch or other device, when operated, shall result in direct interruption of power to the lock -- independent of the control system electronics.

5. All staff shall have keys or other means to unlock the switch or other device or each door provided with the locking device.

C. Add Section 407.12 to the IBC to read:

407.12 Emergency power systems. Emergency power shall be provided for medical life support equipment, operating, recovery, intensive care, emergency rooms, fire detection and alarm systems in any Group I-2 occupancy licensed by the Virginia Department of Health as a hospital, nursing home or hospice facility.

D. Add Section 408.2.1 to the IBC to read:

408.2.1 Short-term holding areas. Short-term holding areas shall be permitted to comply with Section 431.

E. Change Section 408.6 of the IBC to read:

408.6 Smoke barrier. Occupancies classified as Group I-3 shall have smoke barriers complying with Sections 408.8 and 709 to divide every story occupied by residents for sleeping, or any other story having an occupant load of 50 or more persons, into no fewer than two smoke compartments.

F. Change Section 408.9 of the IBC and add Sections 408.9.1 through 408.9.3 to the IBC to read:

408.9 Smoke control. Smoke control for each smoke compartment shall be in accordance with Sections 408.9.1 through 408.9.3.

Exception: Smoke compartments with operable windows or windows that are readily breakable.

408.9.1 Locations. An engineered smoke control system shall comply with Section 909 and shall be provided in the following locations:

1. Dormitory areas.

2. Celled areas.

3. General housing areas.

4. Intake areas.

5. Medical celled or medical dormitory areas.

6. Interior recreation areas.

408.9.2 Compliance. The engineered smoke control system shall provide and maintain a tenable environment in the area of origin and shall comply with all of the following:

1. Shall facilitate the timely evacuation and relocation of occupants from the area of origin.

2. Shall be independent of exhaust systems under Chapter 5 of the IMC.

3. Duration of operation in accordance with Section 909.4.6.

4. The pressurization method shall be permitted and shall provide a minimum of 24 air changes per hour of exhaust, and 20 air changes per hour of makeup, and shall comply with Section 909.6. If the pressurization method is not utilized, the exhaust method shall be provided and shall comply with Section 909.8.

408.9.3 Corridors. Egress corridors within smoke compartments shall be kept free and clear of smoke.

G. Add Section 414.6.2 to the IBC to read:

414.6.2 Other regulations. The installation, repair, upgrade, and closure of underground and aboveground storage tanks subject to the Virginia State Water Control Board regulations 9VAC25-91 and 9VAC25-580 shall be governed by those regulations, which are hereby incorporated by reference to be an enforceable part of this code. Where differences occur between the provisions of this code and the incorporated provisions of the State Water Control Board regulations, the provisions of the State Water Control Board regulations shall apply. Provisions of the International Fire Code addressing closure of such tanks that are subject to the Virginia State Water Control Board regulations 9VAC25-91 and 9VAC25-580 shall not be applicable.

H. Change footnote "b" of Table 428.3 of the IBC to read:

b. Shall include walls, floors, ceilings, and construction supporting the floor of the laboratory suite necessary to provide separation from other portions of the building. Fire barriers shall be constructed in accordance with Section 707, and horizontal assemblies shall be constructed in accordance with Section 711.

I. Delete Section 428.3.3 of the IBC.

J. Change Section 428.3.7 of the IBC to read:

428.3.7 Ventilation. Ventilation shall be in accordance with the Virginia Mechanical Code. The design and installation of ducts from chemical fume hoods shall be in accordance with NFPA 91.

K. Add IBC Section 429 to read:

Section 429 Manufactured Homes and Industrialized Buildings.

429.1 General. The provisions of this section shall apply to the installation or erection of manufactured homes subject to the Virginia Manufactured Home Safety Regulations (13VAC5-95) and industrialized buildings subject to the Virginia Industrialized Building Safety Regulations (13VAC5-91).

Note: Local building departments are also responsible for the enforcement of certain provisions of the Virginia Manufactured Home Safety Regulations (13VAC5-95) and the Virginia Industrialized Building Safety Regulations (13VAC5-91) as set out in those regulations.

429.2 Site work for manufactured homes. Footing design, basements, grading, drainage, decks, stoops, porches and utility connections shall comply with the provisions of this code applicable to Group R-5 occupancies. Manufactured homes shall be classified as Group R-5 in accordance with Chapter 3 of this code. Additionally, all applicable provisions of Chapter 1 of this code, including requirements for permits, inspections, certificates of occupancy and requiring compliance, are applicable to the installation and set-up of a manufactured home. Where the installation or erection of a manufactured home utilizes components that are to be concealed, the installer shall notify the building official that an inspection is necessary and assure that an inspection is performed and approved prior to concealment of such components, unless the building official has agreed to an alternative method of verification.

429.2.1 Relocated manufactured homes. Installation, set-up, and site work for relocated manufactured homes shall comply with the provisions of this code and shall include the option of using the manufacturer's installations instructions or the federal Model Manufactured Home Installation Standards (24 CFR Part 3285) for the technical requirements.

429.2.2 Alterations and repairs to manufactured homes. Alterations and repairs to manufactured homes shall either be in accordance with federal Manufactured Home Construction and Safety Standards (24 CFR Part 3280) or in accordance with the alteration and repair provisions this code.

429.2.3 Additions to manufactured homes. Additions to manufactured homes shall comply with this code and shall be structurally independent of the manufactured home, or when not structurally independent, shall be evaluated by an RDP to determine that the addition does not cause the manufactured home to become out of compliance with federal Manufactured Home Construction and Safety Standards (24 CFR Part 3280).

429.3 Wind load requirements for manufactured homes. Manufactured homes shall be anchored to withstand the wind loads established by the federal regulation for the area in which the manufactured home is installed. For the purpose of this code, Wind Zone II of the federal regulation shall include the cities of Chesapeake, Norfolk, Portsmouth, and Virginia Beach.

429.4 Skirting requirements for manufactured homes. As used in this section, "skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade. In accordance with § 36-99.8 of the Code of Virginia, manufactured homes installed or relocated shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches (457 mm) in any dimension and not less than three square feet (0.28 m^2) in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of this code. In addition, as a requirement of this code, skirting for the installation and set-up of a new manufactured home shall also comply with the requirements of 24 CFR Part 3285 - Model Manufactured Home Installation Standards.

429.5 Site work for industrialized buildings. Site work for the erection and installation of an industrialized building shall comply with the manufacturer's installation instructions. To the extent that any aspect of the erection or installation of an industrialized building is not covered by the manufacturer's installation instructions, this code shall be applicable, including the use of the IRC for any construction work where the industrialized building would be classified as a Group R-5 building. In addition, all administrative requirements of this code for permits, inspections, and certificates of occupancy are also applicable. Further, the building official may require the submission of plans and specifications for details of items needed to comprise the finished building that are not included or specified in the manufacturer's instructions, including footings, foundations, supporting structures, proper anchorage, and the completion of the plumbing, mechanical, and electrical systems. Where the installation or erection of an industrialized building utilizes components that are to be concealed, the installer shall notify the building official that an inspection is necessary and assure that an inspection is performed and approved prior to concealment of such components, unless the building official has agreed to an alternative method of verification.

Exception: Temporary family health care structures installed pursuant to § 15.2-2292.1 of the Code of Virginia shall not be required or permitted to be placed on a permanent foundation, but shall otherwise remain subject to all pertinent provisions of this section.

429.6 Relocated industrialized buildings; alterations and additions. Industrialized buildings constructed prior to January 1, 1972, shall be subject to Section 117 when relocated. Alterations and additions to any existing industrialized buildings shall be subject to pertinent provisions of this code. Building officials shall be permitted to require the submission of plans and specifications for the model to aid in the evaluation of the proposed alteration or addition. Such plans and specifications shall be permitted to be submitted in electronic or other available format acceptable to the building official.

429.7 Change of occupancy of industrialized buildings. Change of occupancy of industrialized buildings is regulated by the Virginia Industrialized Building Safety Regulations (13VAC5-91). When the industrialized building complies with those regulations for the new occupancy, the building official shall issue a new certificate of occupancy under the USBC.

L. Add Section 430 Aboveground Liquid Fertilizer Tanks to the IBC to read:

430.1 General. This section shall apply to the construction of ALFSTs and shall supersede any conflicting requirements in other provisions of this code. ALFSTs shall also comply with any applicable nonconflicting requirements of this code.

430.1.1 When change of occupancy rules apply. A change of occupancy to use a tank as an ALFST occurs when there is a change in the use of a tank from storing liquids other than liquid fertilizers to a use of storing liquid fertilizer and when the type of liquid fertilizer being stored has a difference of at least 20% of the specific gravity or operating temperature, or both, or a significant change in the material's compatibility.

430.2 Standards. Newly constructed welded steel ALFSTs shall comply with API 650 and TFI RMIP, as applicable. Newly constructed ALFSTs constructed of materials other than welded steel shall be constructed in accordance with accepted engineering practice to prevent the discharge of liquid fertilizer and shall be constructed of materials that are resistant to corrosion, puncture or cracking. In addition, newly constructed ALFSTs constructed of materials other than welded steel shall comply with TFI RMIP, as applicable. For the purposes of this code, the use of TFI RMIP shall be construed as mandatory and any language in TFI RMIP, such as, but not limited to, the terms "should" or "may" which indicate that a provision is only a recommendation or a guideline shall be taken as a requirement. ALFSTs shall be placarded in accordance with NFPA 704.

Exception: Sections 4.1.4, 4.2.5, 5.1.2, 5.2.8, 5.3 and 8.1(d)(i) of TFI RMIP shall not be construed as mandatory.

430.3 Secondary containment. When ALFSTs are newly constructed and when there is a change of occupancy to use a tank as an ALFST, a secondary containment system designed and constructed to prevent any liquid fertilizer from reaching the surface water, groundwater or adjacent land before cleanup occurs shall be provided. The secondary containment system may include dikes, berms or retaining walls, curbing, diversion ponds, holding tanks, sumps, vaults, double-walled tanks, liners external to the tank, or other approved means and shall be capable of holding up to 110% of the capacity of the ALFST as certified by an RDP.

430.4 Repair, alteration and reconstruction of ALFSTs. Repair, alteration and reconstruction of ALFSTs shall comply with applicable provisions of API 653 and TFI RMIP.

430.5 Inspection. Applicable inspections as required by and in accordance with API 653 and TFI RMIP shall be performed for repairs and alterations to ALFSTS, the reconstruction of ALFSTs and when there is a change of occupancy to use a tank as an ALFST. When required by API 653 or TFI RMIP, such inspections shall occur prior to the use of the ALFST.

430.6 Abandoned ALFSTs. Abandoned ALFSTs shall comply with applicable provisions of Section 5704.2.13.2 of the IFC.

M. Add Section 431 Short-term Holding Areas to the IBC to read:

431.1 General. In all groups other than Group E, short-term holding areas shall be permitted to be classified as the main occupancy, provided all of the following are met:

1. Provisions are made for the release of all restrained or detained occupants of short-term holding areas at all times.

2. Aggregate area of short-term holding areas shall not occupy more than 10% of the building area of the story in which they are located and shall not exceed the tabular values for building area in Table 506.2 without building area increases.

3. Restrained or detained occupant load of each short-term holding area shall not exceed 20.

4. Aggregate restrained or detained occupant load in short-term holding areas per building shall not exceed 80.

5. Compliance with Sections 408.3.7, 408.3.8, 408.4, and 408.7 as applicable for Group I-3 occupancies.

6. Requirements of the main occupancy in which short-term holding areas are located shall be met.

7. Fire areas containing short-term holding areas shall be provided with a fire alarm system and automatic smoke detection system complying with Section 907.2.6.3 as applicable to I-3 occupancies.

8. Where each fire area containing short-term holding areas exceeds 12,000 square feet (1115 m^2), such fire areas shall be provided with an automatic sprinkler system complying with Section 903.3.

9. Short-term holding areas shall be separated from other short-term holding areas and adjacent spaces by smoke partitions complying with Section 710.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 25, Issue 17, eff. June 1, 2009; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014: Errata 30:24 VA.R. 2698 July 28, 2014; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-224. Chapter 5 General building heights and areas.

Change Section 502.1 to read:

502.1 Address identification. New buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall not be spelled out. Each character shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 1/2 inch (12.7 mm). Where required by the fire code official, address identification shall be provided in additional approved locations to facilitate emergency response. Where access is by means of a private road and the building address cannot be viewed from the public way, a monument, pole or other approved sign or means shall be used to identify the structure.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-225. (Repealed.)

Statutory Authority

Historical Notes
Derived from Virginia Register Volume 30, Issue 16, eff. July 14, 2014; repealed, Virginia Register Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-226. Chapter 6 Types of construction.

Add Section 602.1.2 to read:

602.1.2 Alternative Provisions. As an alternative to the construction types defined in 602.2 through 602.5, buildings and structures erected or to be erected, altered, or extended in height or area may be classified as construction type IV-A, IV-B, or IV-C in accordance with Chapter 6 of the 2021 International Building Code. Buildings and structures classified as IV-A, IV-B, or IV-C shall comply with all provisions of the 2021 International Building Code and 2021 International Fire Code specific to mass timber and the construction type of the building or structure, as well as all other applicable provisions of this code, including provisions for buildings of Type IV construction.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-230. Chapter 7 Fire and smoke protection features.

A. Change item 5 of Section 703.3 of the IBC to read:

5. Alternative protection methods as allowed by Section 112.2.

B. Change Section 703.7 of the IBC to read:

703.7 Fire-resistance assembly marking. Where there is a concealed floor, floor-ceiling, or attic space, the fire walls, fire barriers, fire partitions, smoke barriers, or any other wall required to have protected openings or penetrations shall be designated above ceilings and on the inside of all ceiling access doors that provide access to such fire rated assemblies by signage having letters no smaller than one inch (25.4 mm) in height. Such signage shall indicate the fire-resistance rating of the assembly and the type of assembly and be provided at horizontal intervals of no more than eight feet (2438 mm).

Note: An example of suggested formatting for the signage would be "ONE HOUR FIRE PARTITION."

C. Change the exception and add an exception to Section 705.2 of the IBC to read:

Exceptions:

1. Buildings on the same lot and considered as portions of one building in accordance with Section 705.3 are not required to comply with this section.

2. Decks and open porches of buildings of Groups R-3 and R-4.

D. Add Exception 4 to Section 706.5.2 of the IBC to read:

4. Decks and open porches of buildings in Groups R-3 and R-4.

E. Change Section 716.2.1.4 of the IBC to read:

716.2.1.4 Smoke and draft control. Fire door assemblies located in smoke barrier walls shall also meet the requirements for a smoke and draft control door assembly tested in accordance with UL 1784.

F. Change Section 717.5.3 of the IBC to read:

717.5.3 Shaft enclosures. Shaft enclosures that are permitted to be penetrated by ducts and air transfer openings shall be protected with approved fire and smoke dampers installed in accordance with their listing.

Exceptions:

1. Fire and smoke dampers are not required where steel exhaust subducts extend at least 22 inches (559 mm) vertically in exhaust shafts, provided there is a continuous airflow upward to the outside.

2. Fire dampers are not required where penetrations are tested in accordance with ASTM E119 as part of the fire resistance-rated assembly.

3. Fire and smoke dampers are not required where ducts are used as part of an approved smoke control system in accordance with Section 909.

4. Fire and smoke dampers are not required where the penetrations are in parking garage exhaust or supply shafts that are separated from other building shafts by not less than two-hour fire-resistance-rated construction.

5. Smoke dampers are not required where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

G. Add Section 717.6.2.2 to the IBC to read:

717.6.2.2 Equipment shutdown. Where ceiling radiation dampers are listed as static dampers, the HVAC equipment shall be effectively shut down to stop the airflow prior to the damper closing using one of the following methods:

1. A duct detector installed in the return duct.

2. An area smoke detector interlocked with the HVAC equipment.

3. A listed heat sensor installed in the return duct.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-235. Chapter 8 Interior finishes.

Change Section 806.2 of the IBC to read:

806.2 Combustible decorative materials. In other than Group I-3, curtains, draperies, fabric hangings, and similar combustible decorative materials suspended from walls or ceilings shall comply with Section 806.4 and shall not exceed 10% of the specific wall or ceiling area to which it is attached.

Fixed or movable walls and partitions, paneling, wall pads, and crash pads applied structurally or for decoration, acoustical correction, surface insulation, or other purposes shall be considered interior finish, shall comply with Section 803, and shall not be considered decorative materials or furnishings.

Exceptions:

1. In auditoriums or similar types of spaces in Group A, the permissible amount of curtains, draperies, fabric hangings, and similar combustible decorative materials suspended from walls or ceilings shall not exceed 75% of the aggregate wall area where the building is equipped throughout with an automatic sprinkler system in

accordance with Section 903.3.1.1.1, and where the material is installed in accordance with Section 803.15 of this code.

2. In auditoriums or similar types of spaces in Group A, the permissible amount of decorative materials suspended from the ceiling, located no more than 12 inches (305 mm) from the wall, not supported by the floor, and meeting the flame propagation performance criteria of NFPA 701, shall not exceed 75% of the aggregate wall area when the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

3. In Group R-2 dormitories, within sleeping units and dwelling units, the permissible amount of curtains, draperies, fabric hangings, and similar decorative materials suspended from walls or ceiling shall not exceed 50% of the aggregate walls areas where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.

4. In Groups B and M occupancies, the amount of combustible fabric partitions suspended from the ceiling and not supported by the floor shall comply with Section 806.4 and shall not be limited.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 16, eff. July 14, 2014; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-240. Chapter 9 Fire protection systems.

A. Change Item 2 of Section 903.2.1.2 of the IBC to read:

2. The fire area has an occupant load of 100 or more in night clubs or 300 or more in other Group A-2 occupancies.

B. Change Item 2 of Section 903.2.1.3 of the IBC to read:

2. In Group A-3 occupancies other than places of religious worship, the fire area has an occupant load of 300 or more.

C. Change Item 1 of Section 903.2.3 of the IBC to read:

1. Throughout all Group E fire areas greater than 20,000 square feet (1858 m^2) in area.

D. Add Exception 4 to Section 903.2.6 to read:

4. An automatic sprinkler system shall not be required for open-sided or chain link-sided buildings and overhangs over exercise yards 200 square feet (18.58 m^2) or less in Group I-3 facilities, provided such buildings and overhangs are of noncombustible construction.

E. Delete Item 4 of Section 903.2.7 of the IBC.

F. Change Section 903.2.8 of the IBC to read:

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area, except for Group R-2 occupancies listed in the exceptions to this section when the necessary water pressure or volume, or both, for the system is not available:

Exceptions:

1. Group R-2 occupancies that do not exceed two stories, including basements that are not considered as a story above grade, and with a maximum of 16 dwelling units per fire area. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.

2. Group R-2 occupancies where all dwelling units are not more than two stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and a two-hour fire barrier is provided between each pair of dwelling units. Each bedroom of a dormitory or boarding house shall be considered a dwelling unit under this exception.

G. Add Section 903.3.1.2.3.1 to the IBC to read:

903.3.1.2.3.1 Group R-2 Attics. Sprinkler protection shall be provided for attics in buildings of Type III, IV or V construction in Group R-2 occupancies that are designed or developed and marketed to senior citizens 55 years of age or older and in Group I-1 occupancies in accordance with Section 7.2 of NFPA 13R.

H. Add Section 903.3.5.1.1 to the IBC and change Section 903.3.5.2 of the IBC to Section 903.3.5.1.2; both to read as follows:

903.3.5.1.1 Limited area sprinkler systems. Limited area sprinkler systems serving fewer than 20 sprinklers on any single connection are permitted to be connected to the domestic service where a wet automatic standpipe is not available. Limited area sprinkler systems connected to domestic water supplies shall comply with each of the following requirements:

1. Valves shall not be installed between the domestic water riser control valve and the sprinklers.

Exception: An approved indicating control valve supervised in the open position in accordance with Section 903.4.

2. The domestic service shall be capable of supplying the simultaneous domestic demand and the sprinkler demand required to be hydraulically calculated by NFPA 13, NFPA 13R, or NFPA 13D.

903.3.5.1.2 Residential combination services. A single combination water supply shall be allowed provided that the domestic demand is added to the sprinkler demand as required by NFPA 13R.

I. Delete Sections 903.3.8 through 903.3.8.5 of the IBC.

J. Change Section 903.4.2 of the IBC to read:

903.4.2 Alarms. Approved audible devices shall be connected to every automatic sprinkler system. Such sprinkler water-flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Alarm devices shall be provided on the exterior of the building in an approved location. Where a fire alarm system is installed, actuation of the automatic sprinkler system shall actuate the building fire alarm system. Group R-2 occupancies that contain 16 or more dwelling units or sleeping units, any dwelling unit or sleeping unit two or more stories above the lowest level of exit discharge, or any dwelling unit or sleeping unit more than one story below the highest level of exit discharge of exits serving the dwelling unit or sleeping unit shall provide a manual fire alarm box at an approved location to activate the suppression system alarm.

K. Change Section 905.3.1 of the IBC to read:

905.3.1 Height. Class III standpipe systems shall be installed throughout buildings where four or more stories are above or below grade plane, the floor level of the highest story is located more than 30 feet (9144 mm) above the lowest level of fire department vehicle access, or where the floor level of the lowest story is located more than 30 feet (9144 mm) below the highest level of fire department vehicle access.

Exceptions:

1. Class I standpipes are allowed in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

2. Class I manual wet standpipes are allowed in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1 or Section 903.3.2 and where the highest floor is located not more than 150 feet (45,720 mm) above the lowest level of fire department vehicle access.

3. Class I manual standpipes are allowed in open parking garages where the highest floor is located not more than 150 feet (45,720 mm) above the lowest level of fire department vehicle access.

4. Class I manual dry standpipes are allowed in open parking garages that are subject to freezing temperatures, provided that the hose connections are located as required for Class II standpipes in accordance with Section 905.5.

5. Class I standpipes are allowed in basements equipped throughout with an automatic sprinkler system.

6. In determining the lowest level of fire department vehicle access, it shall not be required to consider either of the following:

6.1. Recessed loading docks for four vehicles or less.

6.2. Conditions where topography makes access from the fire department vehicle to the building impractical or impossible.

L. Change Item 1 of Section 906.1 of the IBC to read:

1. In Groups A, B, E, F, H, I, M, R-1, R-4, and S occupancies.

Exceptions:

1. In Groups A, B, and E occupancies equipped throughout with quick response sprinklers, portable fire extinguishers shall be required only in locations specified in Items 2 through 6.

2. In Group I-3 occupancies, portable fire extinguishers shall be permitted to be located at staff locations and the access to such extinguishers shall be permitted to be locked.

M. Change Section 907.2.1.1 of the IBC to read:

907.2.1.1 System initiation in Group A occupancies with an occupant load of 1,000 or more and in certain night clubs. Activation of the fire alarm in Group A occupancies with an occupant load of 1,000 or more and in night clubs with an occupant load of 300 or more shall initiate a signal using an emergency voice and alarm communications system in accordance with Section 907.5.2.2.

Exception: Where approved, the prerecorded announcement is allowed to be manually deactivated for a period of time, not to exceed three minutes, for the sole purpose of allowing a live voice announcement from an approved, constantly attended location.

N. Change Section 907.2.3 of the IBC to read:

907.2.3 Group E. A manual fire alarm system that activates the occupant notification system meeting the requirements of Section 907.5 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

2.1. Interior corridors are protected by smoke detectors.

2.2. Auditoriums, cafeterias, gymnasiums, and similar areas are protected by heat detectors or other approved detection devices.

2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the occupant notification system will activate on sprinkler water flow and manual activation is provided from a normally occupied location.

O. Change Section 907.3.2 of the IBC to read:

907.3.2 Special locking systems. Where special locking systems are installed on means of egress doors in accordance with Section 407.4.1.1 or 1010.1.9.8, an automatic detection system shall be installed as required by that section.

P. Add an exception to Section 907.5.2.1.1 of the IBC to read:

Exception: Sound pressure levels in Group I-3 occupancies shall be permitted to be limited to only the notification of occupants in the affected smoke compartment.

Q. Delete Exception 1 from Section 907.5.2.3 of the IBC.

R. Change Section 909.6 of the IBC to read:

909.6 Pressurization method. When approved by the building official, the means of controlling smoke shall be permitted by pressure differences across smoke barriers. Maintenance of a tenable environment is not required in the smoke-control zone of fire origin.

S. Change Section 911.1.3 of the IBC to read:

911.1.3 Size. The fire command center shall be a minimum of 96 square feet (9 m^2) in area with a minimum dimension of eight feet (2438 mm).

Exception: Where it is determined by the building official, after consultation with the fire official, that specific building characteristics require a larger fire command center, the building official may increase the minimum required size of the fire command center up to 200 square feet (19 m^2) in area with a minimum dimension of up to 10 feet (3048 mm).

T. Delete Section 912.2.2 of the IBC.

U. Change Sections 912.4 and 912.4.2 of the IBC to read:

912.4 Access. Immediate access to fire department connections shall be provided without obstruction by fences, bushes, trees, walls or any other fixed or moveable object. Access to fire department connections shall be approved by the fire official.

Exception: Fences, where provided with an access gate equipped with a sign complying with the legend requirements of this section and a means of emergency operation. The gate and the means of emergency operation shall be approved by the fire official.

912.4.2 Clear space around connections. A working space of not less than 36 inches (762 mm) in width, 36 inches (914 mm) in depth and 78 inches (1981 mm) in height shall be provided in front of and to the sides of wall-mounted fire department connections and around the circumference of free-standing fire department connections, except as otherwise required or approved by the fire official.

V. Replace Section 915 of the IBC with the following:

915.1 Carbon monoxide alarms. Carbon monoxide alarms shall comply with this section.

915.2 Group I or R. Group I or R occupancies located in a building containing a fuel-burning appliance or in a building that has an attached garage shall be equipped with single-station carbon monoxide alarms. The carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA 720 and the manufacturer's instructions. An open parking garage, as defined in Chapter 2, or an enclosed parking garage ventilated in accordance with Section 404 of the IMC shall not be considered an attached garage.

Exception: Sleeping units or dwelling units that do not themselves contain a fuel-burning appliance or have an attached garage but that are located in a building with a fuel-burning appliance or an attached garage, need not be equipped with single-station carbon monoxide alarms provided that:

1. The sleeping unit or dwelling unit is located more than one story above or below any story that contains a fuel-burning appliance or an attached garage;

2. The sleeping unit or dwelling unit is not connected by duct work or ventilation shafts to any room containing a fuel-burning appliance or to an attached garage; and

3. The building is equipped with a common area carbon monoxide alarm system.

915.3 Group E. Classrooms in Group E occupancies located in a building containing a fuel-burning appliance or in a building that has an attached garage or small engine or vehicle shop shall be equipped with single-station carbon monoxide alarms. The carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA 720 and the manufacturer's instructions. An open parking garage, as defined in Chapter 2, or an enclosed parking garage ventilated in accordance with Section 404 of the IMC shall not be considered an attached garage.

Exception: Classrooms that do not themselves contain a fuel-burning appliance or have an attached garage but are located in a building with a fuel-burning appliance or an attached garage, need not be equipped with single-station carbon monoxide alarms provided that:

1. The classroom is located more than 100 feet from the fuel burning appliance or attached garage or located more than one story above or below any story which contains a fuel-burning appliance or attached garage; and

2. The classroom is not connected by duct work or ventilation shafts to any room containing a fuel-burning appliance.

915.4 Carbon monoxide detection systems. Carbon monoxide detection systems, which include carbon monoxide detectors and audible notification appliances, installed and maintained in accordance with this section for carbon monoxide alarms and NFPA 720 shall be permitted. The carbon monoxide detectors shall be listed as complying with UL 2075.

W. Change the title of IBC Section 918 to read:

In-Building Emergency Communications Coverage.

X. Change Section 918.1 of the IBC to read:

918.1 General. For localities utilizing public safety wireless communications, dedicated infrastructure to accommodate and perpetuate continuous in-building emergency communication equipment to allow emergency public safety personnel to send and receive emergency communications shall be provided in new buildings

and structures in accordance with this section.

Exceptions:

1. Buildings of Use Groups A-5, I-4, within dwelling units of R-2, R-3, R-4, R-5, and U.

2. Buildings of Types IV and V construction without basements, that are not considered unlimited area buildings in accordance with Section 507.

3. Above grade single story buildings of less than 20,000 square feet.

4. Buildings or leased spaces occupied by federal, state, or local governments, or the contractors thereof, with security requirements where the building official has approved an alternative method to provide emergency communication equipment for emergency public safety personnel.

5. Where the owner provides technological documentation from a qualified individual that the structure or portion thereof does not impede emergency communication signals.

6. Buildings in localities that do not provide the additional communication equipment required for the operation of the system.

Y. Add Sections 918.1.1, 918.1.2, and 918.1.3 to the IBC to read:

918.1.1 Installation. The building owner shall install radiating cable, such as coaxial cable or equivalent. The radiating cable shall be installed in dedicated conduits, raceways, plenums, attics, or roofs, compatible for these specific installations as well as other applicable provisions of this code. The locality shall be responsible for the installation of any additional communication equipment required for the operation of the system.

918.1.2 Operations. The locality will assume all responsibilities for the operation and maintenance of the emergency communication equipment. The building owner shall provide sufficient operational space within the building to allow the locality access to and the ability to operate in-building emergency communication equipment.

918.1.3 Inspection. In accordance with Section 113.3, all installations shall be inspected prior to concealment.

Z. Add Section 918.2 to the IBC to read:

918.2 Acceptance test. Upon completion of installation, after providing reasonable notice to the owner or their representative, emergency public safety personnel shall have the right during normal business hours, or other mutually agreed upon time, to enter onto the property to conduct field tests to verify that the required level of radio coverage is present at no cost to the owner. Any noted deficiencies in the installation of the radiating cable or operational space shall be provided in an inspection report to the owner or the owner's representative.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 27, Issue 12, eff. March 1, 2011; Volume 30, Issue 16, eff. July 14, 2014; Errata, 30:18 VA.R. 2362 May 5, 2014; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-245. Chapter 10 Means of egress.

A. Delete Section 1002.2 of the IBC.

B. Change Section 1004.9 of the IBC to read:

1004.9 Posting of occupant load. Every room or space that is an assembly occupancy and where the occupant load of that room or space is 50 or more shall have the occupant load of the room or space posted for the intended configurations in a conspicuous place, near the main exit or exit access doorway from the room or space. Posted signs shall be of an approved legible permanent design and shall be maintained by the owner or the owner's authorized agent.

C. Change Exception 1 of Section 1005.3.1 of the IBC to read:

1. For other than Groups H and I-2 occupancies, the capacity, in inches (mm), of means of egress stairways shall be calculated by multiplying the occupant load served by such stairway by a means of egress capacity factor of 0.2 inch (5.1 mm) per occupant in buildings equipped with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

D. Change Exception 1 of Section 1005.3.2 of the IBC to read:

1. For other than Groups H and I-2 occupancies, the capacity, in inches (mm), of means of egress components other than stairways shall be calculated by multiplying the occupant load served by such component by a means of egress capacity factor of 0.15 inch (3.8 mm) per occupant in buildings equipped with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

E. Add Exception 3 of Section 1006.2.1 of the IBC to read:

3. In Group R-2 and R-3 occupancies, one means of egress is permitted within and from individual dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and the common path of egress travel does not exceed 125 feet (38,100 mm). This exception shall also apply to Group R-2 occupancies where Section 903.2.8, Exception 1 or 2 is applicable.

F. Change the number "49" to "50" in the "Maximum Occupant Load of Space" column in the "A[c], E, M," "B," "F," and "U" rows of Table 1006.2.1 of the IBC.

G. Change the number "49" to "50" in the "Maximum Occupant Load per Story" column of the "A, B[b], E, F[b], M, U" row of Table 1006.3.3(2).

H. Change Exception 2 of Section 1007.1.1 of the IBC to read:

2. Where a building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2, the separation distance of the exit doors or exit access doorways shall not be less than one-fourth of the length of the maximum overall diagonal dimension of the area served.

I. Change Section 1009.6.4 of the IBC to read:

1009.6.4 Separation. Each area of refuge shall be separated from the remainder of the story by a smoke barrier complying with Section 709 or a horizontal exit complying with Section 1026. Each area of refuge shall be designed to minimize the intrusion of smoke.

Exceptions:

1. Areas of refuge located within an enclosure for interior exit stairways complying with Section 1023.

2. Areas of refuge in outdoor facilities where exit access is essentially open to the outside.

3. Areas of refuge where the area of refuge and areas served by the area of refuge are equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

J. Change Section 1010.1.4.4 of the IBC to read:

1010.1.4.4 Locking arrangements in educational occupancies. In Group E occupancies, except Group E day care facilities, and Group B educational occupancies, exit access doors from classrooms, offices, and other occupied rooms, except for exit doors and doors across corridors, shall be permitted to be provided with emergency supplemental hardware where all of the following conditions are met:

1. The door shall be capable of being opened from outside the room with a key, proprietary device provided by the manufacturer, or other approved means.

2. The door shall be openable from within the room in accordance with Section 1010.1.9, except emergency supplemental hardware is not required to comply with Chapter 11.

Note: School officials should consult with their legal counsel regarding provisions of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.) and any other applicable requirements.

3. Installation of emergency supplemental hardware on fire door assemblies must comply with Section 716.2. Modifications shall not be made to listed panic hardware, fire door hardware, or door closures.

4. The emergency supplemental hardware shall not be capable of being used on other doors not intended to be used and shall have at least one component that requires modification to, or is permanently affixed to, the surrounding wall, floor, door, or frame assembly construction for it to properly function.

5. Employees shall engage in lockdown training procedures on how to deploy and remove the emergency supplemental hardware, and its use shall be incorporated in the approved lockdown plan complying with the SFPC.

6. The emergency supplemental hardware and its components shall be maintained in accordance with the SFPC.

7. Approved emergency supplemental hardware shall be of consistent type throughout a building.

Exception: The building official may approve alternate types of emergency supplemental hardware in accordance with Section 110.1 when a consistent device cannot be installed.

K. Change Section 1010.1.6 of the IBC to read:

1010.1.6 Landings at doors. Landings shall have a width not less than the width of the stairway or the door, whichever is greater. Doors in the fully open position shall not reduce a required dimension by more than 7 inches (178 mm). Where a landing serves an occupant load of 50 or more, other doors, gates, or turnstiles in any position shall not reduce the landing to less than one-half its required width nor prevent a door, gate, or turnstile from opening to less than one-half of the required landing width. Landings shall have a length measured in the direction of travel of not less than 44 inches (1118 mm).

Exception: Landing length in the direction of travel in Groups R-3 and U and within individual units of Group R-2 need not exceed 36 inches (914 mm).

L. Add an exception to Sections 1010.1.9 and 1010.1.9.1 of the IBC to read:

Exception: Emergency supplemental hardware provided in accordance with Section 1010.1.4.4.

M. Change Section 1010.1.9.2 of the IBC to read:

1010.1.9.2 Hardware height. Door handles, pulls, latches, locks, and other operating devices shall be installed 34 inches (864 mm) minimum and 48 inches (1219 mm) maximum above the finished floor. Emergency supplemental hardware provided in accordance with Section 1010.1.4.4, shall be installed 48 inches (1219 mm) maximum above the finished floor. Locks used only for security purposes and not used for normal operation are permitted at any height.

Exception: Access doors or gates in barrier walls and fences protecting pools, spas, and hot tubs shall be permitted to have operable parts of the latch release on self-latching devices at 54 inches (1370 mm) maximum above the finished floor or ground, provided that the self-latching devices are not also self-locking devices operated by means of a key, electronic opener, or integral combination lock.

N. Change Item 2 of Section 1010.1.9.4 of the IBC to read:

2. In buildings in occupancy Groups B, F, M and S, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1. The locking device is readily distinguishable as locked.

2.2. A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN THIS SPACE IS OCCUPIED. The sign shall be in letters one inch (25 mm) high on a contrasting background.

2.3. The use of the key-operated locking device is revocable by the building official for due cause.

O. Add Items 7, 7.1, and 7.2 to Section 1010.1.9.4 of the IBC to read:

7. Egress doors equipped with emergency supplemental hardware complying with Section 1010.1.4.4, from the egress side provided:

7.1. A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS HARDWARE SHALL BE USED BY AUTHORIZED PERSONNEL ONLY. The sign shall be in letters 1 inch (25 mm) high on a contrasting background.

7.2. The use of the emergency supplemental hardware is revocable by the building official or fire official for due cause.

P. Add Item 6 to Section 1010.1.9.5 of the IBC to read:

6. Emergency supplemental hardware provided in accordance with Section 1010.1.4.4.

Q. Add Item 5 to Section 1010.1.9.6 of the IBC to read:

5. One additional operation shall be permitted for release of emergency supplemental hardware provided in accordance with Section 1010.1.4.4.

R. Delete Section 1010.1.9.7 of the IBC.

S. Add Exceptions 2 and 3 to Section 1010.1.9.8 of the IBC to read:

Exceptions:

2. Approved, listed, delayed egress locks shall be permitted to be installed on doors serving Group A-3 airport facilities, provided they are installed in accordance with this section.

3. Emergency supplemental hardware shall not be considered a delayed egress locking system.

T. Delete Exception 1 and change Exception 2 of Section 1010.1.10 of the IBC to read:

Exception: Doors provided with panic hardware or fire exit hardware and serving a Group A or E occupancy shall be permitted to be electrically locked in accordance with Section 1010.1.9.10.

U. Add Section 1010.1.11 to the IBC to read:

1010.1.11 Locking certain residential sliding doors. In dwelling units of Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent it from being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

V. Add Section 1010.1.12 to the IBC to read:

1010.1.12 Door viewers in certain residential buildings. Entrance doors to dwelling units of Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

W. Change Exception 3 of Section 1011.5.2 of the IBC to read:

3. In Group R-3 occupancies; within dwelling units in Group R-2 occupancies; and in Group U occupancies that are accessory to a Group R-3 occupancy or accessory to individual dwelling units in Group R-2 occupancies; the maximum riser height shall be 8.25 inches (210 mm); the minimum tread depth shall be 9 inches (229 mm); the minimum winder tread depth at the walk line shall be 10 inches (254 mm); and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 11 inches (279 mm).

X. Delete Exception 4 from Section 1011.5.2 of the IBC.

Y. Add Exception 2 to Section 1011.6 of the IBC to read:

2. A floor or landing is not required at the top of an interior flight of exit access stairs within individual dwelling units and sleeping units of Group R-2 occupancies and dwelling units of Group R-3 occupancies, including stairs in an enclosed private garage serving only an individual dwelling unit, provided that a door does not swing over the stairs.

Z. Delete Item 6 from Section 1011.16 of the IBC.

AA. Change Section 1015.8 of the IBC to read:

1015.8 Window openings. Windows in Groups R-2 and R-3 buildings including dwelling units where the top of the sill of an operable window opening is located less than 18 inches (457 mm) above the finished floor and more than 72 inches (1829 mm) above the finished grade or other surface below on the exterior of the building shall comply with one of the following:

1. Operable windows where the top of the sill of the opening is located more than 75 feet (22,860 mm) above the finished grade or other surface below and that are provided with window fall prevention devices that comply with ASTM F 2006.

2. Operable windows where the openings will not allow a 4-inch diameter (102 mm) sphere to pass through the opening when the window is in its largest opened position.

3. Operable windows where the openings are provided with window fall prevention devices that comply with ASTM F 2090.

4. Operable windows that are provided with window opening control devices that comply with Section 1015.8.1.

BB. Add Exception 3 to Item 5 of Section 1016.2 of the IBC to read:

3. A maximum of one exit access is permitted to pass through kitchens, store rooms, closets or spaces used for similar purposes provided such a space is not the only means of exit access.

CC. Change the following rows and delete footnote "b" in Table 1020.1 of the IBC.

	Table 1020.1 Corridor Fire-Resistance Rating			
	Occupancy	Occupant Load Served By Corridor	Required Fire-Resistance Rating (hours)	
			Without sprinkler system	With sprinkler system[b]
	R	Greater than 10	1	0.5
	I-1, I-3	All	Not Permitted	0

DD. Add an additional row to Table 1020.2 of the IBC to read:

	Occupancy	Width (minimum)
	In corridors of Group I-2 assisted living facilities licensed by the Virginia Department of Social Services serving areas with wheelchair, walker, and gurney traffic where residents are capable of self-preservation or where resident rooms have a means of egress door leading directly to the outside.	44 inches

EE. Add Exception 2 to Section 1023.5 of the IBC to read:

2. For buildings in other than Group H, with no more than two stories above grade plane and are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, structural members, other than columns, that are part of the primary structural frame supporting the roof sheathing, roof slab or roof deck only and structural members that are secondary members supporting the roof sheathing, roof slab or roof deck only, shall be permitted to penetrate an interior exit stairway enclosure or a ramp enclosure. Such penetrations shall be protected in accordance with Section 714.

FF. Change Section 1023.9 of the IBC to read:

1023.9 Floor identification signs. A sign shall be provided at each floor landing in exit enclosures connecting more than three stories designating the floor level, the terminus of the top and bottom of the exit enclosure and the identification of the stair or ramp by designation with a letter of the alphabet. The signage shall also state the story of, and the direction to, the exit discharge and the availability of roof access from the enclosure for the fire department. The sign shall be located five feet (1524 mm) above the floor landing in a position that is readily visible when the doors are in the open and closed positions. Floor level identification signs in tactile characters complying with ICC A117.1 shall be located at each floor level landing adjacent to the door leading from the enclosure into the corridor to identify the floor level.

GG. Add Exception 2 to Section 1024.6 of the IBC to read:

2. For buildings in other than Group H, with no more than two stories above grade plane and are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, structural members, other than columns, which are part of the primary structural frame supporting the roof sheathing, roof slab or roof deck only and structural members which are secondary members supporting the roof sheathing, roof slab or roof deck only, shall be permitted to penetrate an interior exit stairway enclosure or a ramp enclosure. Such penetrations shall be protected in accordance with Section 714.

HH. Change Section 1025.1 of the IBC to read:

1025.1 General. Approved luminous egress path markings delineating the exit path shall be provided in buildings of Groups A, B, E, I, M and R-1 having occupied floors located more than 420 feet (128,016 mm) above the lowest level of fire department vehicle access in accordance with this section.

Exception: Luminous egress path markings shall not be required on the level of exit discharge in lobbies that serve as part of the exit path in accordance with Section 1028.1, Exception 1.

II. Change Section 1026.2 of the IBC to read:

1026.2 Separation. The separation between buildings or refuge areas connected by a horizontal exit shall be provided by a fire wall complying with Section 706, by a fire barrier complying with Section 707 or a horizontal assembly with Section 711, or by both. The minimum fire-resistance rating of the separation shall be two hours. Opening protectives in horizontal exits shall also comply with Section 716. Duct and air transfer openings in a fire wall or fire barrier that servers as a horizontal exit shall also comply with Section 717. The horizontal exit separation shall extend vertically through all levels of the building unless floor assemblies have

a fire-resistance rating of not less than two hours. Openings in horizontal assemblies on the story served by horizontal exits shall be protected in accordance with Sections 712.1.1, 712.1.3, 712.1.13, or item 4 of Section 1019.3.

Exception: A fire-resistance rating is not required at horizontal exits between a building area and an above-grade pedestrian walkway constructed in accordance with Section 3104, provided that the distance between connected buildings is more than 20 feet (6096).

Horizontal exits constructed as fire barriers shall be continuous from exterior wall to exterior wall as to divide completely the floor served by the horizontal exit.

JJ. Delete the last sentence from Section 1030.5.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 27, Issue 12, eff. March 1, 2011; Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-250. Chapter 11 Accessibility.

A. Add an exception to Section 1102.1 of the IBC to read:

Exception: Wall-mounted visible alarm notification appliances in Group I-3 occupancies shall be permitted to be a maximum of 120 inches (3048 mm) above the floor or ground, measured to the bottom of the appliance. Such appliances shall otherwise comply with all applicable requirements.

B. Change Section to 1103.2.8 of the IBC to read:

1103.2.8 Raised and lowered areas in places of religious worship. Raised or lowered areas, or portions of areas, in places of religious worship are not required to be accessible or to be served by an accessible route, provided such areas are used primarily for the performance of religious ceremonies and are located within an accessible story or mezzanine.

C. Add Section 1103.2.15 to the IBC to read:

1103.2.15 Emergency supplemental hardware. In Group E occupancies, except Group E day care facilities, and Group B educational occupancies, when emergency supplemental hardware is deployed during an active shooter or hostile threat event and provided in accordance with Section 1010.1.4.4.

D. Change Section 1106.1 of the IBC and replace Table 1106.1 of the IBC with Tables 1106.1(1) and 1106.1(2) to read:

1106.1 Required. Where parking is provided, accessible parking spaces shall be provided in compliance with Tables 1106.1(1) and 1106.1(2), as applicable, except as required by Sections 1106.2 through 1106.4. Where more than one parking facility is provided on a site, the number of parking spaces required to be accessible shall be calculated separately for each parking facility. Exception: This section does not apply to parking spaces used exclusively for buses, trucks, other delivery vehicles, law-enforcement vehicles, or vehicular impound and motor pools where lots accessed by the public are provided with an accessible passenger loading zone.

	Table 1106.1(1) Accessible Parking Spaces for Groups A, B, E, M, R-1, R-2, and I[a]	
	Total Parking Spaces Provided	Required Minimum Number of Accessible Spaces
	1 - 25	1
	26 - 50	2
	51 - 75	3
	76 - 100	4
	101 - 125	5
	126 - 150	6
	151 - 200	7
	201 - 300	8
	301 - 400	9
	401 - 500	10
	501 - 1,000	2.33% of total
	1,001 and over	23, plus one for each 100, or fraction thereof, over 1,000
	a. Condominium parking in Group R-2 occupancies where parking is part of the unit purchase shall be in accordance with Table 1106.1(2).	

	Table 1106.1(2) Accessible Parking Spaces for Groups F, S, H, R-3, R-4, and U	
	Total Parking Spaces Provided	Required Minimum Number of Accessible Spaces
	1 - 25	1
	26 - 50	2
	51 - 75	3
	76 - 100	4

	101 - 150	5
	151 - 200	6
	201 - 300	7
	301 - 400	8
	401 - 500	9
	501 - 1,000	2.0% of total
	1,001 and over	20, plus one for each 100, or fraction thereof, over 1,000

E. Add Section 1106.8 to the IBC to read:

1106.8 Identification of accessible parking spaces. In addition to complying with applicable provisions of this chapter, all accessible parking spaces shall be identified by above grade signs. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. All above grade parking space signs shall have the bottom edge of the sign no lower than four feet (1219 mm) nor higher than seven feet (2133 mm) above the parking surface. All disabled parking signs shall include the following language: PENALTY, $100-500 Fine, TOW-AWAY ZONE. Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than four feet above the parking surface.

F. Change Section 1109.2 (exceptions remain) of the IBC to read:

1109.2 Toilet and bathing facilities. Each toilet room and bathing room shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing rooms provided within the facility shall be located on the inaccessible floor. Except as provided for in Sections 1109.2.2 through 1109.2.4, at least one of each type of fixture, element, control, or dispenser in each accessible toilet room and bathing room shall be accessible.

G. Add Section 1109.2.4 to the IBC to read:

1109.2.4 Multi-user gender-neutral toilet facility fixtures. Where multi-user facilities are provided to serve all genders, at least two of each fixture type, but only one urinal if more than one urinal is provided, shall comply with ICC A117.1. Water closet and urinal compartments shall comply with Section 1209.3.

H. Add Sections 1109.16 and 1109.16.1 to the IBC to read:

1109.16 Dwellings containing universal design features for accessibility. Group R-5 occupancies not subject to Section R320.1 of the IRC and Group R-3 occupancies not subject to Section 1107.6.3 may comply with this section and be approved by the local building department as dwellings containing universal design features for accessibility.

1109.16.1 Standards for dwellings containing universal design features for accessibility. When the following requirements are met, approval shall be issued by the local building department indicating that a dwelling has been constructed in accordance with these standards and is deemed to be a dwelling containing universal design features for accessibility.

1. The dwelling must comply with the requirements for Type C units under Section 1005 of ICC A117.1 with the following changes to those requirements:

1.1. That at least one bedroom be added to the interior spaces required by Section 1005.4 of ICC A117.1.

1.2. In the toilet room or bathroom required by Section 1005 of ICC A117.1, in addition to the lavatory and water closet, a shower or bathtub complying with Section 1004.11.3.2.3 of ICC A117.1 shall be provided and shall include reinforcement for future installation of grab bars in accordance with Section 1004.11.1 of ICC A117.1.

1.3. That the exception to Section 1005.4 of ICC A117.1 is not applicable.

1.4. That there be a food preparation area complying with Section 1005.7 of ICC A117.1 on the entrance level.

1.5. That any thermostat for heating or cooling on the entrance level comply with Section 1002.9 of ICC A117.1.

I. Delete the exception for Item 1 of Section 1111.1 of the IBC.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-260. Chapter 12 Interior environment.

A. Add Section 1202.5.4 to the IBC to read:

1202.5.4 Insect screens in occupancies other than Group R. Every door, window and other outside opening for natural ventilation serving structures classified as other than a residential group containing habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device.

Exception: Screen doors shall not be required for out swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellent fans are provided.

B. Add Section 1202.5.5 to the IBC to read:

1202.5.5 Insect screens in Group R occupancies. Every door, window and other outside opening required for natural ventilation purposes which serves a structure classified as a residential group shall be supplied with approved tightly fitted screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device.

C. Add Section 1202.7 to the IBC to read:

1202.7 Smoking areas in restaurants. Smoking areas in restaurants, as defined in § 15.2-2820 of the Code of Virginia, shall comply with the following:

1. The area where smoking may be permitted shall be structurally separated from the portion of the restaurant in which smoking is prohibited. For the purposes of this section, structurally separated means a stud wall covered with drywall or other building material or like barrier, which, when completed, extends from the floor to the ceiling, resulting in a physically separated room. Such wall or barrier may include portions that are glass or other gas-impervious building material and shall be permitted to have a door leading to areas in which smoking is prohibited, provided the door is capable of being closed at all times.

2. The area where smoking may be permitted shall be separately vented to prevent the recirculation of air from such area to the area of the restaurant where smoking is prohibited.

Exception: The above requirements do not apply if a restaurant is exempt from, or meets any of the exceptions to, the Virginia Indoor Clean Air Act (Chapter 28.2 of Title 15.2 (§ 15.2-2820 et seq.) of the Code of Virginia).

D. Change Section 1206.1 of the IBC to read:

1206.1 Scope. Sections 1206.2 and 1206.3 shall apply to common interior walls, partitions and floor or ceiling assemblies between adjacent dwelling units or between dwelling units and adjacent public areas such as halls, corridors, stairs or service areas. Section 1206.4 applies to the construction of the exterior envelope of Group R occupancies within airport noise zones and to the exterior envelope of Groups A, B, E, I and M occupancies in any locality in whose jurisdiction, or adjacent jurisdiction, is located a United States Master Jet Base, a licensed airport or United States government or military air facility, when such requirements are enforced by a locality pursuant to § 15.2-2295 of the Code of Virginia.

E. Add Section 1206.4 to the IBC to read:

1206.4 Airport noise attenuation standards. Where the Ldn is determined to be 65 dBA or greater, the minimum STC rating of structure components shall be provided in compliance with Table 1206.4. As an alternative to compliance with Table 1206.4, structures shall be permitted to be designed and constructed so as to limit the interior noise level to no greater than 45 Ldn. Exterior structures, terrain and permanent plantings shall be permitted to be included as part of the alternative design. The alternative design shall be certified by an RDP.

F. Add Table 1206.4 to the IBC to read:

	Table 1206.4 Airport Noise Attenuation Standards		
	Ldn	STC of exterior walls and roof/ceiling assemblies	STC of doors and windows
	65–69	39	25
	70–74	44	33
	75 or greater	49	38

G. Change Sections 1209.3.1 and 1209.3.2 and add Sections 1209.3.1.1, 1209.3.1.2, 1209.3.2.1, and 1209.3.2.2 to read:

1209.3.1 Water closet compartment. Each water closet utilized by the public or employees shall comply with Sections 1209.3.1.1 and 1209.3.1.2, as applicable. All fully-enclosed compartments shall be provided with occupancy indicators.

Exceptions:

1. A separate room or compartment shall not be required in a single-occupant toilet room with a lockable door.

2. Toilet rooms located in child day care facilities and containing two or more water closets shall be permitted to have one water closet without an enclosing compartment.

3. This provision is not applicable to toilet areas located within Group I-3 occupancy housing areas.

1209.3.1.1 Separate facilities. Each water closet provided in separate facilities shall occupy a separate compartment with walls or partitions and a door enclosing the fixtures to ensure privacy and shall comply with Section 405.3.1 of the VPC. Accessible water closets and compartments shall comply with ICC A117.1.

1209.3.1.2 Multi-user gender-neutral facilities. Each water closet provided in a multi-user gender-neutral toilet facility shall occupy a separate compartment with walls or partitions including the doors thereto, which shall extend to the floor and to the ceiling with maximum 1/2-inch (13 mm) clearances at the floor and ceiling, with gaps not exceeding 1/8-inch (3 mm) between the doors and partitions and partitions and walls, and shall comply with Section 405.3.1 of the VPC. Accessible water closet compartments shall comply with ICC A117.1 and the increased toe clearance requirements.

1209.3.2 Urinal separation and partitions. Each urinal utilized by the public or employees shall occupy a separate area with walls or partitions to provide privacy and comply with Sections 1209.3.1.1 and 1209.3.1.2, as applicable. All fully-enclosed compartments shall be provided with occupy indicators.

Exceptions:

1. Urinal partitions shall not be required in a single-occupant or family or assisted-use toilet room with a lockable door.

2. Toilet rooms located in child day care facilities and containing two or more urinals shall be permitted to have one urinal without partitions.

3. A separate room or compartment shall not be required in a single-occupant toilet room with a lockable door.

4. This provision is not applicable to toilet areas located within Group I-3 occupancy housing areas.

1209.3.2.1 Separate facilities. The walls or partitions for urinals in separate facilities shall begin at a height not more than 12 inches (305 mm) from and extend not less than 60 inches (1524 mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal not less than 18 inches (457 mm) or to a point not less than 6 inches (152 mm) beyond the outermost front lip of the urinal measured from the finished backwall surface, whichever is greater.
1209.3.2.2 Multi-user gender-neutral facilities. Each urinal provided in a multi-user gender-neutral toilet facility shall occupy a separate compartment with walls or partitions, including the doors thereto, where the partitions extend to the floor and to the ceiling with maximum 1/2-inch (13 mm) clearances, with gaps not exceeding 1/8-inch (3 mm) between the doors and partitions and partitions and walls, or shall all be located in a separate room with a door, enclosing the urinals to ensure privacy. Where an accessible urinal is located within a compartment, grab bars shall not be required for the urinal, the door shall be located to allow for a forward approach to the urinal, and increased toe clearances shall be provided in accordance with A117.1.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 26, eff. September 28, 2011; Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-264. Chapter 13 Energy efficiency.

Add Section 1301.1.1.1 to the IBC to read:

1301.1.1.1 Changes to the IECC. The following changes shall be made to the IECC:

1. Add Sections C402.1.4.2, C402.1.4.2.1, C402.1.4.2.2, C402.1.4.2.3, C402.2.1.2, C402.2.1.3, C402.2.1.4, and C402.2.1.5 and change Section C402.2.1.1 to read:

C402.1.4.2 Roof/Ceiling assembly. The maximum roof/ceiling assembly U-factor shall not exceed that specified in Table C402.1.4 based on construction materials used in the roof/ceiling assembly.

C402.1.4.2.1 Tapered, above-deck insulation based on thickness. Where used as a component of a maximum roof/ceiling assembly U-factor calculation, the tapered roof insulation R-value contribution to that calculation shall use the average thickness in inches (mm) along with the material R-value-per-inch (per-mm) for U-factor compliance as prescribed in Section C402.1.4.

C402.1.4.2.2 Suspended ceilings. Insulation installed on suspended ceilings having removable ceiling tiles shall not be considered part of the assembly U-factor of the roof/ceiling construction.

C402.1.4.2.3 Multiple layers and staggered joints. Continuous insulation board shall be installed in not less than two layers and the edge joints between each layer of insulation shall be staggered. Multiple layers and staggered joints are not required where insulation tapers to the roof deck at a gutter edge, roof drain, or scupper.

C402.2.1 Roof assembly. The minimum thermal resistance (R-value) of the insulating material installed either between the roof framing or continuously on the roof assembly shall be as specified in Table C402.1.3, based on construction materials used in the roof assembly.

C402.2.1.1 Tapered, above-deck insulation based on thickness. Where used as a component of a roof/ceiling assembly R-value calculation, the tapered roof insulation R-value contribution to that calculation shall use the average thickness in inches (mm) along with the material R-value-per-inch (per-mm) for R-value compliance as prescribed in Section C402.1.3.

C402.2.1.2 Minimum thickness, lowest point. The minimum thickness of above-deck roof insulation at its lowest point, gutter edge, roof drain, or scupper shall be no less than 1 inch (25 mm).

C402.2.1.3 Suspended ceilings. Insulation installed on suspended ceilings having removable ceiling tiles shall not be considered part of the minimum thermal resistance (R-value) of roof insulation in roof/ceiling construction.

C402.2.1.4 Multiple layers and staggered joints. Continuous insulation board shall be installed in not less than two layers and the edge joints between each layer of insulation shall be staggered. Multiple layers and staggered joints are not required where insulation tapers to the roof deck at a gutter edge, roof drain or scupper.

C402.2.1.5 Skylight curbs. Skylight curbs shall be insulated to the level of roofs with insulation entirely above the deck or R-5, whichever is less.

Exception: Unit skylight curbs included as a component of a skylight listed and labeled in accordance with NFRC 100 shall not be required to be insulated.

2. Change the SHGC for Climate Zone 4 (Except Marine) of Table C402.4 to read:

Table C402.4 Building Envelope Requirements: Fenestration								
Climate Zone				4 (Except Marine)				
SHGC								
SHGC				0.36				

3. Change Sections C402.4.2, C402.4.2.1, and C402.4.2.2 and delete Section C402.4.1.2.

C402.4.2 Skylight area with daylight response controls. The skylight area shall be permitted to be not more than 5.0% of the roof area provided daylight responsive controls complying with Section C405.2.3.1 are installed in daylight zones under skylights.

C402.4.2.1 Daylight zone controls under skylights. Daylight responsive controls complying with Section C405.2.3.1 shall be provided to control all electric lights within daylight zones under skylights.

C402.4.2.2 Haze factor. Skylights that are installed in office, storage, automotive service, manufacturing, nonrefrigerated warehouse, retail store, and distribution/sorting area spaces shall have a glazing material or diffuser with a haze factor greater than 90% when tested in accordance with ASTM D1003.

Exception: Skylights designed and installed to exclude direct sunlight entering the occupied space by the use of fixed or automated baffles or the geometry of skylight and light well.

4. Change Section C402.4.3 to read:

C402.4.3 Maximum U-factor and SHGC. The maximum U-factor and solar heat gain coefficient (SHGC) for fenestration shall be as specified in Table C402.4.

The window projection factor shall be determined in accordance with Equation 4-5.

(Equation 4-5)

PF = A/B

where:

PF = Projection factor (decimal).

A = Distance measured horizontally from the farthest continuous extremity of any overhand, eave, or permanently attached shading device to the vertical surface of the glazing.

B = Distance measured vertically from the bottom of the glazing to the underside of the overhang, eave, or permanently attached shading device.

Where different windows or glass doors have different PF values, they shall each be evaluated separately.

Where the fenestration projection factor for a specific vertical fenestration product is greater than or equal to 0.20, the required maximum SHGC from Table C402.4 shall be adjusted by multiplying the required maximum SHGC by the multiplier specified in Table C402.4.3 corresponding with the orientation of the fenestration product and the projection factor.

5. Add Table C402.4.3 to read:

Table C402.4.3

SHGC Adjustment Multipliers

Projection factor	Oriented within 45 degrees of true north	All other orientations
$0.2 \leq PF < 0.5$	1.1	1.2
$PF \geq 0.5$	1.2	1.6

6. Add an exception to the first paragraph of Section 403.7.7 to read:

Exception: Any grease duct serving a Type I hood installed in accordance with IMC Section 506.3 shall not be required to have a motorized or gravity damper.

7. Add Section C403.2.2.1 to read:

C403.2.2.1 Dwelling unit mechanical ventilation. Mechanical ventilation shall be provided for dwelling units in accordance with the IMC.

8. Delete Section C403.7.5 and Table C403.7.5.

9. Delete Sections C404.5 through C404.5.2.1, including Tables.

Change Section C405.4 to read:

C405.4 Exterior lighting (Mandatory). All exterior lighting, other than low-voltage landscape lighting, shall comply with Section C405.4.1.

Exception: Where approved because of historical, safety, signage, or emergency considerations.

10. Change Section C502.1 to read:

C502.1 General. Additions to an existing building, building system or portion thereof shall conform to the provisions of Section 805 of the VEBC.

11. Delete Sections C502.2 through C502.2.6.2.

12. Change Section C503.1 to read:

C503.1 General. Alterations to any building or structure shall comply with the requirements of Chapter 6 of the VEBC.

13. Delete Sections C503.2 through C503.6.

14. Change Section C504.1 to read:

C504.1 General. Buildings and structures, and parts thereof, shall be repaired in compliance with Section 510 of the VEBC.

15. Delete Section C504.2.

16. Change Section R401.2 to read:

R401.2 Compliance. Projects shall comply with all provisions of Chapter 4 labeled "Mandatory" and one of the following:

1. Sections R401 through R404.

2. Section R405.

3. Section R406.

4. The most recent version of REScheck, keyed to the 2018 IECC.

17. Change Section R401.3 to read:

R401.3 A permanent certificate shall be completed by the builder or other approved party and posted on a wall in the space where the furnace is located, a utility room or an approved location inside the building. Where located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. Where approved, certificates for multi-family dwelling units shall be permitted to be located off-site at an identified location. The certificate shall indicate the predominant R-values of insulation installed in or on ceilings, roofs, walls, foundation components such as slabs, basement walls, crawl space walls and floors, and ducts outside conditioned spaces; U-factors of fenestration and the solar heat gain coefficient (SHGC) of fenestration; and the results from any required duct system and building envelope air leakage testing performed on the building. Where there is more than one value for each component, the certificate shall indicate the value covering the largest area. The certificate shall indicate the types and efficiencies of heating, cooling, and service water heating equipment. Where a gas-fired unvented room heater, electric furnace, or baseboard electric heater is installed in the residence, the certificate shall indicate "gas-fired unvented room heater," "electric furnace," or "baseboard electric heater," as appropriate. An efficiency shall not be indicated for gas-fired unvented room heaters, electric furnaces, and electric baseboard heaters.

18. Change the wood frame wall R-value categories for Climate Zone 4 (Except Marine) in Table R402.1.2 to read:

		Wood Frame Wall R-Value
		15 or 13 1[h]

19. Change the ceiling U-factor and frame wall U-factor categories for Climate Zone 4 (Except Marine) in Table R402.1.4 to read:

		Frame Wall U-Factor
		0.079

20. Change Section R402.2.4 to read:

R402.2.4 Access hatches and doors. Access doors from conditioned spaces to unconditioned spaces (e.g., attics and crawl spaces) shall be weatherstripped and insulated in accordance with the following values:

1. Hinged vertical doors shall have a minimum overall R-5 insulation value;

2. Hatches and scuttle hole covers shall be insulated to a level equivalent to the insulation on the surrounding surfaces; and

3. Pull down stairs shall have a minimum of 75% of the panel area having R-5 rigid insulation.

Access shall be provided to all equipment that prevents damaging or compressing the insulation. A wood framed or equivalent baffle or retainer is required to be provided when loose fill insulation is installed, the purpose of which is to prevent the loose fill insulation from spilling into the living space when the attic access is opened and to provide a permanent means of maintaining the installed R-value of the loose fill insulation.

21. Change Sections R402.4 and R402.4.1.1 to read:

R402.4 Air leakage. The building thermal envelope shall be constructed to limit air leakage in accordance with the requirements of Sections R402.4.1 through R402.4.5.

R402.4.1.1 Installation (Mandatory). The components of the building thermal envelope as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer's instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. Where required by the code official, an approved third party shall inspect all components and verify compliance.

22. Change the title of the "Insulation Installation Criteria" category of Table R402.4.1.1; change the "Shower/tub on exterior wall" category of Table R402.4.1.1, and add footnotes "b" and "c" to Table R402.4.1.1 to read:

	Component	Air Barrier Criteria	Insulation Installation Criteria[b]
	Shower/tub on exterior wall[c]	The air barrier installed at exterior walls adjacent to showers and tubs shall be installed on the interior side and	Exterior walls adjacent to showers and tubs shall be insulated.

		separate the exterior walls from the showers and tubs.	
	b. Structural integrity of headers shall be in accordance with the applicable building code. c. Air barriers used behind showers and tubs on exterior walls shall be of a permeable material that does not cause the entrapment of moisture in the stud cavity.		

23. Change Section R402.4.1.2 to read:

R402.4.1.2

Testing. The building or dwelling unit shall be tested and verified as having an air leakage rate not exceeding five air changes per hour in Climate Zone 4. Testing shall be conducted in accordance with RESNET/ICC 380, ASTM E 779, or ASTM E 1827 and reported at a pressure of 0.2 inch w.g. (50 Pascals). A written report of the results of the test shall be signed by the party conducting the test and provided to the building official. Testing shall be conducted by a Virginia licensed general contractor, a Virginia licensed HVAC contractor, a Virginia licensed home inspector, a Virginia registered design professional, a certified BPI Envelope Professional, a certified HERS rater, or a certified duct and envelope tightness rater. The party conducting the test shall have been trained on the equipment used to perform the test. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

Note: Should additional sealing be required as a result of the test, consideration may be given to the issuance of a temporary certificate of occupancy in accordance with Section 116.1.1.

During testing:

1. Exterior windows and doors and fireplace and stove doors shall be closed, but not sealed beyond the intended weatherstripping or other infiltration control measures;

2. Dampers, including exhaust, intake, makeup air, backdraft, and flue dampers, shall be closed, but not sealed beyond intended infiltration control measures;

3. Interior doors, if installed at the time of the test, shall be open;

4. Exterior doors for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;

5. Heating and cooling systems, if installed at the time of the test, shall be turned off; and

6. Supply and return registers, if installed at the time of the test, shall be fully open.

24. Change Section R403.3.3 to read:

R403.3.3 Duct testing (Mandatory). Ducts shall be pressure tested to determine air leakage by one of the following methods:

1. Rough-in test: Total leakage shall be measured with a pressure differential of 0.1 inch w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure if installed at the time of the test. All registers shall be taped or otherwise sealed during the test.

2. Postconstruction test: Total leakage shall be measured with a pressure differential of 0.1 inch w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. Registers shall be taped or otherwise sealed during the test.

Exception: A duct air leakage test shall not be required where the ducts and air handlers are located entirely within the building thermal envelope.

A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. The licensed mechanical contractor installing the mechanical system shall be permitted to perform the duct testing. The contractor shall have been trained on the equipment used to perform the test.

25. Delete Section R403.3.5.

26. Change Section R403.7 to read:

R403.7 Equipment and appliance sizing. Heating and cooling equipment and appliances shall be sized in accordance with ACCA Manual S or other approved sizing methodologies based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies.

Exception: Heating and cooling equipment and appliance sizing shall not be limited to the capacities determined in accordance with Manual S or other approved sizing methodologies where any of the following conditions apply:

1. The specified equipment or appliance utilizes multi-stage technology or variable refrigerant flow technology and the loads calculated in accordance with the approved heating and cooling methodology fall within the range of the manufacturer's published capacities for that equipment or appliance.

2. The specified equipment or appliance manufacturer's published capacities cannot satisfy both the total and sensible heat gains calculated in accordance with the approved heating and cooling methodology and the next larger standard size unit is specified.

3. The specified equipment or appliance is the lowest capacity unit available from the specified manufacturer.

27. Delete Sections C404.5 through C404.5.2.1, including Tables.

28. Change footnote "a" in Table R406.4 to read:

a. When onsite renewable energy is included for compliance using the ERI analysis per Section R406.4, the building shall meet the mandatory requirements of Section R406.2 and the building thermal envelope shall be greater than or equal to levels of energy efficiency and solar heat gain coefficient in Table R402.1.2, with a ceiling R-value of 49 and a wood frame wall R-value of 20 or 13+5, or Table R402.1.4, with a ceiling U-factor of 0.026 and a frame wall U-factor of 0.060.	

29. Change Section R501.1 to read:

R501.1 Scope. The provisions of the Virginia Existing Building Code shall control the alteration, repair, addition and change of occupancy of existing buildings and structures.

30. Delete Sections R501.1.1 through R501.6.

31. Change Section R502.1 to read:

R502.1 General. Additions to an existing building, building system or portion thereof shall conform to the provisions of Section 811 of the VEBC.

32. Delete Sections R502.1.1 through R502.1.2.

33. Change Section R503.1 to read:

R503.1 General. Alterations to any building or structure shall comply with the requirements of Chapter 6 of the VEBC.

34. Delete Sections R503.1.1 through R503.2

35. Change Section R504.1 to read:

R504.1 General. Buildings, structures and parts thereof shall be repaired in compliance with Section 510 of the VEBC.

36. Delete Section R504.2.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-265. (Repealed.)

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; repealed, Virginia Register Volume 24, Issue 14, eff. May 1, 2008.
Statutory Authority

Historical Notes

13VAC5-63-267. Chapter 14 Exterior walls.

A. Delete Section 1402.5 of the IBC.

B. Add Section 1402.8 to the IBC to read:

1402.8 Air barriers. The exterior wall envelope shall be designed and constructed by providing air barriers that comply with the IECC.

C. Change Section 1406.10.4 of the IBC to read:

1406.10.4 Full-scale test. The MCM system shall be tested in accordance with, and comply with, the acceptance criteria of NFPA 285. Such testing shall be performed on the MCM system with the MCM in the maximum thickness intended for use. Where noncombustible materials or combustible materials permitted by Section 603, 803, 806, or 1406 differ from assembly to assembly or within an assembly, multiple tests shall not be required.

Exception: The MCM system is not required to be tested in accordance with, and comply with, acceptance criteria of NFPA 285 in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 24, Issue 14, eff. May 1, 2008; amended, Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-268. Chapter 15 Roof assemblies and rooftop structures.

A. Change the title of IBC Section 1511 to read:

Roofing and Roofing Repair.

B. Change Section 1511.1 of the IBC to read as follows and delete the remainder of Section 1511 of the IBC:

1511.1 General. Materials and methods of application used for reroofing and roof repair shall comply with the applicable requirements of Chapter 15 and the requirements of Sections 302.2, 501.1, and 602.3.4 of the VEBC, as applicable.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-270. Chapter 16 Structural design.

A. Change Section 1609.3 of the IBC to read:

1609.3 Basic wind speed. The ultimate design wind speed, V_{ult}, in miles per hour (mph), for the determination of the wind loads shall be determined by Figures 1609.3(1), 1609.3(2), 1609.3(3), and 1609.3(4). The ultimate design wind speed, V_{ult}, for use in the design of Risk Category II buildings and structures shall be obtained from Figure 1609.3(1). The ultimate design wind speed, V_{ult}, for use in the design of Risk Categories III and IV buildings and structures shall be obtained from Figures 1609.3(2) and 1609.3(3), respectively. The ultimate design wind speed, V_{ult}, for use in the design of Risk Category I buildings and structures shall be obtained from Figure 1609.3(4). The ultimate design wind speeds for localities in special wind regions, near mountainous terrains, and near gorges shall be based on elevation. Areas at 4,000 feet in elevation or higher shall use 142 V mph (62.5 m/s) and areas under 4,000 feet in elevation shall use 116 V mph (51 m/s). Gorge areas shall be based on the highest recorded speed per locality or in accordance with local jurisdiction requirements determined in accordance with Section 26.5.1 of ASCE 7.

In nonhurricane-prone regions, when the ultimate design wind speed, V_{ult}, is estimated from regional climatic data, the ultimate design wind speed, V_{ult}, shall be determined in accordance with Section 26.5.3 of ASCE 7.

B. Add Section 1612.1.1 to the IBC to read:

1612.1.1 Elevation of manufactured homes. New or replacement manufactured homes to be located in any flood hazard zone shall be placed in accordance with the applicable elevation requirements of this code.

Exception: Manufactured homes installed on sites in an existing manufactured home park or subdivision shall be permitted to be placed so that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches (914 mm) above grade in lieu of being elevated at or above the base flood elevation provided no manufactured home at the same site has sustained flood damage exceeding 50% of the market value of the home before the damage occurred.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; Errata, 22:5 VA.R. 734 November 14, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-280. Chapter 17 Special inspections and tests.

A. Change Section 1703.1 of the IBC to read:

1703.1 Approved agency. An approved agency responsible for laboratory testing or special inspections, or both, must comply with the qualification, certification and experience requirements of ASTM E329 or the alternatives listed herein.

B. Change Section 1703.1.1 of the IBC to read:

1703.1.1 Independence. An approved agency shall be objective and competent. The agency shall also disclose possible conflicts of interest so that objectivity can be confirmed. The special inspector and their agents shall be independent from the person, persons or contractor responsible for the physical construction of the project requiring special inspections.

C. Change Section 1703.1.3 of the IBC to read:

1703.1.3 Personnel. An approved agency shall employ experienced personnel educated in conducting, supervising and evaluating tests or inspections, or both. Upon request by the building official, documentation shall be provided demonstrating the applicable agency's accreditation as noted in ASTM E329 and individuals' resumes indicating pertinent training, certifications and other qualifications for special inspection personnel associated with the proposed construction requiring special inspections. The building official may prescribe the manner of qualification documentation and frequency of updating information regarding agency or individual inspector approval.

Firms providing special inspection services or individual inspectors seeking approval of alternative certifications or qualifications, or both, listed in ASTM E329 may submit documentation demonstrating equivalency. This documentation may include evidence of meeting other recognized standards or alternative certifications to demonstrate that the minimum qualifications, certification and experience intended by ASTM E329 have been met. The building official may, if satisfied that equivalency has been demonstrated, approve the credentials of the firm or individual.

D. Change Section 1704.2 of the IBC to read:

1704.2 Special inspections. Where application is made for construction as described in this section, the owner shall employ one or more special inspectors to provide inspections and tests during construction on the types of work listed under Section 1705. All individuals or agents performing special inspection functions shall operate under the direct supervision of an RDP in responsible charge of special inspection activities, also known as the "special inspector." The special inspector shall ensure that the individuals under their charge are performing only those special inspections or laboratory testing that are consistent with their knowledge, training and certification for the specified inspection or laboratory testing.

Exceptions:

1. The building official shall be permitted to waive special inspections and tests.

2. Special inspections and tests are not required for:

2.1. One story buildings under 20 feet (6096 mm) in height which do not exceed 5,000 square feet (565 m^2) in building area; or

2.2. Alterations to Group U structures which do not increase loads in accordance with Sections 603.7.3 and 603.7.4 of the VEBC.

3. Unless otherwise required by the building official, special inspections and tests are not required for occupancies in Group R-3, R-4 or R-5 and occupancies in Group U that are accessory to a residential occupancy including those listed in Section 312.1.

4. Special inspections and tests are not required for portions of structures designed and constructed in accordance with the cold-formed steel light-frame construction provisions of Section 2211.1.2 or the conventional light-frame construction provisions of Section 2308.

5. The contractor is permitted to employ the approved agencies where the contractor is also the owner.

E. Change Section 1704.2.3 of the IBC to read:

1704.2.3 Statement of special inspections. The permit applicant shall submit a statement of special inspections prepared by the RDP in responsible charge in accordance with Section 111.1. This statement shall be in accordance with Section 1704.3.

Exception:

The statement of special inspections is permitted to be prepared by a qualified person approved by the building official for construction not designed by a registered design professional.

F. Change category "12" of Table 1705.3 of the IBC to read:

Type	Continuous Special Inspection	Periodic Special Inspection	Referenced Standard[a]	IBC Reference
12. Inspect formwork for shape, location and dimensions of the concrete member being formed, shoring and reshoring.	--	X	ACI 318: 26.11.1.2(b)	--

G. Delete Sections 1705.17, 1705.17.1, and 1705.17.2 of the IBC.

H. Change Sections 1709.5.2 of the IBC to read:

1709.5.2 Exterior windows and door assemblies not provided for in Section 1709.5.1. Exterior window and door assemblies shall be tested in accordance with ASTM E330. Exterior window and door assemblies containing glass shall comply with Section 2403. The design pressure for testing shall be calculated in accordance with Chapter 16. Each assembly shall be tested for 10 seconds at a load equal to 1.5 times the design pressure.

I. Add Section 1709.5.2.1 to the IBC to read:

1709.5.2.1 Garage doors and rolling doors. Garage doors and rolling doors shall be tested in accordance with either ASTM E 330 or ANSI/DASMA 108 and shall meet the pass/fail acceptance criteria of ANSI/DSMA 108. Garage doors and rolling doors shall be labeled with a permanent label identifying the door manufacturer, the door model/series number, the positive and negative design wind pressure rating, the installation drawing reference number, and the applicable test standard.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-290. Chapter 18 Soils and foundations.

A. Change the exception to Section 1804.6 of the IBC to read:

Exception: Compacted fill material less than 12 inches (305 mm) in depth need not comply with an approved report, provided it is a natural non-organic material that is not susceptible to swelling when exposed to moisture and it has been compacted to a minimum of 90% Modified Proctor in accordance with ASTM D1557. The compaction shall be verified by a qualified inspector approved by the building official. Material other than natural material may be used as fill material when accompanied by a certification from an RDP and approved by the building official.

B. Add an exception to Section 1808.1 of the IBC to read:

Exception: One-story detached accessory structures not exceeding 256 square feet (23.78m^2) of building area, provided all of the following conditions are met:

1. The building eave height is 10 feet (3048 mm) or less.

2. The maximum height from the finished floor level to grade does not exceed 18 inches (457.2 mm).

3. The supporting structural elements in direct contact with the ground shall be placed level on firm soil and when such elements are wood they shall be approved pressure preservative treated suitable for ground contact use.

4. The structure is anchored to withstand wind loads as required by this code.

5. The structure shall be of light-frame construction with walls and roof of light weight material, not slate, tile, brick or masonry.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-295. Chapter 23 Wood.

Add Exception 2 to Item 2 of Section 2308.2.3 of the IBC to read:

2. Concrete slab-on-grade live load limited only by allowable soil bearing pressure.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 30, Issue 16, eff. July 14, 2014; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-298. Chapter 26 Plastic.

Change Section 2603.5.5 of the IBC to read:

2603.5.5 Vertical and lateral fire propagation. Exterior wall assemblies shall be tested in accordance with, and comply with, acceptance criteria of NFPA 285. Where noncombustible materials or combustible materials permitted by Section 603, 803, 806 or 1405 differ from assembly to assembly or within an assembly, multiple tests shall not be required.

Exceptions:

1. One-story buildings where the exterior wall covering is noncombustible.

2. Wall assemblies where the foam plastic insulation is covered on each face by not less than 1-inch (25 mm) thickness of masonry or concrete and meeting one of the following:

2.1. There is no air space between the insulation and the concrete or masonry.

2.2. The insulation has a flame spread index of not more than 25 as determined in accordance with ASTM E 84 or UL 723 and the maximum air space between the insulation and the concrete or masonry is not more than 1 inch (25 mm).

3. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 30, Issue 16, eff. July 14, 2014; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-300. Chapter 27 Electrical.

A. Change Section 2701.1 of the IBC to read:

2701.1 Scope. This chapter governs the electrical components, equipment and systems used in buildings and structures covered by this code. Electrical components, equipment and systems shall be designed and constructed in accordance with the provisions of this code and NFPA 70.

B. Add Section 2701.1.1 to the IBC to read:

2701.1.1 Changes to NFPA 70. The following changes shall be made to NFPA 70:

1. Change Sections 334.10(2) and 334.10(3) of NFPA 70 to read:

(2) Multifamily dwellings not exceeding four floors above grade and multifamily dwellings of any height permitted to be of Types III, IV and V construction except in any case as prohibited in 334.12.

(3) Other structures not exceeding four floors above grade and other structures of any height permitted to be of Types III, IV and V construction except in any case as prohibited in 334.12. In structures exceeding four floors above grade, cables shall be concealed within walls, floors or ceilings that provide a thermal barrier of material that has at least a 15-minute finish rating as identified in listings of fire-rated assemblies.

For the purpose of Items 2 and 3 above, the first floor of a building shall be that floor that has 50% or more of the exterior wall surface area level with or above finished grade. One additional level that is the first level and not designed for human habitation and used only for vehicle parking, storage or similar use shall be permitted.

2. Change Section 700.12(F)(2)(6) of NFPA 70 to read:

(6) Where the normal power branch circuits that supply luminaires providing illumination immediately on the inside and outside of exit doors are supplied by the same service or feeder, the remote heads providing emergency illumination for the exterior of an exit door shall be permitted to be supplied by the unit equipment serving the area immediately inside the exit door.

3. Change Article 555 of NFPA 70 2017 Edition to NFPA 70 2020 Edition for all code requirements related to Marinas, Boatyards, and Commercial and Noncommercial Docking Facilities.

C. Add Section 2701.1.2 to the IBC to read:

2701.1.2 Temporary connection to dwelling units. The building official shall give permission to energize the electrical service equipment of a one-family or two-family dwelling unit when all of the following requirements have been approved:

1. The service wiring and equipment, including the meter socket enclosure, shall be installed and the service wiring terminated.

2. The grounding electrode system shall be installed and terminated.

3. At least one receptacle outlet on a ground fault protected circuit shall be installed and the circuit wiring terminated.

4. Service equipment covers shall be installed.

5. The building roof covering shall be installed.

6. Temporary electrical service equipment shall be suitable for wet locations unless the interior is dry and protected from the weather.

D. Add Section 2701.1.3 to the IBC to read:

2701.1.3 Assisted living facility generator requirements. Generators installed to comply with regulations for assisted living facilities licensed by the Virginia Department of Social Services shall be permitted to be optional standby systems.

E. Change Sections 2702.2.8 and 2702.2.9 of the IBC to read:

2702.2.8 Group I-2 occupancies. Emergency power shall be provided in accordance with Section 407.11 for Group I-2 occupancies licensed by the Virginia Department of Health as a hospital, nursing or hospice facility.

2702.2.9 Group I-3 occupancies. Emergency power shall be provided for doors in Group I-3 occupancies in accordance with Section 408.4.2.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; Errata, 22:5 VA.R. 734 November 14, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-310. Chapter 28 Mechanical systems.

A. Change Section 2801.1 of the IBC to read:

2801.1 Scope. Mechanical appliances, equipment and systems shall be constructed and installed in accordance with this chapter, the IMC and the IFGC. Masonry chimneys, fireplaces and barbecues shall comply with the IMC and Chapter 21 of this code.

Exception: This code shall not govern the construction of water heaters, boilers and pressure vessels to the extent which they are regulated by the Virginia Boiler and Pressure Vessel Regulations (16VAC25-50). However, the building official may require the owner of a structure to submit documentation to substantiate compliance with those regulations.

B. Add Section 2801.1.1 to the IBC to read:

2801.1.1 Required heating in dwelling units. Heating facilities shall be required in every dwelling unit or portion thereof which is to be rented, leased or let on terms, either expressed or implied, to furnish heat to the occupants thereof. The heating facilities shall be capable of maintaining the room temperature at 65°F (18°C) during the period from October 15 to May 1 during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours when measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls. The capability of the heating system shall be based on the outside design temperature required for the locality by this code.

C. Add Section 2801.1.2 to the IBC to read:

2801.1.2 Required heating in nonresidential structures. Heating facilities shall be required in every enclosed occupied space in nonresidential structures. The heating facilities shall be capable of producing sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours. The required room temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls.

Processing, storage and operation areas that require cooling or special temperature conditions and areas in which persons are primarily engaged in vigorous physical activities are exempt from these requirements.

D. Add Section 2801.1.3 to the IBC to read:

2801.1.3 Changes to the IMC. The following changes shall be made to the IMC:

1. Change Section 401.2 of the IMC to read:

401.2 Ventilation required. Every occupied space shall be ventilated by natural means in accordance with Section 402 or by mechanical means in accordance with Section 403. Group R dwelling units shall be ventilated by mechanical means in accordance with Section 403. Ambulatory care facilities and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407.

2. Change Section 403.3.1.1 of the IMC to read:

403.3.1.1 Outdoor airflow rate. Ventilation systems shall be designed to have the capacity to supply the minimum outdoor airflow rate determined in accordance with this section. In each occupiable space, the ventilation system shall be designed to deliver the required rate of outdoor airflow to the breathing zone. The occupant load utilized for design of the ventilation system shall not be less than the number determined from the estimated maximum occupant load rate indicated in Table 403.3.1.1. Ventilation rates for occupancies not represented in Table 403.3.1.1 shall be those for a listed occupancy classification that is most similar in terms of occupant density, activities and building construction; or shall be determined by an approved engineering analysis. The ventilation system shall be designed to supply the required rate of ventilation air continuously during the period the building is occupied, except as otherwise stated in other provisions of the code.

With the exception of smoking lounges and other designated areas where smoking is permitted, the ventilation rates in Table 403.3.1.1 are based on the absence of smoking in occupiable spaces.

Exception: The occupant load is not required to be determined based on the estimated maximum occupant load rate indicated in Table 403.3.1.1 where approved statistical data document the accuracy of an alternate anticipated occupant density.

3. Add the following rows to Table 403.3.1.1 of the IMC to read:

OCCUPANCY CLASSIFICATION	Occupant Density #/1000 ft^{2} [a]	People Outdoor Airflow Rate in Breathing Zone, R_p cfm/person	Area Outdoor Airflow Rate in Breathing Zone, R_a cfm/ft^{2a}	Exhaust Airflow Rate Cfm/ft^{2a}
Food and beverage service				
Bars or cocktail lounges designated as an area where smoking is permitted[b]	100	30	--	--
Cafeteria or fast food designated as an area where smoking is permitted[b]	100	20	--	--
Dining rooms designated as an area where smoking is permitted[b]	70	20	--	--
Public spaces				
Lounges designated as an area where smoking is permitted[b]	100	30	--	--
Medical procedure rooms[I]	20	15	-	-
Patient rooms[I]	10	25	-	-
Physical therapy rooms[I]	20	15	-	-

i. For spaces that are not located in an ambulatory care facility or clinic, outpatient as defined in Chapter 2 of the VCC.

4. Change Section 504.8.2 of the IMC to read:

504.8.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct.

Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

5. Change item 2 of Section 504.10 to read:

2. Dampers shall be prohibited in the exhaust duct. Penetrations of the shaft and ductwork shall be protected in accordance with Section 607.5.5, Exception 1.

6. Change Exception 1 of Section 505.3 of the IMC to read:

1. In Group R buildings, where installed in accordance with the manufacturer's installation instructions and where mechanical or natural ventilation is otherwise provided in accordance with Chapter 4, listed and labeled ductless range hoods shall not be required to discharge to the outdoors.

7. Change item 2 in Section 505.5 to read:

2. Penetrations of the shaft and ductwork shall be protected in accordance with Section 607.5.5.

8. Change Section 505.6 of the IMC to read:

505.6 Other than Group R. In other than Group R occupancies, where electric domestic cooking appliances are utilized for domestic purposes, domestic range hoods shall be permitted for such appliances. Hoods and exhaust systems for such electric domestic cooking appliances shall be in accordance with Sections 505.2 and 505.4. In other than Group R occupancies, where fuel-fired domestic cooking appliances are utilized for domestic purposes, a Type I or Type II hood shall be provided as required for the type of appliances and processes in accordance with Section 507.1.

9. Change Section 506.5 of the IMC to read:

506.5 Exhaust equipment. Exhaust equipment, including fans and grease reservoirs, shall comply with Sections 506.5.1 through 506.5.6 and shall be of an approved design or shall be listed for the application.

10. Change Section 506.5.2, including Items 1, 3, and 5 of the IMC to read: (Items not shown remain the same.)

506.5.2 Pollution control units. The installation of pollution control units shall be in accordance with all of the following:

1. Pollution control units shall be listed and labeled in accordance with UL 8782.

3. Bracing and supports for pollution control units shall be of noncombustible material securely attached to the structure and designed to carry gravity and seismic loads within the stress limitations of the International Building Code.

5. Clearances shall be maintained between the pollution control unit and combustible material in accordance with the listing.

11. Change Section 510.7.1.1 of the IMC to read:

510.7.1.1 Shaft penetrations. Hazardous exhaust ducts that penetrate fire-resistance-rated shafts shall comply with Section 713.11 of the International Building Code.

12. Change Section 607.5.5 of the IMC to read:

607.5.5 Shaft enclosures. Shaft enclosures that are permitted to be penetrated by ducts and air transfer openings shall be protected with approved fire and smoke dampers installed in accordance with their listing.

Exceptions:

1. Fire and smoke dampers are not required where steel exhaust subducts extend at least 22 inches (559 mm) vertically in exhaust shafts, provided there is a continuous airflow upward to the outside.

2. Fire dampers are not required where penetrations are tested in accordance with ASTM E119 as part of the fire-resistance-rated assembly.

3. Fire and smoke dampers are not required where ducts are used as part of an approved smoke control system in accordance with Section 909 of the International Building Code.

4. Fire and smoke dampers are not required where the penetrations are in parking garage exhaust or supply shafts that are separated from other building shafts by not less than two-hour fire-resistance-rated construction.

5. Smoke dampers are not required where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the International Building Code.

13. Add Section 607.6.2.2 to the IMC to read:

607.6.2.2 Equipment shutdown. Where ceiling radiation dampers are listed as static dampers, the HVAC equipment shall be effectively shut down to stop the airflow prior to the damper closing using one of the following methods:

1. A duct detector installed in the return duct.

2. An area smoke detector interlocked with the HVAC equipment.

3. A listed heat sensor installed in the return duct.

E. Add Section 2801.1.4 to the IBC to read:

2801.1.4 Changes to the IFGC. The following changes shall be made to the IFGC:

1. Change Section 301.1 of the IFGC to read:

301.1 Scope. This code shall apply to the installation of fuel gas piping systems, fuel gas utilization equipment, and related accessories as follows:

1. Coverage of piping systems shall extend from the point of delivery to the connections with gas utilization equipment. (See "point of delivery.")

2. Systems with an operating pressure of 125 psig (862 kPa gauge) or less.

Piping systems for gas-air mixtures within the flammable range with an operating pressure of 10 psig (69 kPa gauge) or less.

LP-Gas piping systems with an operating pressure of 20 psig (140 kPa gauge) or less.

3. Piping systems requirements shall include design, materials, components, fabrication, assembly, installation, testing and inspection.

4. Requirements for gas utilization equipment and related accessories shall include installation, combustion and ventilation air and venting.

This code shall not apply to the following:

1. Portable LP-Gas equipment of all types that are not connected to a fixed fuel piping system.

2. Installation of farm equipment such as brooders, dehydrators, dryers, and irrigation equipment.

3. Raw material (feedstock) applications except for piping to special atmosphere generators.

4. Oxygen-fuel gas cutting and welding systems.

5. Industrial gas applications using gases such as acetylene and acetylenic compounds, hydrogen, ammonia, carbon monoxide, oxygen, and nitrogen.

6. Petroleum refineries, pipeline compressor or pumping stations, loading terminals, compounding plants, refinery tank farms, and natural gas processing plants.

7. Integrated chemical plants or portions of such plants where flammable or combustible liquids or gases are produced by chemical reactions or used in chemical reactions.

8. LP-Gas installations at utility gas plants.

9. Liquefied natural gas (LNG) installations.

10. Fuel gas piping in power and atomic energy plants.

11. Proprietary items of equipment, apparatus, or instruments such as gas generating sets, compressors, and calorimeters.

12. LP-Gas equipment for vaporization, gas mixing, and gas manufacturing.

13. Temporary LP-Gas piping for buildings under construction or renovation that is not to become part of the permanent piping system.

14. Installation of LP-Gas systems for railroad switch heating.

15. Installation of LP-Gas and compressed natural gas (CNG) systems on vehicles.

16. Except as provided in Section 401.1.1, gas piping, meters, gas pressure regulators, and other appurtenances used by the serving gas supplier in the distribution of gas, other than undiluted LP-Gas.

17. Building design and construction, except as specified herein.

2. Change Sections 310.1 and 310.2 of the IFGC to read:

310.1 Pipe and tubing. Each above-group portion of a gas piping system that is likely to become energized shall be electrically continuous and bonded to an effective ground-fault current path. Gas piping shall be considered to be bonded where it is connected to appliances that are connected to the equipment grounding conductor of the circuit supplying that appliance. Corrugated stainless steel tubing (CSST) piping systems listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26 shall comply with this section. Where any CSST segments of a piping system are not listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26, Section 310.2 shall apply.

310.2 CSST without arc resistant jacket or coating system. CSST gas piping systems and piping systems containing one or more segments of CSST not listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26 shall be bonded to the electrical service grounding electrode system or, where provided, the lightning protection electrode system and shall comply with Sections 310.2.1 through 310.2.5.

3. Add Section 404.11.6 to the IFGC to read:

404.11.6 Coating application. Joints in gas piping systems shall not be coated prior to testing and approval.

4. Change Section 614.8.2 of the IFGC to read:

614.8.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct.

Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

5. Change the following referenced standard in Chapter 8 of the IFGC:

Standard Reference Number	Title	Referenced in Code Section Number
ANSI LC1/CSA 6.26-18	Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing (CSST)	310.1, 310.1.1, 403.5.4
UL8782-17	Outline of Investigation for Pollution Control Units for Commercial Cooking	506.5.2

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Errata, 24:17 VA.R. April 28, 2008; amended, Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-320. Chapter 29 Plumbing systems.

A. Change Section 2901.1 of the IBC to read:

2901.1 Scope. The provisions of this chapter and the IPC shall govern the design and installation of all plumbing systems and equipment, except that as provided for in Section 103.5 for functional design, water supply sources and sewage disposal systems are regulated and approved by the Virginia Department of Health and the Virginia Department of Environmental Quality. The approval of pumping and electrical equipment associated with such water supply sources and sewage disposal systems shall, however, be the responsibility of the building official.

Note: See also the Memorandum of Agreement in the "Related Laws Package," which is available from DHCD.

B. Add Section 2901.1.1 to the IBC to read:

2901.1.1 Changes to the IPC. The following changes shall be made to the IPC:

1. Add the following definitions to the IPC to read:

Nonpotable fixtures and outlets. Fixtures and outlets that are not dependent on potable water for the safe operation to perform their intended use. Such fixtures and outlets may include water closets, urinals, irrigation, mechanical equipment, and hose connections to perform operations, such as vehicle washing and lawn maintenance.

Nonpotable water systems. Water systems for the collection, treatment, storage, distribution, and use or reuse of nonpotable water. Nonpotable systems include reclaimed water, rainwater, and gray water systems.

Service sink. A general purpose sink exclusively intended to be used for facilitating the cleaning of a building or tenant space.

Stormwater. Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

2. Change the following definitions in the IPC to read:

Rainwater. Natural precipitation, including snow melt, from roof surfaces only.

Reclaimed water. Reclaimed water means water resulting from the treatment of domestic, municipal, or industrial wastewater that is suitable for a water reuse that would not otherwise occur. Specifically excluded from this definition is "gray water."

3. Change the exception to Section 301.3 of the IPC to read:

Exception: Bathtubs, showers, lavatories, clothes washers and laundry trays shall not be required to discharge to the sanitary drainage system where such fixtures discharge to an approved nonpotable gray water system in accordance with the applicable provisions of Chapter 13.

4. Delete Section 311 of the IPC in its entirety.

5.

Change Table 403.1 of the IPC to read:

TABLE 403.1

MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES[a] (See Sections 403.1.1 and 403.2)

NO.	CLASSIFICATION	DESCRIPTION	WATER CLOSETS	LAVATORIES	BATHTUBS/	DRINKING	OTHER

			(URINALS: SEE SECTION 424.2)				SHOWERS	FOUNTAINS	
			MALE	FEMALE	MALE	FEMALE		(SEE SECTION 410)	
1	Assembly	Theaters and other buildings for the performing arts and motion pictures[d]	1 per 125 1 per 85.5[h]	1 per 65	1 per 200		—	1 per 500	1 service sink
		Nightclubs, bars, taverns, dance halls and buildings for similar purposes[d]	1 per 40	1 per 40	1 per 75		—	1 per 500	1 service sink
		Restaurants, banquet halls and food courts[d]	1 per 75	1 per 75	1 per 200		—	1 per 500	1 service sink
		Gaming areas	1 per 100 for the first 400 and 1 per 250 for the remainder exceeding 400 1 per 66.67 for the first 800 and 1 per 187.5 for the remainder exceeding 800[h]	1 per 50 for the first 400 and 1 per 150 for the remainder exceeding 400	1 per 250 for the first 750 and 1 per 500 for the remainder exceeding 750		—	1 per 1,000	1 service sink
		Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums[d]	1 per 125 1 per 85.5[h]	1 per 65	1 per 200		—	1 per 500	1 service sink
		Passenger terminals (other than airport terminals) and transportation facilities[d]	1 per 500	1 per 500	1 per 750		—	1 per 1,000	1 service sink
		Airport terminals	1 per 500	1 per 100 for the first 500 and 1 per 150 for the remainder	1 per 750		—	1 per 1,000	1 service sink

		exceeding 500				
Places of worship and other religious services[d]	1 per 150	1 per 75 1 per 100[h]	1 per 200	—	1 per 1,000	1 service sink
Coliseums, arenas, skating rinks, pools and tennis courts for indoor sporting events and activities	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200 1 per 150	—	1 per 1,000	1 service sink
	1 per 52.2 for the first 3,025 and 1 per 80 for the remainder exceeding 3, 025[h]		1 per 171.4[h]			
Stadiums, amusement parks, bleachers and grandstands for outdoor sporting events and activities[f]	1 per 75 for the first 1,500 and 1 per 120 for the remainder exceeding 1,500	1 per 40 for the first 1,520 and 1 per 60 for the remainder exceeding 1,520	1 per 200 1 per 150	—	1 per 1,000	1 service sink
	1 per 52.2 for the first 3,025 and 1 per 80 for the remainder exceeding 3,025[h]		1 per 171.4[h]			

6. Add footnotes "g" and "h" to Table 403.1 of the IPC to read:

g. The occupant load for pools shall be in accordance with the "Skating rinks, swimming pools" category of Table 1004.5 of the IBC.

h. Use this fixture ratio for determining the minimum number of fixtures for multi-user gender-neutral toilet facilities.

7. Add an exception to Section 403.1.1 of the IPC to read:

2. In other than Group A Occupancies where occupant ratios differ from 50/50 split, distribution of the sexes is not required where single-user water closets and bathing room fixtures are provided in accordance with Section 403.1.2.

8. Change Section 403.1.2 of the IPC to read:

403.1.2 Single-user toilet and bathing room fixtures. The plumbing fixtures located in single-user toilet and bathing rooms, including family or assisted use toilet and bathing rooms that are required by Section 1109.2.1 of the International Building Code, shall contribute toward the total number of required plumbing fixtures for a building or tenant space. Single-user toilet and bathing rooms, and family or assisted-use toilet rooms and bathing rooms shall be identified as being available for use by all persons regardless of their sex.

The total number of fixtures shall be permitted to be based on the required number of separate facilities or based on the aggregate of any combination of single-user or separate facilities.

9. Add Section 403.1.4 and Table 403.1.4 to the IPC to read:

403.1.4 Marina fixtures. Notwithstanding any provision to the contrary, plumbing fixtures shall be provided for marinas in the minimum number shown in Table 403.1.4. Fixtures shall be located within 500 feet walking distance from the shore end of any dock they serve. Separate facilities shall be provided for each sex with an equal number of fixtures of each type in each facility, except that separate facilities are not required where the number of slips is less than 25. Urinals may be substituted for up to 50% of water closets.

	Table 403.1.4 Minimum Number of Required Plumbing Fixtures for Marinas			
	Number of Slips	Plumbing Fixtures		
		Water Closets	Lavatories	Showers
	1 - 24	1	1	1
	25 - 49	4	4	2
	50 - 99	6	4	2

	100 - 149	8	6	4
	150 - 199	10	8	4
	200 - 249	12	10	6
	250 or greater	Two additional fixtures of each type for each 100 additional slips.		

10. Add exceptions 5 and 6 to Section 403.2 of the IPC to read:

5. Separate facilities shall not be required to be designated by sex where single-user toilet rooms are provided in accordance with Section 403.1.2.

6. Separate facilities shall not be required where multi-user gender-neutral facilities are provided in accordance with Section 405.3 and Section 1109.2.4 of the VCC.

11. Change Section 403.2.1 of the IPC to read

12. Change Section 403.3.3 of the IPC to read:

403.3.3 Location of toilet facilities in occupancies other than malls and airports. In occupancies other than covered and open mall buildings and airport terminals, the required public and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

Exceptions:

1. The location and maximum distances of travel to required employee facilities in factory and industrial occupancies are permitted to exceed that required by this section, provided that the location and maximum travel distance are approved.

2. The location and maximum distances of travel to the required public facilities located on cemetery property are permitted to exceed that required by this section, provided that the location and maximum travel distance are located on the same property and approved.

13. The location and maximum distances of travel to required public and employee facilities in Group S occupancies are permitted to exceed that required by this section, provided that the location and maximum distance of travel are approved.

13. Renumber Section 403.3.5 to Section 403.3.6 and Section 403.3.6 to Section 403.3.7; and change Section 403.3.5 to read:

403.3.5 Location of toilet facilities in airport terminals. In airport terminals, the minimum number of public and employee toilet fixtures shall be located before arriving at and after leaving the main security screening checkpoints and shall comply with the following:

1. Shall be based on the actual use and occupant load of those spaces before and after the main security screening checkpoints.

2. Shall not be more than one story above or below the space required to be provided with toilet facilities.

3. The path of travel to such facilities shall not exceed a distance of 300 feet (91 mm). For employees' toilet facilities, the maximum distance of travel shall be measured from the employees' work area.

403.3.6 Pay facilities. Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.

403.3.7 Door locking. Where a toilet room is provided for the use of multiple occupants, the egress door for the room shall not be lockable from the inside of the room. This section does not apply to family or assisted-use toilet rooms.

14. Add an exception to Section 405.3.2 of the IPC to read:

Exception: In educational use occupancies, the required lavatory shall be permitted to be located adjacent to the room or space containing the water closet provided that not more than one operational door is between the water closet and the lavatory.

15. Change Section 405.3.4 and add Sections 405.3.4.1 and 405.3.4.2 to the IPC to read:

405.3.4 Water closet compartment. Each water closet utilized by the public or employees shall comply with Sections 405.3.4.1 and 405.3.4.2, as applicable. All fully-enclosed compartments shall be provided with occupancy indicators.

Exceptions:

1. Water closet compartments shall not be required in a single-occupant toilet room with a lockable door.

2. Toilet rooms located in child day care facilities and containing two or more water closets shall be permitted to have one water closet without an enclosing compartment.

3. This provision is not applicable to toilet areas located within Group I-3 housing areas.

405.3.4.1 Separate facilities. Each water closet provided in separate facilities shall occupy a separate compartment with walls or partitions and a door enclosing the fixtures to ensure privacy and shall comply with Section 405.3.1. Accessible water closets and compartments shall comply with ICC A117.1.

405.3.4.2 Multi-user gender-neutral facilities. Each water closet provided in a multi-user gender-neutral toilet facility shall occupy a separate compartment with walls or partitions including the doors thereto, which shall extend to the floor and to the ceiling with maximum 1/2-inch (13 mm) clearances at the floor and ceiling, with gaps not exceeding 1/8-inch (3 mm) between the doors and partitions and partitions and walls, and shall comply with Section 405.3.1. Accessible water closet compartments shall comply with ICC A117.1 and the increased toe clearance requirements.

16. Change Section 405.3.5 of the IPC to read:

405.3.5 Urinal separation and partitions. Each urinal utilized by the public or employees shall occupy a separate area with walls or partitions to provide privacy. The horizontal dimension between walls or partitions at each urinal shall be not less than 30 inches (762 mm). The walls or partitions shall begin at a height not greater

than 12 inches (305 mm) from and extend not less than 60 inches (1524 mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal not less than 18 inches (457 mm) or to a point not less than 6 inches (152 mm) beyond the outermost front lip of the urinal measured from the finished backwall surface, whichever is greater. All fully-enclosed compartments shall be provided with occupancy indicators.

Exceptions:

1. Urinal partitions shall not be required in a single-occupant or family-assisted-use toilet room with a lockable door.

2. Toilet rooms located in child day care facilities and containing two or more urinals shall be permitted to have one urinal without partitions.

17. Add Sections 405.3.5.1 and 405.3.5.2 to the IPC to read:

405.3.5.1 Separate facilities. The walls or partitions for urinals in separate facilities shall begin at a height not more than 12 inches (305 mm) from and extend not less than 60 inches (1524 mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal not less than 18 inches (457 mm) or to a point not less than 6 inches (152 mm) beyond the outermost front lip of the urinal measured from the finished backwall surface, whichever is greater.

405.3.5.2 Multi-user gender-neutral facilities. Each urinal provided in a multi-user gender-neutral toilet facility shall occupy a separate compartment with walls or partitions, including the doors thereto, where the partitions extend to the floor and to the ceiling with maximum 1/2-inch (13 mm) clearances, with gaps not exceeding 1/8-inch (3 mm) between the doors and partitions and partitions and walls, or shall all be located in a separate room with a door, enclosing the urinals to ensure privacy. Where an accessible urinal is located within a compartment, grab bars shall not be required for the urinal, the door shall be located to allow for a forward approach to the urinal, and increased toe clearances shall be provided in accordance with A117.1.

Exceptions:

1. A separate room or compartment shall not be required in a single-occupant toilet room with a lockable door.

2. This provision is not applicable to toilet areas located within Group I-3 occupancy housing areas.

18. Change Section 410.4 of the IPC to read:

410.4 Substitution. Where restaurants provide drinking water in a container free of charge, drinking fountains shall not be required in those restaurants. In other occupancies where more than two drinking fountains are required, water dispensers shall be permitted to be substituted for not more than 50% of the required number of drinking fountains.

19. Change Section 423.1 of the IPC to read:

423.1 Water connections. Baptisteries, ornamental and lily pools, aquariums, ornamental fountain basins, swimming pools, footbaths and pedicure baths, and similar constructions, where provided with water supplies, shall be protected against backflow in accordance with Section 608.

20. Add an exception to Section 424.2 of the IPC to read:

Exception: In each multi-user gender-neutral bathroom or toilet room, urinals shall not be substituted for more than 22.5 percent of the total number of water closets in Assembly and Educational occupancies. Urinals shall not be substituted for more than 25% of the total number of water closets in all other occupancies.

21. Add Section 602.2.1 to the IPC to read:

602.2.1 Nonpotable fixtures and outlets. Nonpotable water shall be permitted to serve nonpotable type fixtures and outlets in accordance with Chapter 13.

22. Add Section 603.3 to the IPC to read:

603.3 Tracer wire. Nonmetallic water service piping that connects to public systems shall be locatable. An insulated copper tracer wire, 18 AWG minimum in size and suitable for direct burial or an equivalent product, shall be utilized. The wire shall be installed in the same trench as the water service piping and within 12 inches (305 mm) of the pipe and shall be installed to within five feet (1524 mm) of the building wall to the point where the building water service pipe intersects with the public water supply. At a minimum, one end of the wire shall terminate above grade to provide access to the wire in a location that is resistant to physical damage, such as with a meter vault or at the building wall.

23. Change Section 605.2.1 to read:

605.2.1 Lead content of drinking water pipe and fittings. Pipe, pipe fittings, joints, valves, faucets and fixture fittings utilized to supply water for drinking or cooking purposes shall comply with NSF 372.

24. Change Section 608.15 to read:

608.15 Location of backflow preventers. Access for inspection, testing, service, repair and replacement shall be provided to backflow prevention assemblies. Backflow prevention assemblies shall be installed between 12 inches (305 mm) and 60 inches (1525 mm) from grade, floor level or service platform and as specified by the manufacturer's instructions. Where the manufacturer's listed installation height conflicts with this requirement, the manufacturer's listed heights shall apply. Access shall be provided to backflow prevention devices and as specified by the manufacturer's instructions.

25. Add Section 703.7 to the IPC to read:

703.7 Tracer wire. Nonmetallic sanitary sewer piping that discharges to public systems shall be locatable. An insulated copper tracer wire, 18 AWG minimum in size and suitable for direct burial or an equivalent product, shall be utilized. The wire shall be installed in the same trench as the sewer within 12 inches (305 mm) of the pipe and shall be installed to within five feet (1524 mm) of the building wall to the point where the building sewer intersects with the public system. At a minimum, one end of the wire shall terminate above grade in an accessible location that is resistant to physical damage, such as with a cleanout or at the building wall.

26. Delete the exception for Section 705.10.2 of the IPC.

27. Add Section 717 Relining Building Sewers and Building Drains to the IPC.

28. Add Sections 717.1 through 717.10, including subsections, to the IPC to read:

717.1 General. This section shall govern the relining of existing building sewers and building drainage piping.

717.2 Applicability. The relining of existing building sewer and building drainage piping shall be limited to gravity drainage piping, 4 inches (102 mm) in diameter and larger. The relined piping shall be of the same nominal size as the existing piping.

717.3 Pre-installation requirements. Prior to commencement of the relining installation, the existing piping sections to be relined shall be descaled and cleaned. After the cleaning process has occurred and water has been flushed through the system, the piping shall be inspected internally by a recorded video camera survey.

717.3.1 Pre-installation recorded video camera survey. The video survey shall include verification of the project address location. The video shall include notations of the cleanout and fitting locations, and the approximate depth of the existing piping. The video shall also include notations of the length of piping at intervals no greater than 25 feet.

717.4 Permitting. Prior to permit issuance, the code official shall review and evaluate the pre-installation recorded video camera survey to determine if the piping system is capable to be relined in accordance with the proposed lining system manufacturer's installation requirements and applicable referenced standards.

717.5 Prohibited applications. Where review of the pre-installation recorded video camera survey reveals that piping systems are not installed correctly or defects exist, relining shall not be permitted. The defective portions of piping shall be exposed and repaired with pipe and fittings in accordance with this code. Defects shall include backgrade or insufficient slope, complete pipe wall deterioration or complete separations, such as from tree root invasion or improper support.

717.6 Relining materials. The relining materials shall be manufactured in compliance with applicable standards and certified as required in Section 303. Fold-and-form pipe reline materials shall be manufactured in compliance with ASTM F1504 or ASTM F1871.

717.7 Installation. The installation of relining materials shall be performed in accordance with the manufacturer's installation instructions, applicable referenced standards and this code.

717.7.1 Material data report. The installer shall record the data as required by the relining material manufacture and applicable standards. The recorded data shall include the location of the project, relining material type, amount of product installed, and conditions of the installation. A copy of the data report shall be provided to the code official prior to final approval.

717.8 Post-installation recorded video camera survey. The completed relined piping system shall be inspected internally by a recorded video camera survey after the system has been flushed and flow-tested with water. The video survey shall be submitted to the code official prior to finalization of the permit. The video survey shall be reviewed and evaluated to provide verification that no defects exist. Any defects identified shall be repaired and replaced in accordance with this code.

717.9 Certification. A certification shall be provided in writing to the code official, from the permit holder, that the relining materials have been installed in accordance with the manufacturer's installation instructions, the applicable standards, and this code.

717.10 Approval. Upon verification of compliance with the requirements of Sections 717.1 through 717.9, the code official shall approve the installation.

29. Add an exception to Section 1101.2 of the IPC to read:

Exception. Rainwater nonpotable water systems shall be permitted in accordance with Chapter 13.

30. Delete the last sentence from Section 1101.7 of the IPC.

31. Delete Section 1105.2 of the IPC.

32. Change Section 1106.2 of the IPC to read:

1106.2 Vertical conductors and leaders. Vertical conductors and leaders shall be sized for the maximum projected roof area, in accordance with Tables 1106.2(1) and 1106.2(2).

33. Delete Table 1106.2 of the IPC and add Tables 1106.2(1) and 1106.2(2) to the IPC to read:

Table 1106.2(1)

Size of Circular Vertical Conductors and Leaders

Diameter of Leader (inches[a])	Horizontally Projected Roof Area (square feet)											
	Rainfall rate (inches per hour)											
	1	2	3	4	5	6	7	8	9	10	11	12
2	2,280	1,440	960	720	575	480	410	360	320	290	260	240
3	8,800	4,400	2,930	2,200	1,760	1,470	1,260	1,100	980	880	800	730
4	18,400	9,200	6,130	4,600	3,680	3,070	2,630	2,300	2,045	1,840	1,675	1,530
5	34,600	17,300	11,530	8,650	6,920	5,765	4,945	4,325	3,845	3,460	3,145	2,880
6	54,000	27,000	17,995	13,500	10,800	9,000	7,715	6,750	6,000	5,400	4,910	4,500
8	116,000	58,000	38,660	29,000	23,200	19,315	16,570	14,500	12,890	11,600	10,545	9,600

For SI: 1 inch = 25.4 mm, 1 square foot = 0.0929 m^2.

a. Sizes indicated are the diameter of circular piping. This table is applicable to piping of other shapes, provided the cross-sectional shape fully enclosed a circle of the diameter indicated in this table. For rectangular leaders, see Table 1106.2(2). Interpolation is permitted for pipe sizes that fall between those listed in this table.

Table 1106.2(2)

Size of Rectangular Vertical Conductors and Leaders

Dimensions of	Horizontally Projected Roof Area (square feet)

Common Leader Sizes width x length (inches)[a,b]	Rainfall rate (inches per hour)											
	1	2	3	4	5	6	7	8	9	10	11	12
1-3/4 x 2-1/2	3,410	1,700	1,130	850	680	560	480	420	370	340	310	280
2 x 3	5,540	2,770	1,840	1,380	1,100	920	790	690	610	550	500	460
2-3/4 x 4-1/4	12,830	6,410	4,270	3,200	2,560	2,130	1,830	1,600	1,420	1,280	1,160	1,060
3 x 4	13,210	6,600	4,400	3,300	2,640	2,200	1,880	1,650	1,460	1,320	1,200	1,100
3-1/2 x 4	15.900	7,950	5,300	3,970	3,180	2,650	2,270	1,980	1,760	1,590	1,440	1,320
3-1/2 x 5	21,310	10,650	7,100	5,320	4,260	3,550	3,040	2,660	2,360	2,130	1,930	1,770
3-3/4 x 4-3/4	21,960	10,980	7,320	5,490	4,390	3,660	3,130	2,740	2,440	2,190	1,990	1,830
3-3/4 x 5-1/4	25,520	12,760	8,500	6,380	5,100	4,250	3,640	3,190	2,830	2,550	2,320	2,120
3-1/2 x 6	27,790	13,890	9,260	6,940	5,550	4,630	3,970	3,470	3,080	2,770	2,520	2,310
4 x 6	32,980	16,490	10,990	8,240	6,590	5,490	4,710	4,120	3,660	3,290	2,990	2,740
5-1/2 x 5-1/2	44,300	22,150	14,760	11,070	8,860	7,380	6,320	5,530	4,920	4,430	4,020	3,690
7-1/2 x 7-1/2	100,500	50,250	33,500	25,120	20,100	16,750	14,350	12,560	11,160	10,050	9,130	8,370

For SI: 1 inch =m, 1 square foot = 0.0929 m^2.

a. Sizes indicated are nominal width x length of the opening for rectangular piping.

b. For shapes not included in this table, Equation 11-1 shall be used to determine the equivalent circular diameter, De, of rectangular piping for use in interpolation using the data from Table 1106.2(1).

(Equation 11-1)

De = (width x length)1/2

where:

De = equivalent circular diameter and De, width and length are in inches.

34. Change Section 1106.3 and Table 1106.3 of the IPC to read:

1106.3 Building storm drains and sewers. The size of the building storm drain, building storm sewer and their horizontal branches having a slope of 1/2 unit or less vertical in 12 units horizontal (4% slope) shall be based on the maximum projected roof area in accordance with Table 1106.3. The slope of horizontal branches shall be not less than 1/8 unit vertical in 12 units horizontal (1% slope) unless otherwise approved.

Table 1106.3

Size of Horizontal Storm Drainage Piping

Size of Horizontal Piping (inches)	Horizontally Projected Roof Area (square feet)					
	Rainfall rate (inches per hour)					
	1	2	3	4	5	6
1/8 unit vertical in 12 units horizontal (1% slope)						
3	3,288	1,644	1,096	822	657	548
4	7,520	3,760	2,506	1,800	1,504	1,253
5	13,360	6,680	4,453	3,340	2,672	2,227
6	21,400	10,700	7,133	5,350	4,280	3,566
8	46,000	23,000	15,330	11,500	9,200	7,600
10	82,800	41,400	27,600	20,700	16,580	13,800
12	133,200	66,600	44,400	33,300	26,650	22,200
15	218,000	109,000	72,800	59,500	47,600	39,650
1/4 unit vertical in 12 units horizontal (2% slope)						
3	4,640	2,320	1,546	1,160	928	773
4	10,600	5,300	3,533	2,650	2,120	1,766
5	18,880	9,440	6,293	4,720	3,776	3,146
6	30,200	15,100	10,066	7,550	6,040	5,033
8	65,200	32,600	21,733	16,300	13,040	10,866
10	116,800	58,400	38,950	29,200	23,350	19,450

12	188,000	94,000	62,600	47,000	37,600	31,350
15	336,000	168,000	112,000	84,000	67,250	56,000
1/2 unit vertical in 12 units horizontal (4% slope)						
3	6,576	3,288	2,295	1,644	1,310	1,096
4	15,040	7,520	5,010	3,760	3,010	2,500
5	26,720	13,360	8,900	6,680	5,320	4,450
6	42,800	21,400	13,700	10,700	8,580	7,140
8	92,000	46,000	30,650	23,000	18,400	15,320
10	171,600	85,800	55,200	41,400	33,150	27,600
12	266,400	133,200	88,800	66,600	53,200	44,400
15	476,000	238,000	158,800	119,000	95,300	79,250
For SI: 1 inch = 25.4 mm, 1 square foot = 0.0929 m^2.						

35. Change Section 1106.6 and Table 1106.6 of the IPC to read:

1106.6 Size of roof gutters. The size of semicircular gutters shall be based on the maximum projected roof area in accordance with Table 1106.6.

Table 1106.6

Size of Semicircular Roof Gutters

Diameter of Gutters (inches)	Horizontally Projected Roof Area (square feet)					
	Rainfall rate (inches per hour)					
	1	2	3	4	5	6
1/16 unit vertical in 12 units horizontal (0.5% slope)						
3	680	340	226	170	136	113
4	1,440	720	480	360	288	240
5	2,500	1,250	834	625	500	416
6	3,840	1,920	1,280	960	768	640
7	5,520	2,760	1,840	1,380	1,100	918
8	7,960	3,980	2,655	1,990	1,590	1,325
10	14,400	7,200	4,800	3,600	2,880	2,400
1/8 unit vertical in 12 units horizontal (1% slope)						
3	960	480	320	240	192	160
4	2,040	1,020	681	510	408	340
5	3,520	1,760	1,172	880	704	587
6	5,440	2,720	1,815	1,360	1,085	905
7	7,800	3,900	2,600	1,950	1,560	1,300
8	11,200	5,600	3,740	2,800	2,240	1,870
10	20,400	10,200	6,800	5,100	4,080	3,400
1/4 unit vertical in 12 units horizontal (2% slope)						
3	1,360	680	454	340	272	226
4	2,880	1,440	960	720	576	480
5	5,000	2,500	1,668	1,250	1,000	834
6	7,680	3,840	2,560	1,920	1,536	1,280
7	11,040	5,520	3,860	2,760	2,205	1,840
8	15,920	7,960	5,310	3,980	3,180	2,655
10	28,800	14,400	9,600	7,200	5,750	4,800
1/2 unit vertical in 12 units horizontal (4% slope)						
3	1,920	960	640	480	384	320
4	4,080	2,040	1,360	1,020	816	680
5	7,080	3,540	2,360	1,770	1,415	1,180
6	11,080	5,540	3,695	2,770	2,220	1,850
7	15,600	7,800	5,200	3,900	3,120	2,600
8	22,400	11,200	7,460	5,600	4,480	3,730
10	40,000	20,000	13,330	10,000	8,000	6,660
For SI: 1 inch = 25.4 mm, 1 square foot = 0.0929 m^2.						

36. Add Section 1114 Values for Continuous Flow to the IPC.

37. Add Section 1114.1 to the IPC to read:

1114.1 Equivalent roof area. Where there is a continuous or semicontinuous discharge into the building storm drain or building storm sewer, such as from a pump, ejector, air conditioning plant, or similar device, each gallon per minute (L/m) of such discharge shall be computed as being equivalent to 96 square feet (9 m^2) of roof area, based on a rainfall rate of 1 inch (25.4 mm) per hour.

38. Change Sections 1301.1 through 1301.12 and add Sections 1301.13 through 1301.18, including subsections, to the IPC to read:

1301.1 Scope. The provisions of Chapter 13 shall govern the materials, design, construction, and installation of nonpotable water systems subject to this code. In addition to the applicable provision of this section, reclaimed water shall comply with the requirements of Section 1304.

1301.1.1 Design of nonpotable water systems. All portions of nonpotable water systems subject to this code shall be constructed using the same standards and requirements for the potable water systems or drainage systems as provided for in this code unless otherwise specified in this chapter.

1301.2 Makeup water. Makeup water shall be provided for all nonpotable water supply systems. The makeup water system shall be designed and installed to provide supply of water in the amounts and at the pressures specified in this code. The makeup water supply shall be potable and be protected against backflow in accordance with the applicable requirements of Section 608.

1301.2.1 Makeup water sources. Potable water shall be provided as makeup water for reclaimed water systems. Nonpotable water shall be permitted to serve as makeup water for gray water and rainwater systems.

1301.2.2 Makeup water supply valve. A full-open valve shall be provided on the makeup water supply line.

1301.2.3 Control valve alarm. Makeup water systems shall be fitted with a warning mechanism that alerts the user to a failure of the inlet control valve to close correctly. The alarm shall activate before the water within the storage tank begins to discharge into the overflow system.

1301.3 Sizing. Nonpotable water distribution systems shall be designed and sized for peak demand in accordance with approved engineering practice methods that comply with the applicable provisions of Chapter 6.

1301.4 Signage required. All nonpotable water outlets, other than water closets and urinals, such as hose connections, open-ended pipes, and faucets shall be identified at the point of use for each outlet with signage that reads as follows: "Nonpotable water is utilized for (insert application name). Caution: nonpotable water. DO NOT DRINK." The words shall be legibly and indelibly printed on a tag or sign constructed of corrosion-resistant waterproof material or shall be indelibly printed on the fixture. The letters of the words shall be not less than 0.5 inches (12.7 mm) in height and in colors in contrast to the background on which they are applied. The pictograph shown in Figure 1301.4 shall appear on the signage required by this section.

Figure 1301.4
Pictograph DO NOT DRINK

1301.5 Potable water supply system connections. Where a potable water supply system is connected to a nonpotable water system, the potable water supply shall be protected against backflow in accordance with the applicable provisions of Section 608.

1301.6 Nonpotable water system connections. Where a nonpotable water system is connected and supplies water to another nonpotable water system, the nonpotable water system that supplies water shall be protected against backflow in accordance with the applicable provisions of Section 608.

1301.7 Approved components and materials. Piping, plumbing components, and materials used in the nonpotable water drainage and distribution systems shall be approved for the intended application and compatible with the water and any disinfection or treatment systems used.

1301.8 Insect and vermin control. Nonpotable water systems shall be protected to prevent the entrance of insects and vermin into storage and piping systems. Screen materials shall be compatible with system material and shall not promote corrosion of system components.

1301.9 Freeze protection. Nonpotable water systems shall be protected from freezing in accordance with the applicable provisions of Chapter 3.

1301.10 Nonpotable water storage tanks. Nonpotable water storage tanks shall be approved for the intended application and comply with Sections 1301.10.1 through 1301.10.12.

1301.10.1 Sizing. The holding capacity of storage tanks shall be sized for the intended use.

1301.10.2 Inlets. Storage tank inlets shall be designed to introduce water into the tank and avoid agitating the contents of the storage tank. The water supply to storage tanks shall be controlled by fill valves or other automatic supply valves designed to stop the flow of incoming water before the tank contents reach the overflow pipes.

1301.10.3 Outlets. Outlets shall be located at least 4 inches (102 mm) above the bottom of the storage tank and shall not skim water from the surface.

1301.10.4 Materials and location. Storage tanks shall be constructed of material compatible with treatment systems used to treat water. Above grade storage vessels shall be constructed using opaque, UV-resistant materials such as tinted plastic, lined metal, concrete, or wood or painted to prevent algae growth. Above grade storage tanks shall be protected from direct sunlight unless their design specifically incorporates the use of the sunlight heat transfer. Wooden storage tanks shall be provided with a flexible liner. Storage tanks and their manholes shall not be located directly under soil or waste piping or sources of contamination.

1301.10.5 Foundation and supports. Storage tanks shall be supported on a firm base capable of withstanding the storage tank's weight when filled to capacity. Storage tanks shall be supported in accordance with the applicable provisions of the IBC.

1301.10.5.1 Ballast. Where the soil can become saturated, an underground storage tank shall be ballasted, or otherwise secured, to prevent the effects of buoyancy. The combined weight of the tank and hold down ballast shall meet or exceed the buoyancy force of the tank. Where the installation requires a foundation, the foundation shall be flat and shall be designed to support the storage tank weight when full, consistent with the bearing capability of adjacent soil.

1301.10.5.2 Structural support. Where installed below grade, storage tank installations shall be designed to withstand earth and surface structural loads without damage.

1301.10.6 Overflow. The storage tank shall be equipped with an overflow pipe having a diameter not less than that shown in Table 606.5.4. The overflow outlet shall discharge at a point not less than 6 inches (152 mm) above the roof or roof drain, floor or floor drain, or over an open water-supplied fixture. The overflow outlet shall terminate through a check valve. Overflow pipes shall not be directed on walkways. The overflow drain shall not be equipped with a shutoff valve. A minimum of one cleanout shall be provided on each overflow pipe in accordance with the applicable provisions of Section 708.

1301.10.7 Access. A minimum of one access opening shall be provided to allow inspection and cleaning of the tank interior. Access openings shall have an approved locking device or other approved method of securing access. Below grade storage tanks, located outside of the building, shall be provided with either a manhole not less than 24 inches (610 mm) square or a manhole with an inside diameter not less than 24 inches (610 mm). The design and installation of access openings shall prohibit surface water from entering the tank. Each manhole cover shall have an approved locking device or other approved method of securing access.

Exception: Storage tanks under 800 gallons (3028 L) in volume installed below grade shall not be required to be equipped with a manhole, but shall have an access opening not less than 8 inches (203 mm) in diameter to allow inspection and cleaning of the tank interior.

1301.10.8 Venting. Storage tanks shall be vented. Vents shall not be connected to sanitary drainage system. Vents shall be at least equal in size to the internal diameter of the drainage inlet pipe or pipes connected to the tank. Where installed at grade, vents shall be protected from contamination by means of a U-bend installed with the opening directed downward. Vent outlets shall extend a minimum of 12 inches (304.8 mm) above grade, or as necessary to prevent surface water from entering the storage tank. Vent openings shall be protected against the entrance of vermin and insects. Vents serving gray water tanks shall terminate in accordance with the applicable provisions of Sections 903 and 1301.8.

1301.10.9 Drain. Where drains are provided they shall be located at the lowest point of the storage tank. The tank drain pipe shall discharge as required for overflow pipes and shall not be smaller in size than specified in Table 606.5.7. A minimum of one cleanout shall be provided on each drain pipe in accordance with Section 708.

1301.10.10 Labeling and signage. Each nonpotable water storage tank shall be labeled with its rated capacity and the location of the upstream bypass valve. Underground and otherwise concealed storage tanks shall be labeled at all access points. The label shall read: "CAUTION: NONPOTABLE WATER – DO NOT DRINK." Where an opening is provided that could allow the entry of personnel, the opening shall be marked with the words: "DANGER – CONFINED SPACE." Markings shall be indelibly printed on a tag or sign constructed of corrosion-resistant waterproof material mounted on the tank or shall be indelibly printed on the tank. The letters of the words shall be not less than 0.5 inches (12.7 mm) in height and shall be of a color in contrast with the background on which they are applied.

1301.10.11 Storage tank tests. Storage tanks shall be tested in accordance with the following:

1. Storage tanks shall be filled with water to the overflow line prior to and during inspection. All seams and joints shall be left exposed and the tank shall remain watertight without leakage for a period of 24 hours.

2. After 24 hours, supplemental water shall be introduced for a period of 15 minutes to verify proper drainage of the overflow system and verify that there are no leaks.

3. Following a successful test of the overflow, the water level in the tank shall be reduced to a level that is at 2 inches (50.8 mm) below the makeup water offset point. The tank drain shall be observed for proper operation. The makeup water system shall be observed for proper operation, and successful automatic shutoff of the system at the refill threshold shall be verified. Water shall not be drained from the overflow at any time during the refill test.

4. Air tests shall be permitted in lieu of water testing as recommended by the tank manufacturer or the tank standard.

1301.10.12 Structural strength. Storage tanks shall meet the applicable structural strength requirements of the IBC.

1301.11 Trenching requirements for nonpotable water system piping. Underground nonpotable water system piping shall be horizontally separated from the building sewer and potable water piping by 5 feet (1524 mm) of undisturbed or compacted earth. Nonpotable water system piping shall not be located in, under, or above sewage systems cesspools, septic tanks, septic tank drainage fields, or seepage pits. Buried nonpotable system piping shall comply with the requirements of this code for the piping material installed.

Exceptions:

1. The required separation distance shall not apply where the bottom of the nonpotable water pipe within 5 feet (1524 mm) of the sewer is equal to or greater than 12 inches (305 mm) above the top of the highest point of the sewer and the pipe materials conforms to Table 702.3.

2. The required separation distance shall not apply where the bottom of the potable water service pipe within 5 feet (1524 mm) of the nonpotable water pipe is a minimum of 12 inches (305 mm) above the top of the highest point of the nonpotable water pipe and the pipe materials comply with the requirements of Table 605.4.

3. Nonpotable water pipe is permitted to be located in the same trench with building sewer piping, provided that such sewer piping is constructed of materials that comply with the requirements of Table 702.2.

4. The required separation distance shall not apply where a nonpotable water pipe crosses a sewer pipe, provided that the pipe is sleeved to at least 5 feet (1524 mm) horizontally from the sewer pipe centerline on both sides of such crossing with pipe materials that comply with Table 702.2.

5. The required separation distance shall not apply where a potable water service pipe crosses a nonpotable water pipe provided that the potable water service pipe is sleeved for a distance of at least 5 feet (1524 mm) horizontally from the centerline of the nonpotable pipe on both sides of such crossing with pipe materials that comply with Table 702.2.

1301.12 Outdoor outlet access. Sillcocks, hose bibs, wall hydrants, yard hydrants, and other outdoor outlets that are supplied by nonpotable water shall be located in a locked vault or shall be operable only by means of a removable key.

1301.13 Drainage and vent piping and fittings. Nonpotable drainage and vent pipe and fittings shall comply with the applicable material standards and installation requirements in accordance with provisions of Chapter 7.

1301.13.1. Labeling and marking. Identification of nonpotable drainage and vent piping shall not be required.

1301.14 Pumping and control system. Mechanical equipment, including pumps, valves, and filters, shall be accessible and removable in order to perform repair, maintenance, and cleaning. The minimum flow rate and flow pressure delivered by the pumping system shall be designed for the intended application in accordance

with the applicable provisions of Section 604.

1301.15 Water-pressure reducing valve or regulator. Where the water pressure supplied by the pumping system exceeds 80 psi (552 kPa) static, a pressure-reducing valve shall be installed to reduce the pressure in the nonpotable water distribution system piping to 80 psi (552 kPa) static or less. Pressure-reducing valves shall be specified and installed in accordance with the applicable provisions of Section 604.8.

1301.16 Distribution pipe. Distribution piping utilized in nonpotable water stems shall comply with Sections 1301.16.1 through 1301.16.4.

1301.16.1 Materials, joints, and connections. Distribution piping and fittings shall comply with the applicable material standards and installation requirements in accordance with applicable provisions of Chapter 6.

1301.16.2 Design. Distribution piping shall be designed and sized in accordance with the applicable provisions of Chapter 6.

1301.16.3 Labeling and marking. Distribution piping labeling and marking shall comply with Section 608.9.

1301.16.4 Backflow prevention. Backflow preventers shall be installed in accordance with the applicable provisions of Section 608.

1301.17 Tests and inspections. Tests and inspections shall be performed in accordance with Sections 1301.17.1 through 1301.17.5.

1301.17.1 Drainage and vent pipe test. Drain, waste, and vent piping used for gray water and rainwater nonpotable water systems shall be tested in accordance with the applicable provisions of Section 312.

1301.17.2 Storage tank test. Storage tanks shall be tested in accordance with the Section 1301.10.11.

1301.17.3 Water supply system test. Nonpotable distribution piping shall be tested in accordance with Section 312.5.

1301.17.4 Inspection and testing of backflow prevention assemblies. The testing of backflow preventers and backwater valves shall be conducted in accordance with Section 312.10.

1301.17.5 Inspection of vermin and insect protection. Inlets and vent terminations shall be visually inspected to verify that each termination is installed in accordance with Section 1301.10.8.

1301.18 Operation and maintenance manuals. Operations and maintenance materials for nonpotable water systems shall be provided as prescribed by the system component manufacturers and supplied to the owner to be kept in a readily accessible location.

39. Change the title of Section 1302 of the IPC to "Gray Water Nonpotable Water Systems."

40. Change Sections 1302.1 through 1302.6, including subsections, of the IPC to read as follows:

1302.1 Gray water nonpotable water systems. This code is applicable to the plumbing fixtures, piping or piping systems, storage tanks, drains, appurtenances, and appliances that are part of the distribution system for gray water within buildings and to storage tanks and associated piping that are part of the distribution system for gray water outside of buildings. This code does not regulate equipment used for, or the methods of, processing, filtering, or treating gray water, that may be regulated by the Virginia Department of Health or the Virginia Department of Environmental Quality.

1302.1.1 Separate systems. Gray water nonpotable water systems, unless approved otherwise under the permit from the Virginia Department of Health, shall be separate from the potable water system of a building with no cross connections between the two systems except as permitted by the Virginia Department of Health.

1302.2 Water quality. Each application of gray water reuse shall meet the minimum water quality requirements set forth in Sections 1302.2.1 through 1302.2.4 unless otherwise superseded by other state agencies.

1302.2.1 Disinfection. Where the intended use or reuse application for nonpotable water requires disinfection or other treatment or both, it shall be disinfected as needed to ensure that the required water quality is delivered at the point of use or reuse.

1302.2.2 Residual disinfectants. Where chlorine is used for disinfection, the nonpotable water shall contain not more than 4 parts per million (4 mg/L) of free chlorine, combined chlorine, or total chlorine. Where ozone is used for disinfection, the nonpotable water shall not exceed 0.1 parts per million (by volume) of ozone at the point of use.

1302.2.3 Filtration. Water collected for reuse shall be filtered as required for the intended end use. Filters shall be accessible for inspection and maintenance. Filters shall utilize a pressure gauge or other approved method to indicate when a filter requires servicing or replacement. Shutoff valves installed immediately upstream and downstream of the filter shall be included to allow for isolation during maintenance.

1302.2.4 Filtration required. Gray water utilized for water closet and urinal flushing applications shall be filtered by a 100 micron or finer filter.

1302.3 Storage tanks. Storage tanks utilized in gray water nonpotable water systems shall comply with Section 1301.10.

1302.4 Retention time limits. Untreated gray water shall be retained in storage tanks for a maximum of 24 hours.

1302.5 Tank Location. Storage tanks shall be located with a minimum horizontal distance between various elements as indicated in Table 1302.5.1.

	Table 1302.5.1 Location of Nonpotable Gray Water Reuse Storage Tanks	
	Element	Minimum Horizontal Distance from Storage Tank (feet)
	Lot line adjoining private lots	5
	Sewage systems	5
	Septic tanks	5

	Water wells	50
	Streams and lakes	50
	Water service	5
	Public water main	10

1302.6 Valves. Valves shall be supplied on gray water nonpotable water drainage systems in accordance with Sections 1302.6.1 and 1302.6.2.

1302.6.1 Bypass valve. One three-way diverter valve certified to NSF 50 or other approved device shall be installed on collection piping upstream of each storage tank, or drainfield, as applicable, to divert untreated gray water to the sanitary sewer to allow servicing and inspection of the system. Bypass valves shall be installed downstream of fixture traps and vent connections. Bypass valves shall be labeled to indicate the direction of flow, connection, and storage tank or drainfield connection. Bypass valves shall be provided with access for operation and maintenance. Two shutoff valves shall not be installed to serve as a bypass valve.

1302.6.2 Backwater valve. Backwater valves shall be installed on each overflow and tank drain pipe to prevent unwanted water from draining back into the storage tank. If the overflow and drain piping arrangement is installed to physically not allow water to drain back into the tank, such as in the form of an air gap, backwater valves shall not be required. Backwater valves shall be constructed and installed in accordance with Section 715.

41. Delete Sections 1302.7 through 1302.13.4, including subsections, of the IPC.

42. Change the title of Section 1303 of the IPC to "Rainwater Nonpotable Water Systems."

43. Change Sections 1303.1 through 1303.10, including subsections, of the IPC to read as follows:

1303.1 General. The provisions of this section shall govern the design, construction, installation, alteration, and repair of rainwater nonpotable water systems for the collection, storage, treatment, and distribution of rainwater for nonpotable applications. The provisions of CSA B805/ICC 805 shall be permitted as an alternative to the provisions contained in this section for the design, construction, installation, alteration, and repair of rainwater nonpotable water systems for the collection, storage, treatment, and distribution of rainwater for nonpotable applications. Roof runoff or stormwater runoff collection surfaces shall be limited to roofing materials, public pedestrian accessible roofs, and subsurface collection identified in CSA B805/ICC 805 Table 7.1. Stormwater runoff shall not be collected from any other surfaces.

1303.2 Water quality. Each application of rainwater reuse shall meet the minimum water quality requirements set forth in Sections 1303.2.1 through 1303.2.4 unless otherwise superseded by other state agencies.

1303.2.1 Disinfection. Where the intended use or reuse application for nonpotable water requires disinfection or other treatment or both, it shall be disinfected as needed to ensure that the required water quality is delivered at the point of use or reuse.

1303.2.2 Residual disinfectants. Where chlorine is used for disinfection, the nonpotable water shall contain not more than 4 parts per million (4 mg/L) of free chlorine, combined chlorine, or total chlorine. Where ozone is used for disinfection, the nonpotable water shall not exceed 0.1 parts per million (by volume) of ozone at the point of use.

1303.2.3 Filtration. Water collected for reuse shall be filtered as required for the intended end use. Filters shall be accessible for inspection and maintenance. Filters shall utilize a pressure gauge or other approved method to indicate when a filter requires servicing or replacement. Shutoff valves installed immediately upstream and downstream of the filter shall be included to allow for isolation during maintenance.

1303.2.4 Filtration required. Rainwater utilized for water closet and urinal flushing applications shall be filtered by a 100 micron or finer filter.

1303.3 Collection surface. Rainwater shall be collected only from aboveground impervious roofing surfaces constructed from approved materials. Overflow or discharge piping from appliances or equipment, or both, including but not limited to evaporative coolers, water heaters, and solar water heaters shall not discharge onto rainwater collection surfaces.

1303.4 Collection surface diversion. At a minimum, the first 0.04 inches (1.016 mm) of each rain event of 25 gallons (94.6 L) per 1,000 square feet (92.9 m^2) shall be diverted from the storage tank by automatic means and not require the operation of manually operated valves or devices. Diverted water shall not drain onto other collection surfaces that are discharging to the rainwater system or to the sanitary sewer. Such water shall be diverted from the storage tank and discharged in an approved location.

1303.5 Pre-tank filtration. Downspouts, conductors, and leaders shall be connected to a pre-tank filtration device. The filtration device shall not permit materials larger than 0.015 inches (0.4 mm).

1303.6 Roof gutters and downspouts. Gutters and downspouts shall be constructed of materials that are compatible with the collection surface and the rainwater quality for the desired end use. Joints shall be made watertight.

1303.6.1 Slope. Roof gutters, leaders, and rainwater collection piping shall slope continuously toward collection inlets. Gutters and downspouts shall have a slope of not less than 1 unit in 96 units along their entire length and shall not permit the collection or pooling of water at any point.

Exception: Siphonic roof drainage systems installed in accordance with Chapter 11 shall not be required to have slope.

1303.6.2 Size. Gutters and downspouts shall be installed and sized in accordance with Section 1106.6 and local rainfall rates.

1303.6.3 Cleanouts. Cleanouts or other approved openings shall be provided to permit access to all filters, flushes, pipes, and downspouts.

1303.7 Storage tanks. Storage tanks utilized in rainwater nonpotable water systems shall comply with Section 1301.10.

1303.8 Location. Storage tanks shall be located with a minimum horizontal distance between various elements as indicated in Table 1303.8.1.

	Table 1303.8.1 Location of Rainwater Storage Tanks	
	Element	Minimum Horizontal Distance from Storage Tank (feet)

	Lot line adjoining private lots	5
	Sewage systems	5
	Septic tanks	5

1303.9 Valves. Valves shall be installed in collection and conveyance drainage piping of rainwater nonpotable water systems in accordance with Sections 1303.9.1 and 1303.9.2.

1303.9.1 Influent diversion. A means shall be provided to divert storage tank influent to allow maintenance and repair of the storage tank system.

1303.9.2 Backwater valve. Backwater valves shall be installed on each overflow and tank drain pipe to prevent unwanted water from draining back into the storage tank. If the overflow and drain piping arrangement is installed to physically not allow water to drain back into the tank, such as in the form of an air gap, backwater valves shall not be required. Backwater valves shall be constructed and installed in accordance with Section 715.

1303.10 Tests and inspections. Tests and inspections shall be performed in accordance with Sections 1303.10.1 through 1303.10.2.

1303.10.1 Roof gutter inspection and test. Roof gutters shall be inspected to verify that the installation and slope is in accordance with Section 1303.6.1. Gutters shall be tested by pouring a minimum of one gallon of water into the end of the gutter opposite the collection point. The gutter being tested shall not leak and shall not retain standing water.

1303.10.2 Collection surface diversion test. A collection surface diversion test shall be performed by introducing water into the gutters or onto the collection surface area. Diversion of the first quantity of water in accordance with the requirements of Section 1303.4 shall be verified.

44. Delete Sections 1303.11 through 1303.16.4, including subsections, of the IPC.

45. Change Sections 1304.1 and 1304.2 of the IPC to read as follows:

1304.1 General. Reclaimed water, water reclamation systems, reclaimed water distribution systems, and allowable nonpotable reuses of reclaimed water are as defined or specified in and governed by the Virginia Water Reclamation and Reuse Regulation (9VAC25-740). Permits from the Virginia State Water Control Board are required for such systems and reuses. The provisions of Section 1304 shall govern the design, construction, installation, alterations, and repair of plumbing fixtures, piping or piping systems, storage tanks, drains, appurtenances, and appliances that are part of the distribution system for reclaimed water within buildings and to storage tanks for reclaimed water as defined in the Virginia Water Reclamation and Reuse Regulation (9VAC25-740) and associated piping outside of buildings that deliver reclaimed water into buildings. Where conflicts occur between this code and the Virginia Water Reclamation and Reuse Regulation (9VAC25-740), the provisions of the Virginia Water Reclamation and Reuse Regulation (9VAC25-740) shall apply unless determined otherwise by the Virginia Department of Environmental Quality and DHCD through a memorandum of agreement.

1304.2 Design of reclaimed water systems. The design of reclaimed water systems shall conform to applicable requirements of Section 1301.

Exception: The design of reclaimed water systems shall conform to applicable requirements of the Virginia Water Reclamation and Reuse Regulation (9VAC25-740) for the following:

1. Identification, labeling, and posting of signage for reclaimed water systems in lieu of signage requirements described in Section 1301.4.

2. Sizing of system storage as defined in the Virginia Water Reclamation and Reuse Regulation (9VAC25-740), in addition to storage sizing requirements described in Section 1301.10.1.

3. Signage and labeling for reclaimed water storage in addition to labeling and signage requirements described in Section 1301.10.10.

4. Minimum separation distances and configurations for in-ground reclaimed water distribution piping in lieu of trenching requirements for nonpotable water systems described in Section 1301.11.

46. Delete Sections 1304.3 and 1304.4.2, including subsections, of the IPC.

47. Add the following referenced standards to Chapter 15 as follows: (Standards not shown remain the same.)

	Standard Reference Number	Title	Referenced in Code Section Number
	ASTM F1871-2011	Standard Specification for Folded/Formed Poly (Vinyl Chloride) Pipe Type A for Existing Sewer and Conduit Rehabilitation	717.6
	ASTM F1504-2014	Standard Specification for Folded Poly (Vinyl Chloride) (PVC) for Existing Sewer and Conduit Rehabilitation	717.6
	CSA B805-18/ICC 805-2018	Rainwater Harvesting Systems	1303.1

C. Change Section 2902.1 of the IBC to read:

2902.1 Minimum number of fixtures. Plumbing fixtures shall be provided in the minimum number as shown in Table 403.1 of the VPC based on the actual use of the building or space. Uses not shown in Table 403.1 of the VPC shall be considered individually by the code official. The number of occupants shall be determined by this code.

D. Delete Table 2902.1 and Sections 2902.1.1 through 2902.6

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Errata, 30:26 VA.R. 2795 August 25, 2014; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-330. Chapter 30 Elevators and conveying systems.

A. Change Section 3002.4 of the IBC to read:

3002.4 Elevator car to accommodate ambulance stretcher. Where elevators are provided in buildings four or more stories above, or four or more stories below, grade plane, at least one elevator shall be provided for fire department emergency access to all floors. The elevator car shall be of such a size and arrangement to accommodate an ambulance stretcher 24 inches by 84 inches (610 mm by 2134 mm) with not less than five-inch (127 mm) radius corners, in the horizontal, open position and shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than three inches (76 mm) high and shall be placed inside on both sides of the hoistway door frame.

Exception: Elevators in multistory dwelling units or guest rooms.

B. Change Section 3003.3 of the IBC to read:

3003.3 Fire service elevator keys. All elevators shall be equipped to operate with either a standardized or non-standardized fire service elevator key in accordance with the IFC.

C. Change Section 3005.4 of the IBC to read:

3005.4 Machine and control rooms, control spaces, and machinery spaces. Elevator machine rooms, rooms and spaces housing elevator controllers, and machinery spaces outside of but attached to a hoistway that have openings into the hoistway shall be enclosed with fire barriers constructed in accordance with Section 707 or horizontal assemblies constructed in accordance with Section 711, or both. The fire-resistance rating shall not be less than the required rating of the hoistway enclosure. Openings in the fire barriers shall be protected with assemblies having a fire protection rating not less than that required for the hoistway enclosure doors.

Exceptions:

1. Where elevator machine rooms, rooms and spaces housing elevator controllers, and machinery spaces do not abut and do not have openings to the hoistway enclosure they serve, the fire barrier constructed in accordance with Section 707 or horizontal assemblies constructed in accordance with Section 711, or both, shall be permitted to be reduced to a one-hour fire-resistance rating.

2. In buildings four stories or less above grade plane when elevator machine rooms, rooms and spaces housing elevator controllers, and machinery spaces do not abut and have no openings to the hoistway enclosure they serve, the elevator machine rooms, rooms and spaces housing elevator controllers, and machinery spaces are not required to be fire-resistance rated.

D. Add Section 3005.7 to the IBC to read:

3005.7 Machine-room-less designs. Where machine-room-less designs are utilized they shall comply with the provisions of ASME A17.1 and incorporate the following:

1. Where the elevator car-top will be used as a work platform, it shall be equipped with permanently installed guards on all open sides. Guards shall be permitted to be of collapsible design, but otherwise must conform to all applicable requirements of this code for guards.

2. Where the equipment manufacturer's procedures for machinery removal and replacement depend on overhead structural support or lifting points, such supports or lifting points shall be permanently installed at the time of initial equipment installation.

3. Where the structure that the elevator will be located in is required to be fully sprinklered by this code, the hoistway that the elevator machine is located in shall be equipped with a fire suppression system as a machine room in accordance with NFPA 13. Smoke detectors for the automatic initiation of Phase I Emergency Recall Operation, and heat detectors or other approved devices that automatically disconnect the main line power supply to the elevators, shall be installed within the hoistway.

E. Delete Section 3006 of the IBC in its entirety.

F. Change the exception to 3007.6 to read:

Exception: Where a fire service access elevator has two entrances onto a floor, the second entrance shall be permitted to be protected in accordance with IBC Section 3006.3.

G. Change Section 3008.1 of the IBC to read:

3008.1 General. Where elevators in buildings greater than 420 feet (128,016 mm) in building height are to be used for occupant self-evacuation during fires, all passenger elevators for general public use shall comply with this section.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-335. (Repealed.)

Statutory Authority

Historical Notes
Derived from Virginia Register Volume 24, Issue 14, eff. May 1, 2008; repealed, Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010.

13VAC5-63-336. Chapter 31 Special construction.

A. Change the title of IBC Section 3109 to read:

Swimming Pools, Swimming Pool Enclosures, and Aquatic Recreational Facilities.

B. Change Section 3109.1 of the IBC to read as follows, add Section 3109.1.1 to the IBC to read as follows, and delete the remainder of Section 3109 of the IBC:

3109.1 General. Swimming pools, swimming pool enclosures, and aquatic recreational facilities, as that term is defined in the ISPSC, shall comply with applicable provisions of the ISPSC.

3109.1.1 Changes to the ISPSC. The following changes shall be made to the ISPSC:

1. Add Section 410.2 and related subsections to the ISPSC to read:

410.2 Showers. Showers shall be in accordance with Sections 410.2.1 through 410.2.5.

410.2.1 Deck hand shower or shower spray unit. Not less than one and not greater than half of the total number of showers required by Section 410.1 shall be a hand shower or spray shower unit located on the deck of or at the entrance of each pool.

410.2.2 Anti-scald device. Where heated water is provided to the showers, the shower water supply shall be controlled by an anti-scald device.

410.2.3 Water heater and mixing valve. Bather access to water heaters and thermostatically controlled mixing valves for showers shall be prohibited.

410.2.4 Flow rate. Each showerhead shall have a water flow of not less than 2 gallons per minute (7.6 lpm).

410.2.5 Temperature. At each showerhead, the heated shower water temperature shall not exceed 120°F (49°C) and shall not be less than 90°F (32°C).

2. Change the title of Section 609 of the ISPSC to read:

Dressing and Sanitary Facilities.

3. Change Section 609.3.1 of the ISPSC to read:

609.3.1 Deck hand shower or shower spray unit. Not less than one and not greater than half of the total number of showers required by Section 609.2 shall be a hand shower or shower spray unit located on the deck of or at the entrance of each pool.

C. Delete Section 3113 of the IBC in its entirety.

Statutory Authority
§ 36-98 of the Code of Virginia

Historical Notes
Derived from Virginia Register Volume 30, Issue 16, eff. July 14, 2016; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-340. Chapter 33 Safeguards during construction.

A. Delete Section 3302.1 of the IBC.

B. Delete IBC Sections 3303 and 3305 in their entirety.

C. Change Section 3310.2 of the IBC to read:

3310.2 Maintenance of means of egress. Means of egress and required accessible means of egress shall be maintained at all times during construction.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-350. (Repealed.)

Statutory Authority

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; repealed, Virginia Register Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-360. Chapter 35 Referenced standards.

Change the referenced standards in Chapter 35 of the IBC as follows (standards not shown remain the same):

Standard reference number	Title	Referenced in code section number
ASTM E329-02	Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction	1703.1, 1703.1.3
API 650-09	Welded Steel Tanks for Oil Storage	430.2
API 653-09	Tank Inspection, Repair, Alteration and Reconstruction	430.4, 430.5
NFPA 91-15	Standard for Exhaust Systems for Air Conveying of Vapors, Mists and Particulate Solids	428.3.7
ISPSC-18	International Swimming Pool and Spa Code	202, 3109.1, 3109.1.1
TFI RMIP-09	Aboveground Storage Tanks Containing Liquid Fertilizer, Recommended Mechanical Integrity Practices	430.2, 430.4, 430.5
UL 2075-13	Standard for Gas and Vapor Detectors and Sensors	915.4, 915.5.1, 915.5.3

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-365. Appendix E Supplementary accessibility requirements.

Appendix E of the IBC shall be part of this code.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010.

13VAC5-63-370. Appendix F Rodent proofing.

The following provisions of Appendix F of the IBC are part of this code:

F101.2 Foundation wall ventilation openings.

F101.6 Pier and wood construction. (Includes all provisions.)

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-380. Appendix H Signs.

The following provisions of Appendix H of the IBC are part of this code:

H101.2 Signs exempt from permits.

H102 Definitions. (Includes all definitions.)

H103 Location. (Includes Section H103.1.)

H105 through H114. (Includes all provisions.)

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005.

13VAC5-63-390. Appendix I Patio covers.

Appendix I of the IBC shall be part of this code.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014.

Part II. Existing Buildings

13VAC5-63-400. Chapter 1 Administration; Section 101 General.

A. Section 101.1 Short title. The Virginia Uniform Statewide Building Code, Part II, Existing Buildings, may be cited as the "Virginia Existing Building Code" or as the "VEBC."

B. Section 101.2 Incorporation by reference. Chapters 2 - 16 of the 2018 International Existing Building Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the VEBC. The term "IEBC" means the 2018 International Existing Building Code, published by the International Code Council, Inc. Any codes and standards referenced in the IEBC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference.

C. Section 101.3 Numbering system. A dual numbering system is used in the VEBC to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IEBC. IEBC numbering system designations are provided in the catchlines of the Virginia Administrative Code sections and cross references between sections or chapters of the VEBC use only the IEBC numbering system designations. The term "chapter" is used in the context of the numbering system of the IEBC and may mean a chapter in the VEBC, a chapter in the IEBC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

D. Section 101.4 Arrangement of code provisions. The VEBC is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 - 16 of the IEBC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IEBC that are specifically identified, including any new chapters added. The terminology "changes to the text of the incorporated chapters of the IEBC that are specifically identified, including any new chapters added" shall also be referred to as the "state amendments to the IEBC." Such state amendments to the IEBC are set out using corresponding chapter and section numbers of the IEBC numbering system. In addition, since Chapter 1 of the IEBC is not incorporated as part of the VEBC, any reference to a provision of Chapter 1 of the IEBC in the provisions of Chapters 2 - 16 of the IEBC is generally invalid. However, where the purpose of such a reference would clearly correspond to a provision of Chapter 1 established herein, then the reference may be construed to be a valid reference to such corresponding Chapter 1 provision.

E. Section 101.5 Use of terminology and notes. The provisions of this code shall be used as follows:

1. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 - 16 of the IEBC, or in the state amendments to the IEBC, means the VEBC, unless the context clearly indicates otherwise.

2. The term "this code," or "the code," where used in a code or standard referenced in the VEBC, means that code or standard, unless the context clearly indicates otherwise.

3. The term "USBC" where used in this code, means the VCC, unless the context clearly indicates otherwise.

4. The use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision.

5. Notes in the IEBC, in the codes and standards referenced in the IEBC and in the state amendments to the IEBC, may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

6. References to International Codes and standards, where used in this code, include state amendments made to those International Codes and standards in the VCC.

Note: See Section 101.2 of the VCC for a list of major codes and standards referenced in the VCC.

F. Section 101.6 Order of precedence. The provisions of this code shall be used as follows:

1. The provisions of Chapter 1 of this code supersede any provisions of Chapters 2 - 16 of the IEBC that address the same subject matter and impose differing requirements.

2. The provisions of Chapter 1 of this code supersede any provisions of the codes and standards referenced in the IEBC that address the same subject matter and impose differing requirements.

3. The state amendments to the IEBC supersede any provisions of Chapters 2 - 16 of the IEBC that address the same subject matter and impose differing requirements.

4. The state amendments to the IEBC supersede any provisions of the codes and standards referenced in the IEBC that address the same subject matter and impose differing requirements.

5. The provisions of Chapters 2 - 16 of the IEBC supersede any provisions of the codes and standards referenced in the IEBC that address the same subject matter and impose differing requirements.

G. Section 101.7 Administrative provisions. The provisions of Chapter 1 establish administrative requirements, which include but are not limited to provisions relating to the scope and enforcement of the code. Any provisions of Chapters 2 - 16 of the IEBC or any provisions of the codes and standards referenced in the IEBC that address the same subject matter to a lesser or greater extent are deleted and replaced by the provisions of Chapter 1. Further, any administrative requirements contained in the state amendments to the IEBC shall be given the same precedence as the provisions of Chapter 1. Notwithstanding the above, where administrative requirements of Chapters 2 - 16 of the IEBC or of the codes and standards referenced in the IEBC are specifically identified as valid administrative requirements in Chapter 1 of this code or in the state amendments to the IEBC, then such requirements are not deleted and replaced.

Note: The purpose of this provision is to eliminate overlap, conflicts and duplication by providing a single standard for administrative, procedural and enforcement requirements of this code.

H. Section 101.8 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-410. Section 102 Purpose and scope.

A. Section 102.1 Purpose. In accordance with § 36-99.01 of the Code of Virginia, the General Assembly of Virginia has declared that (i) there is an urgent need to improve the housing conditions of low and moderate income individuals and families, many of whom live in substandard housing, particularly in the older cities of the Commonwealth; (ii) there are large numbers of older residential buildings in the Commonwealth, both occupied and vacant, which are in urgent need of rehabilitation and must be rehabilitated if the state's citizens are to be housed in decent, sound, and sanitary conditions; and (iii) the application of those building code requirements currently in force to housing rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

The General Assembly further declares that (i) there is an urgent need to improve the existing condition of many of the Commonwealth's stock of commercial properties, particularly in older cities; (ii) there are large numbers of older commercial buildings in the Commonwealth, both occupied and vacant, that are in urgent need of rehabilitation and that must be rehabilitated if the citizens of the Commonwealth are to be provided with decent, sound and sanitary work spaces; and (iii) the application of the existing building code to such rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

B. Section 102.2 Scope. The provisions of this code shall govern construction and rehabilitation activities in existing buildings and structures.

C. 102.2.1 Change of occupancy to Group I-2 or I-3. A change of occupancy to Group I-2 or I-3 shall comply with the provisions of the VCC. Written application shall be made to the local building department for a new certificate of occupancy, and the new certificate of occupancy shall be obtained prior to the change of occupancy. When impractical to achieve compliance with the VCC for the new occupancy classification, the building official shall consider modifications upon application and as provided for in Section 106.3 of the VCC.

D. 102.2.2 Reconstruction, alteration, or repair in Group R-5 occupancies. Compliance with this section shall be an acceptable alternative to compliance with this code at the discretion of the owner or owner's agent. The VCC may be used for the reconstruction, alteration, or repair of Group R-5 buildings or structures subject to the following criteria:

1. Any reconstruction, alteration or repair shall not adversely affect the performance of the building or structure, or cause the building or structure to become unsafe or lower existing levels of health and safety.

2. Parts of the building or structure not being reconstructed, altered, or repaired shall not be required to comply with the requirements of the VCC applicable to newly constructed buildings or structures.

3. The installation of material or equipment, or both, that is neither required nor prohibited shall only be required to comply with the provisions of the VCC relating to the safe installation of such material or equipment.

4. Material or equipment, or both, may be replaced in the same location with material or equipment of a similar kind of capacity.

Exceptions:

1. This section shall not be construed to permit noncompliance with any applicable flood load or flood-resistant construction requirements of the VCC.

2. Reconstructed decks, balconies, porches, and similar structures located 30 inches (762 mm) or more above grade shall meet the current code provisions for structural loading capacity, connections, and structural attachment. This requirement excludes the configuration and height of handrails and guardrails.

5. In accordance with § 36-99.2 of the Code of Virginia, installation or replacement of glass shall comply with Section R308 or Chapter 24 of the VCC.

E. 102.2.3 Additions. Where one or more newly constructed fire walls that comply with Section 706 of the VCC is provided between an addition and the existing building or structure or portions thereof, the addition shall be considered a separate building, and therefore, not an addition within the scope of this code. Such separate building, including the fire wall, shall be constructed in accordance with the VCC and shall not place the existing building or structure in nonconformance with the building code under which the existing building or structure or the affected portions thereof was built, or as previously approved.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-420. Section 103 Application of code.

A. Section 103.1 General. All administrative provisions of the VCC, including requirements for permits, inspections and approvals by the local building department, provisions for appeals from decisions of the local building department and the issuance of modifications, are applicable to the use of this code, except where this code sets out differing requirements. Where there is a conflict between a general requirement and a specific requirement in the VEBC, the specific requirement shall govern.

B. Section 103.1.1 Use of performance code. Compliance with the provisions of a nationally recognized performance code when approved as a modification shall be considered to constitute compliance with this code. All documents submitted as part of such consideration shall be retained in the permanent records of the local building department.

C. Section 103.1.2 Preliminary meeting. When requested by a prospective permit applicant or when determined necessary by the code official, the code official shall meet with the prospective permit applicant prior to the application for a permit to discuss plans for the proposed work or change of occupancy in order to establish the specific applicability of the provisions of this code.

D. Section 103.2 Change of occupancy. Prior to a change of occupancy of the building or structure, the owner or the owner's agent shall make written application to the local building department for a new certificate of occupancy and shall obtain the new certificate of occupancy.

When impractical to achieve compliance with this code for the new occupancy, the building official shall consider modifications upon application and as provided for in Section 106.3 of the VCC.

E. Section 103.3 Retrofit requirements. The local building department shall enforce the provisions of Section 1101 that require certain existing buildings to be retrofitted with fire protection systems and other safety equipment. Retroactive fire protection system requirements contained in the IFC shall not be applicable unless required for compliance with the provisions of Section 1101.

F. Section 103.4 Nonrequired equipment. The following criteria for nonrequired equipment are in accordance with § 36-103 of the Code of Virginia. Building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the edition of the VCC in effect at the time a building was constructed without meeting current requirements of the code, provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with the VCC. In addition, as a requirement of this code, when such nonrequired equipment is to be installed, the building official shall notify the appropriate fire official or fire chief.

G. Section 103.4.1 Reduction in function or discontinuance of nonrequired fire protection systems. When a nonrequired fire protection system is to be reduced in function or discontinued, it shall be done in such a manner so as not to create a false sense of protection. Generally, in such cases, any features visible from interior areas shall be removed, such as sprinkler heads, smoke detectors, or alarm panels or devices, but any wiring or piping hidden within the construction of the building may remain. Approval of the proposed method of reduction or discontinuance shall be obtained from the building official.

H. Section 103.5 Requirements relating to maintenance. Any requirements of the IEBC requiring the maintenance of existing buildings or structures are invalid.

Note: Requirements for the maintenance of existing buildings and structures and for unsafe conditions are contained in the VMC.

I. Section 103.6 Use of Appendix A. Appendix A of the IEBC provides guidelines for the seismic retrofit of existing buildings. The use of this appendix is not mandatory but shall be permitted to be utilized at the option of an owner, the owner's agent or the RDP involved in a rehabilitation project. However, in no case shall the use of Appendix A be construed to authorize the lowering of existing levels of health or safety in buildings or structures being rehabilitated.

J. Section 103.7 Use of Appendix B. Appendix B of the IEBC provides supplementary accessibility requirements for existing buildings and facilities. All applicable requirements of Appendix B shall be met in buildings and structures being rehabilitated.

K. Section 103.8 Use of Resource A. Resource A of the IEBC provides guidelines for the evaluation of fire resistance ratings of archaic materials and may be used in conjunction with rehabilitation projects.

L. 103.9 Construction documents. Construction documents shall be submitted with the application for a permit. The work proposed to be performed on an existing building or structure shall be classified on the construction documents as repairs, alterations, change of occupancy, addition, historic building, or moved building. Alterations shall further be classified as Level 1 or Level 2.

Exception: Construction documents or classification of the work does not need to be submitted when the building official determines the proposed work does not require such documents, classification, or identification.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-430. Chapter 2 Definitions.

A. Change Section 201.3 of the IEBC to read:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the other International Codes, such terms shall have the meanings ascribed to them in those codes, except that terms that are not defined in this code and that are defined in the VCC shall take precedence over other definitions.

B. Change the following definitions in Section 202 of the IEBC to read:

Building. A combination of materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Building" shall not include roadway tunnels and bridges owned by the Virginia Department of Transportation, which shall be governed by construction and design standards approved by the Commonwealth Transportation Board.

Change of occupancy. Either of the following shall be considered a change of occupancy where the current VCC requires a greater degree of accessibility, structural strength, fire protection, means of egress, ventilation or sanitation than is existing in the current building or structure:

1. Any change in the occupancy classification of a building or structure.

2. Any change in the purpose of, or a change in the level of activity within, a building or structure.

Note: The use and occupancy classification of a building or structure, shall be determined in accordance with Chapter 3 of the VCC.

Existing building. A building for which a legal certificate of occupancy has been issued under any edition of the USBC or approved by the building official when no legal certificate of occupancy exists, and that has been occupied for its intended use; or, a building built prior to the initial edition of the USBC.

Existing structure. A structure (i) for which a legal building permit has been issued under any edition of the USBC, (ii) that has been previously approved, or (iii) that was built prior to the initial edition of the USBC. For application of provisions in flood hazard areas, an existing structure is any building or structure for which the start of construction commenced before the effective date of the community's first flood plain management code, ordinance, or standard.

C. Add the following definitions to Section 202 of the IEBC to read:

Moved building or structure. An existing building or structure that is moved to a new location.

Roof covering. The covering applied to the roof deck or spaced supports for weather resistance, energy performance, fire classification, or appearance.

Structure. An assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Structure" shall not include roadway tunnels and bridges owned by the Virginia Department of Transportation, which shall be governed by construction and design standards approved by the Virginia Commonwealth Transportation Board.

D. Delete the following definitions from Section 202 of the IEBC:

Approved

Dangerous

Deferred submittal

Facility

Flood hazard area

Registered design professional in responsible charge

Relocatable building

Roof repair

Unsafe

Work area

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-431. Chapter 3 General provisions and special detailed requirements.

A. Change IEBC Section 301 to General.

B. Change Section 301.1 of the IEBC to read:

301.1 Applicability. The applicable provisions of this chapter shall be used in conjunction with the requirements in this code, and shall apply to all construction and rehabilitation.

C. Change Section 301.2 to the IEBC to read:

301.2 Occupancy and use. When determining the appropriate application of the referenced sections of this code, the occupancy and use of a building shall be determined in accordance with Chapter 3 of the VCC.

D. Change IEBC Section 302 to Building Materials and Systems.

E. Change Sections 302.1 through 302.3 of the IEBC to read:

302.1 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs and alterations, provided no hazard to life, health or property is created. Hazardous materials shall not be used where the VCC would not permit their use in buildings or structures of similar occupancy, purpose, and location.

302.2 Existing seismic force-resisting systems. Where the existing seismic force-resisting system is a type that can be designated ordinary, values of R, Ω_0, and C_d for the existing seismic force-resisting system shall be those specified by the VCC for an ordinary system unless it is demonstrated that the existing system will provide performance equivalent to that of a detailed, intermediate, or special system.

302.3 Smoke alarms. Repair or replacement of smoke alarms shall be with devices listed in accordance with UL217 and that are no more than 10 years from the date of manufacture. Battery-only powered devices shall be powered by a 10-year sealed battery.

F. Delete Sections 302.3 through 302.6 of the IEBC.

G. Change IEBC Section 303 to Fire escapes.

H. Change Sections 303.1 through 303.3.2, including subsections, and add Sections 303.4 through 303.6 to the IEBC to read:

303.1 Where permitted. Fire escapes shall comply with this section and shall not constitute more than 50% of the required number of exits nor more than 50% of the required exit capacity.

303.1.1 Existing fire escapes. Existing fire escapes shall continue to be accepted as a component in the means of egress.

303.1.2 New fire escapes. For other than Group I-2, newly constructed fire escapes shall be permitted only where exterior stairs cannot be utilized due to lot lines limiting stair size or due to the sidewalks, alleys, or roads at grade level.

Exception: Replacement fire escapes or existing fire escapes undergoing repairs shall comply with Sections 303.3 and 303.4 if feasible, and if not feasible to the greatest extent possible.

303.2 Location. Where located on the front of the building and where projecting beyond the building line, the lowest landing shall not be less than 7 feet (2134 mm) or more than 12 feet (3658 mm) above grade, and shall be equipped with a counterbalanced stairway to the street. In alleyways and thoroughfares less than 30 feet (9144 mm) wide, the clearance under the lowest landing shall not be less than 12 feet (3658 mm).

303.3 Construction. The fire escape shall be designed to support a live load of 100 pounds per square foot (4788 Pa) and shall be constructed of steel or other approved noncombustible materials. Fire escapes constructed of wood not less than nominal 2 inches (51 mm) thick are permitted on buildings of Type V construction. Walkways and railings located over or supported by combustible roofs in buildings of Types III and IV construction are permitted to be of wood not less than nominal 2 inches (51 mm) thick.

303.4 Dimensions. Stairs shall be at least 22 inches (559 mm) wide with risers not more than, and treads not less than, 8 inches (203 mm) and landings at the foot of stairs not less than 40 inches (1016 mm) wide by 36 inches (914 mm) long, located not more than 9 inches (203 mm) below the door.

303.5 Opening protectives. Openings within 10 feet (3048 mm) of newly constructed fire escape stairways shall be protected by fire assemblies having minimum 3/4-hour-fire-resistance ratings.

Exception: Opening protection shall not be required in buildings equipped throughout with an approved automatic sprinkler system.

303.6 Fire escape access and details. Newly constructed fire escapes shall comply with all of the following requirements:

1. Occupants shall have unobstructed access to the fire escape without having to pass through a room subject to locking.

2. Access to a new fire escape shall be through a door, except that windows shall be permitted to provide access from single dwelling units or sleeping units in Groups R-1, R-2 and I-1 occupancies or to provide access from spaces having a maximum occupant load of 10 in other occupancy classifications.

2.1. The window shall have a minimum net clear opening of 5.7 square feet (0.53 m^2) or 5 square feet (0.46 m^2) where located at grade.

2.2. The minimum net clear opening height shall be 24 inches (610 mm) and net clear opening width shall be 20 inches (508 mm).

2.3. The bottom of the clear opening shall not be greater than 44 inches (1118 mm) above the floor.

2.4. The operation of the window shall comply with the operational constraints of the VCC.

3. In all buildings of Group E occupancy, up to and including the 12th grade, buildings of Group I occupancy, rooming houses and child care centers, ladders of any type are prohibited on fire escapes used as a required means of egress.

I. Change Section 304 to Glass replacement and replacement windows.

J. Change Section 304.1 and add Sections 304.2 through 304.3.1 to the IEBC to read:

304.1 Replacement glass. In accordance with § 36-99.2 of the Code of Virginia, installation or replacement of glass shall comply with Chapter 24 of the VCC.

304.2 Replacement window opening devices. In Group R-2 or R-3 buildings containing dwelling units, window opening control devices complying with ASTM F 2090 shall be installed where an existing window is replaced and where all of the following apply to the replacement window:

1. The window is operable;

2. The window replacement includes replacement of the sash and the frame;

3. The top of the sill of the window opening is at a height less than 36 inches (915 mm) above the finished floor;

4. The window will permit openings that will allow passage of a 4-inch diameter (102 mm) sphere when the window is in its largest opened position; and

5. The vertical distance from the top of the sill of the window opening to the finished grade or other surface below, on the exterior of the building, is greater than 72 inches (1829 mm).

The window opening control device, after operation to release the control device allowing the window to fully open, shall not reduce the minimum net clear opening area of the window unit to less than the area required by Section 1029.2 of the VCC.

Exceptions:

1. Operable windows where the top of the sill of the window opening is located more than 75 feet (22 860 mm) above the finished grade or other surface below, on the exterior of the room, space or building, and that are provided with window fall prevention devices that comply with ASTM F 2006.

2. Operable windows with openings that are provided with window fall prevention devices that comply with ASTM F 2090.

304.3 Replacement window emergency escape and rescue openings. Where windows are required by the VCC or International Residential Code to provide emergency escape and rescue openings in Groups R-2 and R-3 occupancies and one-family and two-family dwellings and townhouses regulated by the International Residential Code, replacement windows shall be exempt from the requirements of Sections 1030.2, 1030.3, and 1030.4 of the VCC or Sections R310.2.1, R310.2.2, and R310.2.3 of the International Residential Code, provided the replacement window meets the following conditions:

1. The replacement window is the manufacturer's largest standard size window that will fit within the existing frame or existing rough opening. The replacement window shall be permitted to be of the same operating style as the existing window or a style that provides for an equal or greater window opening area than the existing window.

2. The replacement of the window is not part of a change of occupancy.

304.3.1 Operational constraints. Where bars, grilles, grates, or similar devices are installed over emergency escape and rescue openings as permitted by Section 1030.4 of the VCC, smoke alarms shall also be provided in accordance with Section 907.2.11 of the VCC.

K. Change Section 305 Seismic force-resisting systems.

L. Change Sections 305.1 and 305.2, including subsections, to the IEBC to read:

305.1 General. Where this code requires consideration of the seismic force-resisting system of an existing building subject to repair, alteration, change of occupancy, addition or moving of existing buildings, the seismic evaluation and design shall be based on Section 305.2.

305.2 Seismic evaluation and design procedures. The seismic evaluation and design shall be based on the procedures specified in the VCC or ASCE 41. The procedures contained in Appendix A of this code shall be permitted to be used as specified in Section 305.2.2.

305.2.1 Compliance with VCC-level seismic forces. Where compliance with the seismic design provisions of the VCC is required, the criteria shall be in accordance with one of the following:

1. 100% of the values in the VCC. Where the existing seismic force-resisting system is a type that can be designated as "Ordinary," values of R, Ω_0, and C_d used for analysis in accordance with Chapter 16 of the VCC shall be those specified for structural systems classified as "Ordinary" in accordance with Table 12.2-1 of ASCE 7, unless it can be demonstrated that the structural system will provide performance equivalent to that of a "Detailed," "Intermediate" or "Special" system.

2. ASCE 41, using a Tier 3 procedure and the two level performance objective in Table 305.2.1 for the applicable risk category.

Table 305.2.1
Performance Objectives for Use in ASCE 41 for Compliance with VCC-Level Seismic Forces

Risk Category (Based on VCC Table 1604.5)	Structural Performance Level for Use with BSE-1E Earthquake Hazard Level	Structural Performance Level for Use with BSE-2N Earthquake Hazard Level
I	Life Safety (S-3)	Collapse Prevention (S-5)
II	Life Safety (S-3)	Collapse Prevention (S-5)
III	Damage Control (S-2)	Limited Safety (S-4)
IV	Immediate Occupancy (S-1)	Life Safety (S-3)

305.2.2 Compliance with reduced VCC-level seismic forces. Where seismic evaluation and design is permitted to meet reduced VCC seismic force levels, the criteria used shall be in accordance with one of the following:

1. The VCC using 75% of the prescribed forces. Values of R, Ω_0 and C_d used for analysis shall be as specified in Section 305.2.1 of this code.

2. Structures or portions of structures that comply with the requirements of the applicable chapter in Appendix A as specified in Items 2.1 through 2.5 and subject to the limitations of the respective Appendix A chapters shall be deemed to comply with this section.

2.1. The seismic evaluation and design of unreinforced masonry bearing wall buildings in Risk Category I or II are permitted to be based on the procedures specified in Appendix Chapter A1.

2.2. Seismic evaluation and design of the wall anchorage system in reinforced concrete and reinforced masonry wall buildings with flexible diaphragms in Risk Category I or II are permitted to be based on the procedures specified in Chapter A2.

2.3. Seismic evaluation and design of cripple walls and sill plate anchorage in residential buildings of light-frame wood construction in Risk Category I or II are permitted to be based on the procedures specified in Chapter A3.

2.4. Seismic evaluation and design of soft, weak, or open-front wall conditions in multiunit residential buildings of wood construction in Risk Category I or II are permitted to be based on the procedures specified in Chapter A4.

2.5. Seismic evaluation and design of concrete buildings assigned to Risk Category I, II, or III are permitted to be based on the procedures specified in Chapter A5.

3. ASCE 41, using the performance objective in Table 305.2.2 for the applicable risk category.

Table 305.2.2

Performance Objectives for Use in ASCE 41 for Compliance with Reduced VCC-Level Seismic Forces

Risk Category (Based on VCC Table 1604.5)	Structural Performance Level for Use with BSE-1E Earthquake Hazard Level
I	Life Safety (S-3)
II	Life Safety (S-3)
III	Damage Control (S-2[a])
IV	Immediate Occupancy (S-1)

a. Tier 1 evaluation at the Damage Control performance level shall use the Tier 1 Life Safety checklists and Tier 1 Quick Check provision midway between those specified for Life Safety and Immediate Occupancy performance

M. Delete Sections 305.3 through 305.9, including subsections, of the IEBC.

N. Add IEBC Section 306 Higher education laboratories.

O. Add Section 306.1, including subsections, to the IEBC to read:

306.1 Change of occupancy in existing higher education laboratories. Where the use of new or different hazardous materials or a change in the amount of hazardous materials in existing higher education laboratories would constitute a change of occupancy, this section shall be permitted to be used as an acceptable alternative to compliance with change of occupancy requirements to permit the increased amounts of hazardous materials stipulated without the laboratories being classified as Group H. In addition, such laboratories shall comply with the applicable operational and maintenance requirements in Chapter 38 of the SFPC. Approval under this section is contingent upon operational requirements in the SFPC being complied with and maintained.

306.1.1 Hazardous materials in existing higher education laboratories. The percentage of maximum allowable quantities of hazardous materials per control area and the number of control areas permitted at each floor level within an existing building shall be permitted to comply with Table 302.6.1(1) in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC or shall be permitted to comply with Table 302.6.1(2) in buildings not equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC.

Table 306.1.1(1)

Design and Number of Control Areas in Existing Buildings Equipped throughout with an Automatic Sprinkler System in Accordance with Section 903.3.1.1 of the VCC with Higher Education Laboratories

Floor Level		Percentage of the Maximum Allowable Quantity per Control Area[a]	Number of Control Areas per Floor	Fire-Resistance Rating for Fire Barriers and Horizontal Assemblies in Hours[b]
Above Grade Plane	Higher than 20	5	1	2
	10-20	10	1	2
	7-9	25	2	2
	4-6	50	2	2
	3	75	2	1
	2	100	3	1
	1	100	4	1
Below Grade Plane	1	75	3	1
	2	50	2	1
	Lower than 2	Not Allowed	Not Allowed	Not Allowed

a. Percentage shall be of the maximum allowable quantity per control area shown in Tables 307.1(1) and 307.1(2) of the VCC, with all increases allowed in the notes to those tables.

b. Separation shall include fire barriers and horizontal assemblies as necessary to provide separation from other portions of the building.

Table 306.1.1(2)

Design and Number of Control Areas in Existing Buildings Not Equipped throughout with an Automatic Sprinkler System in Accordance with Section 903.3.1.1 of the VCC with Higher Education Laboratories

Floor Level		Percentage of the Maximum Allowable Quantity per Control Area[a]	Number of Control Areas per Floor	Fire-Resistance Rating for Fire Barriers and Horizontal Assemblies in Hours[b]
Above Grade Plane	Higher than 9	5	1	2
	7-9	10	2	2
	4-6	25	2	2

	3	75	2	1
	2	100	3	1
	1	100	4	1
Below Grade Plane	1	75	3	1
	2	50	2	1
	Lower than 2	Not Allowed	Not Allowed	Not Allowed
a. Percentage shall be of the maximum allowable quantity per control area shown in Tables 307.1(1) and 307.1(2) of the VCC, with all increases allowed in the notes to those tables. b. Separation shall include fire barriers and horizontal assemblies as necessary to provide separation from other portions of the building.				

306.1.2 Automatic fire alarm and detection systems. A fire alarm system shall be provided throughout the building in accordance with Section 907 of the VCC. An automatic fire detection system shall be provided in the control area in accordance with Section 907 of the VCC where the building is not equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC.

306.1.3 System supervision and monitoring. Automatic fire alarm and detection systems shall be electronically supervised and monitored by an approved supervising station or, where approved, shall initiate an audible and visual signal at a constantly attended onsite location.

306.1.4 Restricted materials in storage and use. Where approved by the building official, the storage and use of the following hazardous materials prohibited by VCC Table 307.1(1) in buildings not equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 shall be allowed within a control area at 25% of Table 307.1(1) limits for a building equipped throughout with an automatic sprinkler system:

1. Pyrophorics.

2. Class 4 oxidizers.

No additional quantity increases shall be allowed. All such materials shall be stored and used in accordance with Sections 3805.2.1 and 3805.2.2 of the SFPC.

P. Add IEBC Section 307 Reroofing and roof repair.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-432. (Repealed.)

Statutory Authority

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; repealed, Virginia Register Volume 24, Issue 14, eff. May 1, 2008.

13VAC5-63-432.5. Chapter 4 Accessibility.

A. Change Section 401.1 of the IEBC to read:

401.1 Scope. The applicable provisions of this chapter shall apply to all construction and rehabilitation.

B. Delete Sections 401.2 through 401.3 of the IEBC.

C. Change IEBC Section 402 to Change of Occupancy.

D. Change Section 402.1 of the IEBC to read:

402.1 Change of occupancy. Existing buildings or structures that undergo a change of occupancy are not required to be provided with additional accessibility features. Any alterations undertaken in connection with a change of occupancy shall conform to the applicable requirements of Section 404.

E. Change IEBC Section 403 to Additions.

F. Change Section 403.1 of the IEBC to read:

403.1 Additions. Accessibility provisions for new construction shall apply to additions. An addition that affects the accessibility to, or contains an area of, a primary function shall comply with the requirements in Section 404.3, as applicable.

G. Add Sections 403.2 through 403.4 to the IEBC to read:

403.2 Accessible dwelling units and sleeping units. Where Group I-1, I-2, I-3, R-1, R-2, or R-4 dwelling or sleeping units are being added, the requirements of Section 1107 of the VCC for accessible units apply only to the quantity of spaces being added.

403.3 Type A dwelling or sleeping units. Where more than 20 Group R-2 dwelling or sleeping units are being added, the requirements of Section 1107 of the VCC for Type A units and Chapter 9 of the VCC for visible alarms apply only to the quantity of the spaces being added.

403.4 Type B dwelling or sleeping units. Where four or more Group I-1, I-2, R-1, R-2, R-3, or R-4 dwelling or sleeping units are being added, the requirements of Section 1107 of the VCC for Type B units and Chapter 9 of the VCC for visible alarms apply only to the quantity of spaces being added.

H. Change IEBC Section 404 to Alterations.

I. Change Section 404.1 of the IEBC to read:

404.1 General. An alteration of an existing facility shall not impose a requirement for greater accessibility than that which would be required for new construction. Alterations shall not reduce or have the effect of reducing accessibility of a facility or portion of a facility.

J. Add Sections 404.2 through 404.4.15, including subsections, to the IEBC to read:

404.2 Alterations. A facility that is altered shall comply with the applicable provisions in this section and Chapter 11 of the VCC, except as modified by Sections 404.3 and 404.4, unless technically infeasible. Where compliance with this section is technically infeasible, the alteration shall provide access to the maximum extent technically feasible.

Exceptions:

1. The altered element or space is not required to be on an accessible route, unless required by Section 404.3.

2. Accessible means of egress required by Chapter 10 of the VCC are not required to be provided in existing facilities.

3. The alteration to Type A individually owned dwelling units within a Group R-2 occupancy shall be permitted to meet the provision for a Type B dwelling unit.

404.3 Alterations affecting an area containing a primary function. Where an alteration affects or could affect the usability of or access to an area containing a primary function, the route to the primary function area shall be accessible. The accessible route to the primary function area shall include toilet facilities and drinking fountains that shall also be accessible to and useable by individuals with disabilities, serving the area of primary function.

Exceptions:

1. The costs of providing the accessible route are not required to exceed 20% of the costs of the alterations affecting the area of primary function.

2. This provision does not apply to alterations limited solely to windows, hardware, operating controls, electrical outlets and signs.

3. This provision does not apply to alterations limited solely to mechanical systems, electrical systems, installation or alteration of fire protection systems and abatement of hazardous materials.

4. This provision does not apply to alterations undertaken for the primary purpose of increasing the accessibility of a facility.

5. This provision does not apply to altered areas limited to Type B dwelling and sleeping units.

404.4 Scoping for alterations. The provisions of Sections 404.4.1 through 404.1.15 shall apply to alterations to existing buildings and facilities.

404.4.1 Entrances. Where an alteration includes alterations to an entrance, and the facility has an accessible entrance on an accessible route, the altered entrance is not required to be accessible unless required by Section 404.3. Signs complying with Section 1111 of the VCC shall be provided.

Exception: Where an alteration includes alterations to an entrance, and the facility has an accessible entrance, the altered entrance is not required to be accessible, unless required by Section 404.3. Signs complying with Section 1111 of the VCC shall be provided.

404.4.2 Elevators. Altered elements of existing elevators shall comply with ASME A17.1/CSA B44 and ICC A117.1. Such elements shall also be altered in elevators programmed to respond to the same hall call control as the altered elevator.

404.4.3 Platform lifts. Platform (wheelchair) lifts complying with ICC A117.1 and installed in accordance with ASME A18.1 shall be permitted as a component of an accessible route.

404.4.4 Stairways and escalators. Where an escalator or stairway is added where none existed previously and major structural modifications are necessary for installation, an accessible route shall be provided between the levels served by the escalator or stairways in accordance with Section 1104.4 of the VCC.

404.4.5 Ramps. Where steeper slopes than allowed by Section 1012.2 of the VCC are necessitated by space limitations, the slope of ramps in or providing access to existing facilities shall comply with Table 404.4.5.

Table 404.4.5

Ramps

Slope	Maximum Rise
Steeper than 1:10 but not steeper than 1:8	3 inches
Steeper than 1:12 but not steeper than 1:10	6 inches
For SI: 1 inch = 25.4 mm	

404.4.6 Accessible dwelling or sleeping units. Where Group I-1, I-2, I-3, R-1, R-2, or R-4 dwelling or sleeping units are being altered, the requirements of Section 1107 of the VCC for Accessible units apply only to the quantity of the spaces being altered.

404.4.7 Type A dwelling or sleeping units. Where more than 20 Group R-2 dwelling or sleeping units are being altered, the requirements of Section 1107 of the VCC for Type A units and Chapter 9 of the VCC for visible alarms apply only to the quantity of the spaces being altered.

404.4.8 Type B dwelling or sleeping units. Where four or more Group I-1, I-2, R-1, R-2, R-3, or R-4 dwelling or sleeping units are being altered, the requirements of Section 1107 of the VCC for Type B units and Chapter 9 of the VCC for visible alarms apply only to the quantity of the spaces being altered.

Exceptions: Groups I-1, I-2, R-2, R-3, and R-4 dwelling or sleeping units where the first certificate of occupancy was issued before March 15, 1991, are not required to provide Type B dwelling or sleeping units.

404.4.9 Jury boxes and witness stands. In alterations, accessible wheelchair spaces are not required to be located within the defined area of raised jury boxes or witness stands and shall be permitted to be located outside these spaces where ramp or lift access poses a hazard by restricting or projecting into a required means of egress.

404.4.10 Toilet and bathing rooms. Where it is technically infeasible to alter existing toilet and bathing rooms to be accessible, an accessible single-user or family or assisted-use toilet or bathing room constructed in accordance with Section 1109.2.1 of the VCC is permitted. The single-user or family or assisted-use toilet or bathing room shall be located on the same floor and in the same area as the existing toilet or bathing rooms. At the inaccessible toilet and bathing rooms, provide directional signs indicating the location of the nearest single-user or family or assisted-use toilet room or bathing room. These directional signs shall include the International Symbol of Accessibility and sign characters shall meet the visual character requirements in accordance with ICC A117.1.

404.4.10.1 Additional toilet and bathing facilities. In assembly and mercantile occupancies, where additional toilet fixtures are added, not fewer than one accessible family or assisted-use toilet room shall be provided where required by Section 1109.2.1 of the International Building Code. In recreational facilities, where additional bathing rooms are being added, not fewer than one family or assisted-use bathing room shall be provided where required by Section 1109.2.1 of the International Building Code.

404.4.11 Dressing, fitting and locker rooms. Where it is technically infeasible to provide accessible dressing, fitting or locker rooms at the same location as similar types of rooms, one accessible room on the same level shall be provided. Where separate-sex facilities are provided, accessible rooms for each sex shall be provided. Separate sex facilities are not required where only unisex rooms are provided.

404.4.12 Fuel dispensers. Operable parts of replacement fuel dispensers shall be permitted to be 54 inches (1370 mm) maximum, measuring from the surface of the vehicular way where fuel dispensers are installed on existing curbs.

404.4.13 Thresholds. The maximum height of thresholds at doorways shall be 3/4 inch (19.1 mm). Such thresholds shall have beveled edges on each side.

404.4.14 Amusement rides. Where the structural or operational characteristics of an amusement ride are altered to the extent that the amusement ride's performance differs from that specified by the manufacturer or the original design, the amusement ride shall comply with requirements for new construction in Section 1110.4.8 of the VCC.

404.4.15 Dining areas. An accessible route to raised or sunken dining areas or to outdoor seating areas is not required provided that the same services and décor are provided in an accessible space usable by any occupant and not restricted to use by people with a disability.

K. Change Section 405 to Historic Buildings.

L. Change Section 405.1 to read:

405.1 General. These provisions shall apply to facilities designated as historic buildings or structures that undergo alterations unless technically infeasible. Where compliance with the requirements for accessible routes, entrances or toilet rooms would threaten or destroy the historic significance of the facility, the alternative requirements of Sections 405.1.1 through 405.1.5 for that element shall be permitted.

M. Add Sections 405.1.1 through 405.1.5 to the IEBC to read:

405.1.1 Site arrival points. At least one accessible route from a site arrival point to an accessible entrance shall be provided.

405.1.2 Multilevel buildings and facilities. An accessible route from an accessible entrance to public spaces on the level of the accessible entrance shall be provided.

405.1.3 Entrances.

Where an entrance cannot be made accessible in accordance with Section 404.4.1, an accessible entrance that is unlocked while the building is occupied shall be provided; or, a locked accessible entrance with a notification system or remote monitoring shall be provided.

Signs complying with Section 1111 of the VCC shall be provided at the primary entrances and the accessible entrance.

405.1.4 Toilet and bathing facilities. Where toilet rooms are provided, at least one accessible single-user or family or assisted-use toilet or bathing room complying with Sections 1109.2.1 of the VCC and Section 403.2.1 of the International Plumbing Code shall be provided.

405.1.5 Type B units. Type B dwelling or sleeping units required by Section 1107 of the VCC are not required to be provided in historic buildings or structures.

N. Delete Sections 405.2 through 405.2.5, including subsections, of the IEBC.

O. Delete Sections 406, 407, and 408 of the IEBC in their entirety.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-433. Chapter 5 Repairs.

A. Change Section 501.1 and 501.2 of the IEBC to read:

501.1 Scope. Repairs, including the patching or restoration or replacement of damaged materials, elements, equipment or fixtures shall comply with the requirements of this chapter. Repairs to historic buildings need only comply with Chapter 9. Portions of the existing building or structure not being repaired shall not be required to comply with the requirements of this code applicable to newly constructed buildings or structures. Work on nondamaged components that is necessary for the required repair of damaged components shall be considered part of the repair and shall not be subject to the provisions of Chapter 6. Routine maintenance required by Section 302, ordinary repairs exempt from permit in accordance with Section 108.2 of the VCC, and abatement of wear due to normal service conditions shall not be subject to the requirements for repairs in this section.

501.2 Conformance. The work shall not make the building less conforming than it was before the repair was undertaken. Repairs shall be done in a manner that maintains the following:

1. Level of fire protection that is existing.

2. Level of protection that is existing for the means of egress.

3. Level of accessibility that is existing.

B. Delete Section 501.1.1 of the IEBC.

C. Change Section 502 to Structural.

D. Change Sections 502.1 through 502.4 and add Section 502.4.1 to the IEBC to read:

502.1 General. Structural repairs shall be in compliance with this section and Section 501.2. Regardless of the scope of repair, new structural members and connections used for repair or rehabilitation shall comply with the detailing provisions of the VCC for new buildings of similar structure, purpose and location.

502.2 Less than substantial structural damage. For damage less than substantial structural damage, repairs shall be allowed that restore the building to its predamage state.

502.3 Substantial structural damage to vertical elements of the lateral force-resisting system. A building that has sustained substantial structural damage to the vertical elements of its lateral force-resisting system shall be evaluated in accordance with Section 502.3.1 and either repaired in accordance with Section 502.3.2 or repaired and rehabilitated in accordance with Section 502.3.3, depending on the results of the evaluation.

Exceptions:

1. Buildings assigned to Seismic Design Category A, B, or C whose substantial structural damage was not caused by earthquake need not be evaluated or rehabilitated for load combinations that include earthquake effects.

2. One-family and two-family dwellings need not be evaluated or rehabilitated for load combinations that include earthquake effects.

502.3.1 Evaluation. The building shall be evaluated by a registered design professional, and the evaluation findings shall be submitted to the building official. The evaluation shall establish whether the damaged building if repaired to its predamage state, would comply with the provisions of the VCC for load combinations that include wind or earthquake effects, except that the seismic forces shall be the reduced VCC-level seismic forces.

Wind loads for this evaluation shall be those prescribed in Section 1609 of the VCC. Earthquake loads for this evaluation, if required, shall be permitted to be 75% of those prescribed in Section 1613 of the VCC. Alternatively, compliance with ASCE 41, using the performance objective in Table 305.2.2 for the applicable risk category, shall be deemed to meet the earthquake evaluation requirement.

502.3.2 Extent of repair for compliant buildings. If the evaluation establishes that the building in its predamage condition complies with the provisions of Section 502.3.1, then repairs shall be permitted that restore the building to its predamage state.

502.3.3 Extent of repair for noncompliant buildings. If the evaluation does not establish that the building in its predamage condition complies with the provisions of Section 502.3.1, then the building shall be rehabilitated to comply with the provisions of this section. The wind loads for the repair shall be as required by the building code in effect at the time of original construction, unless the damage was caused by wind, in which case the wind loads shall be in accordance with the VCC. The earthquake loads for this rehabilitation design shall be those required by the building code in effect at the time of original construction, but not less than the reduced VCC-level seismic forces. New structural members and connections required by this rehabilitation design shall comply with the detailing provisions of the VCC for new buildings of similar structure, purpose and location. Alternatively, compliance with ASCE 41, using the performance objective in Table 305.2.2 for the applicable risk category, shall be deemed to meet the earthquake rehabilitation requirement.

502.4 Substantial structural damage to gravity load-carrying components. Gravity load-carrying components that have sustained substantial structural damage shall be rehabilitated to comply with the applicable provisions for dead and live loads in the VCC. Snow loads shall be considered if the substantial structural damage was caused by or related to snow load effects. Existing gravity load carrying structural elements shall be permitted to be designed for live loads approved prior to the damage. If the approved live load is less than that required by Section 1607 of the VCC, the area designed for the nonconforming live load shall be posted with placards of approved design indicating the approved live load. Nondamaged gravity load-carrying components that receive dead, live, or snow loads from rehabilitated components shall also be rehabilitated if required to comply with the design loads of the rehabilitation design, or shown to have the capacity to carry the design loads of the rehabilitation design. New structural members and connections required by this rehabilitation design shall comply with the detailing provisions of the VCC for new buildings of similar structure purpose and location.

502.4.1 Lateral force-resisting elements. Regardless of the level of damage to gravity elements of the lateral force-resisting system, if substantial structural damage to gravity load-carrying components was caused primarily by wind or earthquake effects, then the building shall be evaluated in accordance with Section 502.3.1 and, if noncompliant, rehabilitated in accordance with Section 502.3.3.

Exceptions:

1. Buildings assigned to Seismic Design Category A, B, or C whose substantial structural damage was not caused by earthquake need not be evaluated or rehabilitated for load combinations that include earthquake effects.

2. One-family and two-family dwellings need not be evaluated or rehabilitated for load combinations that include earthquake effects.

E. Delete Sections 502.5 through 502.8 of the IEBC.

F. Change Section 503 to Flood Hazard Areas.

G. Change Section 503.1 of the IEBC to read:

503.1 Flood hazard areas. For buildings and structures, in flood hazard areas established in Section 1612.3 of the VCC, or Section R322 of the International Residential Code, as applicable, any repair that constitutes substantial improvement or repair of substantial damage of the existing building or structure shall comply with the flood design requirements for new construction and all aspects of the existing building or structure shall be brought into compliance with the requirements for new construction for flood design.

For buildings and structures in flood hazard areas established in Section 1612.3 of the VCC, or Section R322 of the International Residential Code, as applicable, any repairs that do not constitute substantial improvement or repair of substantial damage of the existing building or structure are not required to comply with the flood design requirements for new construction.

H. Delete Sections 503.2 through 503.16.3, including subsections, of the IEBC.

I. Change Section 504 to Electrical.

J. Change Section 504.1, including subsections, and add section 504.1.5 of the IEBC to read:

504.1 Material. Existing electrical wiring and equipment undergoing repair shall be allowed to be repaired or replaced with like material.

504.1.1 Receptacles. Replacement of electrical receptacles shall comply with the applicable requirements of Section 406.4(D) of NFPA 70.

504.1.2 Plug fuses. Plug fuses of the Edison-base type shall be used for replacements only where there is no evidence of over fusing or tampering per applicable requirements of Section 240.51(B) of NFPA 70.

504.1.3 Nongrounding-type receptacles. For replacement of nongrounding-type receptacles with grounding-type receptacles and for branch circuits that do not have an equipment grounding conductor in the branch circuitry, the grounding conductor of a grounding-type receptacle outlet shall be permitted to be grounded to any accessible point on the grounding electrode system or to any accessible point on the grounding electrode conductor in accordance with Section 250.130(C) of NFPA 70.

504.1.4 Group I-2 receptacles. Non-"hospital grade" receptacles in patient bed locations of Group I-2 shall be replaced with "hospital grade" receptacles, as required by NFPA 99 and Article 517 of NFPA 70.

504.1.5 Grounding of appliances. Frames of electric ranges, wall-mounted ovens, counter-mounted cooking units, clothes dryers and outlet or junction boxes that are part of the existing branch circuit for these appliances shall be permitted to be grounded to the grounded circuit conductor in accordance with Section 250.140 of NFPA 70.

K. Delete Sections 504.2 through 504.5 of the IEBC.

L. Change Section 505 to Mechanical.

M. Change Sections 505.1 and 505.2 of the IEBC to read:

505.1 General. Existing mechanical systems undergoing repair shall not make the building less conforming than it was before the repair was undertaken.

505.2 Mechanical draft systems for manually fired appliances and fireplaces. A mechanical draft system shall be permitted to be used with manually fired appliances and fireplaces where such a system complies with all of the following requirements:

1. The mechanical draft device shall be listed and installed in accordance with the manufacturer's installation instructions.

2. A device shall be installed that produces visible and audible warning upon failure of the mechanical draft device or loss of electrical power at any time that the mechanical draft device is turned on. This device shall be equipped with a battery backup if it receives power from the building wiring.

3. A smoke detector shall be installed in the room with the appliance or fireplace. This device shall be equipped with a battery backup if it receives power from the building wiring.

N. Delete Sections 505.3 and 505.4 of the IEBC.

O. Change Section 506 to Plumbing.

P. Change Sections 506.1 and 506.2 of the IEBC to read:

506.1 Materials. Plumbing materials and supplies shall not be used for repairs that are prohibited in the International Plumbing Code.

506.2 Water closet replacement. The maximum water consumption flow rates and quantities for all replaced water closets shall be 1.6 gallons (6 L) per flushing cycle.

Exception: Blowout-design water closets 3.5 gallons (13 L) per flushing cycle.

Q. Delete Section 506.1.1 and Sections 506.3 through 506.4.4, including subsections, of the IEBC.

R. Change Section 507 to Energy Conservation.

S. Add Sections 507.1 and 507.2 to the IEBC to read:

507.1 General. Except as permitted by Sections 302.1 and 501.1, repairs shall comply with the VECC.

Exception: Where a building was constructed to comply with the requirements of the building code under which the building or structure or the affected portion thereof was built, or as previously approved by the building official, repairs need not comply with the VECC, provided the repairs, as documented, do not result in reduced energy efficiency.

507.2 Application. For the purposes of this section, the following shall be considered repairs:

1. Glass-only replacements in an existing sash and frame.

2. Replacement of existing doors that separate conditioned space from the exterior shall not require the installation of a vestibule or revolving door, provided that an existing vestibule that separates a conditioned space from the exterior shall not be removed.

3. Repairs where only the bulb, the ballast or both within the existing luminaires in a space are replaced, provided that the replacement does not increase the installed interior lighting power.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-433.3. Chapter 6 Alterations.

A. Change Sections 601.1 and 601.2 of the IEBC to read:

601.1 General. Except as modified in Chapter 9 or this chapter, alterations to any building or structure shall comply with the requirements of the VCC for new construction. Alterations shall be such that the existing building or structure is no less conforming to the provisions of the VCC than the existing building or structure was prior to the alteration. Portions of the building or structure not being altered shall not be required to comply with the requirements of the VCC.

Exceptions:

1. Any stairway replacing an existing stairway shall not be required to comply with the requirements of Section 1011 of the VCC where the existing space and construction does not allow a reduction in pitch or slope.

2. Handrails otherwise required to comply with Section 1011.11 of the VCC shall not be required to comply with the requirements of Section 1014.6 of the VCC regarding full extension of the handrails where such extensions would be hazardous due to plan configuration.

3. Where the current level of safety or sanitation is proposed to be reduced, the portion altered shall conform to the requirements of the VCC.

4. Alterations complying with the requirements of the building code under which the building or structure or the affected portions thereof was built, or as previously approved by the building official, shall be considered in compliance with the provisions of this code. New structural members added as part of the alteration shall comply with the VCC. Alterations of existing buildings in flood hazard areas shall comply with Section 601.3.

601.2 Levels of alterations. Alterations to any building or structure shall be classified as the following:

B. Delete Section 601.1.1.

C. Add Sections 601.2.1 through 601.5, including subsections, to the IEBC to read:

601.2.1 Level 1. Level 1 alterations include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose, or the removal without replacement of materials, elements, equipment, or fixtures. Level 1 alterations shall comply with the applicable provisions Section 602.

601.2.2 Level 2. Level 2 alterations shall comply with the applicable provisions of Sections 602 and 603 and shall include

the following:

1. The addition or elimination of any door or window.

2. The addition of elimination of any wall, floor, or ceiling assembly.

3. The reconfiguration or extension of any system.

4. The installation of any addition equipment, materials, elements, or fixtures.

601.3 Flood hazard areas. In flood hazard areas, alterations that constitute substantial improvement shall require that the building comply with Section 1612 of the VCC or Section R322 of the International Residential Code, as applicable.

601.4 Energy conservation. Except as modified by this section, alterations to an existing

building, building system, or structure shall conform to the applicable provisions of the Virginia Energy Conservation Code or Virginia Residential Code as they relate to new construction without requiring the unaltered portions of the existing building, building system, or structure to comply with the VECC or VRC.

601.4.1 Opaque walls. Where the existing stud wall cavity that is part of the thermal envelope is exposed during the alteration, such exposed cavities between framing members shall be filled with insulation having a minimum nominal value of not less than R-30/inch or filled to the minimum prescriptive insulation requirement in Table R402.1.2 or Table C402.1.3 of the VECC.

Exception: Where less than 60 square feet (5.574 m^2) of the existing stud cavities that are part of the thermal envelope are exposed.

601.4.2 Floors. Where the existing framed floor cavity that is part of the thermal envelop is exposed during the alteration, such exposed cavities between framing members shall be filled with insulation having a minimum nominal value of not less than R-30/inch or filled to the minimum prescriptive insulation requirement in Table R402.1.2 or Table C402.1.3 of the VECC.

Exception: Where less than 60 square feet (5.574 m^2) of the existing framed floor cavities that are part of the thermal envelope are exposed.

601.4.3 Ceilings and vented attics. Where the existing rafter cavity that is part of the thermal envelope is exposed during the alteration, such exposed cavities between framing members shall be filled with insulation having a minimum nominal value of not less than R-30/inch or filled to the minimum prescriptive insulation requirement in Table R402.1.2 or Table C402.1.3 of the VECC. Where the existing framed floor or truss bottom chord cavity of a vented attic is exposed during the alteration, the exposed cavities shall be filled with insulation having a minimum nominal value of not less than R-30/inch or filled to the minimum prescriptive insulation requirement in Table R402.1.2 or Table C402.1.3 of the VECC. If the existing insulation laying on such vented attic floor is removed, such insulation shall be replaced with insulation complying with the minimum prescriptive insulation requirement in Table R402.1.2 or Table C402.1.3 of the VECC.

Exception: Where less than 60 square feet (5.574 m^2) of the existing rafter, framed vented attic floor, or truss bottom chord cavities that are part of the thermal envelope is exposed.

601.4.4 Fenestration. Where an existing fenestration unit is replaced, the replacement fenestration unit shall comply with the requirements for U-factor and SHGC as specified in Table R402.1.2 or Table C402.4 of the VECC, as applicable. Where more than one fenestration unit is to be replaced, an area-weighted average of the U-factor, SHGC, or both of all replacement fenestration units shall be permitted.

601.4.4.1 Converting fenestration unit to opaque wall. Where existing fenestration units are converted into an opaque exterior wall assembly, the new portion of wall shall comply with Section 601.4.1.

601.4.5 Roof replacement. Roof replacements shall comply with Section C402.2.1 and Section C402.1. C402.1.4, C402.1.5, or C407 of the VECC where all of the following conditions are met. For purposes of this section, roof area shall mean an area of the existing roof of the same building that is bounded by exterior walls, different roof levels, roof edges or perimeters, roof dividers, building expansion joints, or parapets.

1. The roof replacement exceeds 75% or 30,000 square feet (2787.1 m^2) of the roof area, whichever is less.

2. The roof assembly is part of the building thermal envelope, as defined by the VECC.

3. The roof assembly contains insulation entirely above the roof deck.

601.4.6 Lighting. Lighting alterations shall comply with Section 601.4.6.1 or 601.4.6.2, as applicable.

601.4.6.1 Commercial Lighting. Altered commercial lighting shall comply with Section C405 of the VECC.

Exception: Alterations that replace less than 10% of the luminaires within a space, provided the replacement luminaires do not increase the existing interior lighting power as determined by Section C405.3.1 of the VECC.

601.4.6.2 Residential lighting. Altered residential lighting shall comply with Section R404 of the VECC.

Exception: Alterations that replace less than 50% of the total luminaires within a space, provided the replacement luminaires do not decrease the efficacy of the lighting equipment as required by Section R404.1 of the VECC.

601.4.7 Ducts. In R-5 occupancies, where ducts from an existing heating and cooling system are extended, such duct systems with less than 40 linear feet (12.19 m) in unconditioned spaces shall not be required to be tested in accordance with Section R403.3.3 of the VECC.

601.5 Accessibility. Accessibility shall be provided in accordance with applicable provisions of Section 404.

D. Change Sections 602.1 and 602.2 of the IEBC to read:

602.1 Scope. Level 1 alterations as described in Section 601.2.1 shall comply with the requirements of this section.

602.2 Conformance. Alterations shall be done in a manner that maintains the following:

1. Level of fire protection that is existing.

2. Level of protection that is existing for the means of egress.

E. Add Sections 602.3 through 602.3.5 to the IEBC to read:

602.3 Building elements and materials. Building elements and materials shall comply with the applicable provisions of Sections 302 and 602.3.1 through 602.3.3.

602.3.1 Interior finishes and trim. All newly installed interior finish and trim materials and wall, floor, and ceiling finishes shall comply with Chapter 8 of the VCC.

602.3.2 Materials and methods. All new building elements and materials shall comply with the materials and methods requirements in the VCC, International Energy Conservation Code, International Mechanical Code, and International Plumbing Code, as applicable, that specify material standards, detail of installation and connection, joints, penetrations, and continuity of any element, component, or system in the building.

602.3.2.1 Reroofing. Materials and methods of application used for recovering or replacing an existing roof covering shall comply with Chapter 15 of the VCC, except as modified by Section 302.1 and this section.

Exceptions:

1. Roof replacement or roof recover of existing low-slope roof coverings shall not be required to meet the minimum design slope requirement of one-quarter unit vertical in 12 units horizontal (2.0% slope) in Section 1507 of the VCC for roofs that provide positive roof drainage.

2. Recovering or replacing an existing roof covering shall not be required to meet the requirement of secondary (emergency overflow) drains or scuppers in Section 1503.4 of the VCC for roofs that provide positive roof drainage. For the purposes of this exception, existing secondary drainage or scupper systems required in accordance with the VCC shall not be removed unless they are replaced by secondary drains or scuppers designed and installed in accordance with Section 1503.4 of the VCC.

3. Where the existing roof assembly includes an ice barrier membrane that is adhered to the roof deck, the existing ice barrier membrane shall be permitted to remain in place and covered with an additional layer of ice barrier membrane in accordance with Section 1507 of the VCC.

602.3.2.1.1 Roof recover permitted. The installation of a new roof covering over an existing roof covering shall be permitted where any of the following conditions occur:

1. Complete and separate roofing systems, such as standing-seam metal roof systems, that are designed to transmit the roof loads directly to the building's structural system and that do not rely on existing roofs and roof coverings for support, shall not require the removal of existing roof coverings.

2. Where the application of a new roof covering over wood shingle or shake roofs creates a combustible concealed space, the entire existing surface is covered with gypsum board, mineral fiber, glass fiber or other approved materials securely fastened in place.

3. The application of a new protective coating over an existing spray polyurethane foam roofing system shall be permitted without tearoff of existing roof coverings

4. Where the new roof covering is installed in accordance with the roof covering manufacturer's approved instructions.

602.3.2.1.2 Roof recover not permitted. A roof recover shall not be permitted where any of the following conditions occur:

1. Where the existing roof or roof covering is water soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.

2. Where the existing roof covering is slate, clay, cement, or asbestos-cement tile.

3. Where the existing roof has two or more applications of any type of roof covering.

602.3.2.1.3 Reinstallation of materials. Existing slate, clay or cement tile shall be permitted for reinstallation, except that damaged, cracked, or broken slate or tile shall not be reinstalled. Existing vent flashing, metal edgings, drain outlets, collars, and metal counter-flashings shall not be reinstalled where rusted, damaged, or deteriorated. Aggregate surfacing materials shall not be reinstalled. Metal flashing to which bituminous materials are to be adhered shall be primed prior to installation.

602.3.2.2 Structural and construction loads. Structural roof components shall be capable of supporting the roof covering system and the material and equipment loads that will be encountered during installation of the systems.

Exception: Structural elements where the additional dead load from the roofing or equipment does not increase the force in the element by more than 5.0%; or where the addition of a second layer of roof covering weighing three pounds per square foot (0.1437kN/m) or less over an existing, single layer of roof covering.

602.3.3 International Fuel Gas Code. The following sections of the International Fuel Gas Code shall constitute the fuel gas materials and methods requirements for Level 1 alterations.

1. All of Chapter 3, entitled "General Regulations," except Sections 303.7 and 306.

2. All of Chapter 4, entitled "Gas Piping Installations," except Sections 401.8 and 402.3.2.1. Sections 401.8 and 402.3 shall apply when the work being performed increases the load on the system such that the existing pipe does not meet the size required by code. Existing systems that are modified shall not require resizing as long as the load on the system is not increased and the system length is not increased even if the altered system does not meet code minimums.

3. All of Chapter 5, entitled "Chimneys and Vents."

4. All of Chapter 6, entitled "Specific Appliances."

F. Change Section 603.1 and 603.2, and add Sections 603.3 through 603.7.6, including subsections, to the IEBC to read:

603.1 Scope. Level 2 alterations as described in Section 601.2.2 shall comply with the requirements of this section.

Exception: Buildings in which the alteration is exclusively the result of compliance with the accessibility requirements of Section 404.3 shall be permitted to comply with Section 602.

603.2 Level 1 alteration compliance. In addition to the requirements of this section, all alterations shall comply with the applicable requirements of Section 602.

603.3 Compliance. All new construction elements, components, systems, and spaces shall comply with the requirements of the VCC.

Exceptions:

1. Windows may be added without requiring compliance with the light and ventilation requirements of the VCC.

2. Where an approved automatic sprinkler system is installed throughout the story, the required fire-resistance rating for any corridor located on the story shall be permitted to be reduced in accordance with the VCC. In order to be considered for a corridor rating reduction, such system shall provide coverage for the stairway landings serving the floor and the intermediate landings immediately below.

3. In other than Groups A and H occupancies, the maximum length of a newly constructed or extended dead-end corridor shall not exceed 50 feet (15240 mm) on floors equipped with an automatic sprinkler system installed in accordance with the VCC.

4. The minimum ceiling height of the newly created habitable and occupiable spaces and corridors shall be 7 feet (2134 mm).

5. Where provided in below-grade transportation stations, new escalators shall be permitted to have a clear width of less than 32 inches (815 mm).

603.4 Fire-resistance ratings. Buildings where an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 of the VCC has been added, and the building is now sprinklered throughout, the required fire-resistance ratings of building elements and materials shall be permitted to meet the requirements of the current building code.

603.5 In mechanically ventilated spaces, existing mechanical ventilation systems that are altered, reconfigured, or extended shall provide not less than 5 cubic feet per minute (cfm) (0.0024 m^3/s) per person of outdoor air and not less than 15 cfm (0.0071 m^3/s) of ventilation air per person or not less than the amount of ventilation air determined by the Indoor Air Quality Procedure of ASHRAE 62.

603.5.1 Local exhaust. All newly introduced devices, equipment, or operations that produce airborne particulate matter, odors, fumes, vapor, combustion products, gaseous contaminants, pathogenic and allergenic organisms, and microbial contaminants in such quantities as to affect adversely or impair health or cause discomfort to occupants shall be provided with local exhaust.

603.6 Plumbing. Where the occupant load of the story is increased by more than 20%, plumbing fixtures for the story shall be provided in quantities specified in the International Plumbing Code based on the increased occupant load.

603.7 Structural. Structural elements and systems within buildings undergoing Level 2 alterations shall comply with Sections 603.7.1 through 603.7.6.

603.7.1 New structural elements. New structural elements in alterations, including connections and anchorage, shall comply with the VCC.

603.7.2 Minimum design loads. The minimum design loads on existing elements of a structure that do not support additional loads as a result of an alteration shall be the loads applicable at the time the building was constructed.

603.7.3 Existing structural elements carrying gravity loads. Any existing gravity load-carrying structural element for which an alteration causes an increase in design gravity load of more than 5% shall be strengthened, supplemented, replaced or otherwise altered as needed to carry the increased gravity load required by the VCC for new structures. Any existing gravity load-carrying structural element whose gravity load-carrying capacity is decreased as part of the alteration shall be shown to have the capacity to resist the applicable design gravity loads required by the VCC for new structures.

Exception: Buildings of Group R occupancy with not more than five dwelling or sleeping units used solely for residential purposes where the existing building and its alteration comply with the conventional light-frame construction methods of the VCC or the provisions of the International Residential Code.

603.7.3.1 Design live load. Where the alteration does not result in increased design live load, existing gravity load-carrying structural elements shall be permitted to be evaluated and designed for live loads approved prior to the alteration. If the approved live load is less than that required by Section 1607 of the VCC, the area designed for the nonconforming live load shall be posted with placards of approved design indicating the approved live load. Where the alteration does result in increased design live load, the live load required by Section 1607 of the VCC shall be used.

603.7.4 Existing structural elements resisting lateral loads. Except as permitted by Section 603.7.5, where the alteration increases design lateral loads in accordance with Section 1609 or 1613 of the VCC, or where the alteration results in a prohibited structural irregularity as defined in ASCE 7, or where the alteration decreases the capacity of any existing lateral load-carrying structural element, the structure of the altered building or structure shall be shown to meet the requirements of Sections 1609 and 1613 of the VCC. For purposes of this section, compliance with ASCE 41, using a Tier 3 procedure and the two-level performance objective in Table 305.2.2 for the applicable risk category, shall be deemed to meet the requirements of Section 1613 of the VCC.

Exception:

1. Any existing lateral load-carrying structural element whose demand-capacity ratio with the alteration considered is not more than 10% greater than its demand-capacity ratio with the alteration ignored shall be permitted to remain unaltered. For purposes of calculating demand-capacity ratios, the demand shall consider applicable load combinations with design lateral loads or forces in accordance with VCC Sections 1609 and 1613. Reduced VCC level seismic forces in accordance with Section 305.2.2 shall be permitted. For purposes of this exception, comparisons of demand-capacity ratios and calculation of design lateral loads, forces and capacities shall account for the cumulative effects of additions and alterations since original construction.

2. Buildings of Group R occupancy with no more than five dwelling or sleeping units used solely for residential purposes that are altered based on the conventional light-frame construction methods of the VCC or in compliance with the provisions of the IRC.

3. Where such alterations involve only the lowest story of a building and the change of occupancy provisions of Chapter 7 do not apply, only the lateral force-resisting components in and below that story need comply with this section.

603.7.5 Voluntary lateral force-resisting system alterations. Alterations of existing structural elements and additions of new structural elements that are initiated for the purpose of increasing the lateral force-resisting strength or stiffness of an existing structure and that are not required by other sections of this code shall not be required to be designed for forces conforming to the VCC, provided that an engineering analysis is submitted to show that:

1. The capacity of existing structural elements required to resist forces is not reduced;

2. The lateral loading to existing structural elements is not increased either beyond its capacity or more than 10%;

3. New structural elements are detailed and connected to the existing structural elements as required by the VCC;

4. New or relocated nonstructural elements are detailed and connected to existing or new structural elements as required by the VCC; and

5. Voluntary alterations to lateral force-resisting systems conducted in accordance with Appendix A and the referenced standards of this code shall be permitted.

603.7.6 Voluntary seismic improvements. Alterations to existing structural elements or additions of new structural elements that are not otherwise required by this chapter and are initiated for the purpose of improving the performance of the seismic force resisting system of an existing structure or the performance of seismic bracing or anchorage of existing nonstructural elements shall be permitted, provided that an engineering analysis is submitted demonstrating the following:

1. The altered structure and the altered nonstructural elements are no less conforming to the provisions of the VCC with respect to earthquake design than they were prior to the alteration.

2. New structural elements are detailed as required for new construction.

3. New or relocated nonstructural elements are detailed and connected to existing or new structural elements as required for new construction.

4. The alterations do not create a structural irregularity as defined in ASCE 7 or make an existing structural irregularity more severe.

G. Delete Sections 604, 605, 606, 607, and 608 of the IEBC in their entirety.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-433.5. Chapter 7 Change of occupancy.

A. Change Sections 701.1 through 701.2 of the IEBC to read:

701.1 Scope. The provisions of this chapter shall apply where a change of occupancy occurs, except as modified by Section 906 for historic buildings. Compliance with the current VCC for the change of occupancy shall only be required as prescribed in this chapter. Compliance shall be only as necessary to meet the specific provisions of the applicable International Codes and is not intended to require the entire building be brought into compliance.

Exception: Compliance with the provisions of Chapter 14 shall be permitted in lieu of complying with this chapter for a change of occupancy.

701.2 Work undertaken in connection with a change of occupancy. Any repairs, alterations, or additions undertaken in connection with a change of occupancy shall conform to the applicable requirements for the work as classified in this code and as modified by this chapter.

B. Delete Sections 701.3 and 701.4 of the IEBC.

C. Change Section 702 to Special Use and Occupancy.

D. Change Sections 702.1 and 702.2 of the IEBC to read:

702.1 Compliance with the building code. Where a building undergoes a change of occupancy to one of the special use or occupancy categories described in Chapter 4 of the VCC, the building shall comply with all of the requirements of Chapter 4 of the VCC applicable to the special use or occupancy.

702.2 Incidental uses. Where a portion of a building undergoes a change of occupancy to one of the incidental uses listed in Table 509 of the VCC, the incidental use shall comply with the applicable requirements of Section 509 of the VCC.

E. Delete Sections 702.3 through 702.6.1, including subsections, of the IEBC.

F. Change Section 703 to Building Elements and Materials.

G. Change Section 703.1 of the IEBC and add Section 703.2, including subsections, to the IEBC to read:

703.1 Interior finish. In areas of the building undergoing a change of occupancy classification, the interior finish of walls and ceilings shall comply with the requirements of the VCC for the new occupancy classification.

703.2 Enclosure of vertical openings. When a change of occupancy classification is made to a higher hazard category as shown in Table 705.2, protection of existing vertical openings shall be in accordance with Sections 703.2.1 through 703.2.3.

703.2.1 Stairways. Interior stairways shall be protected as required by Section 705.1.

703.2.2 Other vertical openings. Interior vertical openings, other than stairways, within the area of the change of occupancy shall be protected as required by the VCC.

Exceptions:

1. Existing one-hour interior shaft enclosures shall be accepted where a higher rating is required.

2. Vertical openings, other than stairways, in buildings of other than Group I occupancy and connecting less than six stories shall not be required to be enclosed are permitted if the entire building is provided with an approved automatic sprinkler system.

703.2.3 Shaft openings. All openings into existing vertical shaft enclosures shall be protected by fire assemblies having a fire protection rating of not less than one hour and shall be maintained self-closing or shall be automatic-closing by actuation of a smoke detector. All other openings shall be fire protected in an approved manner. Existing fusible link-type automatic door-closing devices shall be permitted in all shafts except stairways if the fusible link rating does not exceed 135°F (57°C).

H. Change Section 704 to Fire Protection.

I. Change Section 704.1 of the IEBC and add Sections 704.2, 704.3 and 704.4 to the IEBC to read:

704.1 Fire protection systems. Fire protection systems shall be provided in accordance with Sections 704.2 through 704.4.

704.2 Fire sprinkler system. Where a building undergoes a change of occupancy that requires an automatic fire sprinkler system to be provided based on the new occupancy in accordance with Section 903 of the VCC, such automatic fire sprinkler system shall be provided throughout the area where the change of occupancy occurs.

704.3 Fire alarm and detection system. Where a building undergoes a change of occupancy that requires a fire alarm and detection system to be provided based on the new occupancy in accordance with Section 907 of the VCC, such fire alarm and detection system shall be provided throughout the area where the change of occupancy occurs. Existing alarm notification appliances shall be automatically activated throughout the building. Where the building is not equipped with a fire

alarm system, alarm notification appliances shall be provided throughout the area where the change of occupancy occurs in accordance with Section 907 of the VCC as required for new construction.

704.4 Standpipe system. Where a building undergoes a change of occupancy that requires a standpipe system to be provided based on the new occupancy in accordance with Section 905 of the VCC, such standpipe system shall be provided to serve the area where the change of occupancy occurs.

J. Change Section 705 to Means of Egress.

K. Change Sections 705.1 through 705.4, deleting subsections, and delete Sections 705.5 and 705.6 of the IEBC to read:

705.1 General. Means of egress in buildings undergoing a change of occupancy shall comply with Sections 705.2 through 705.4.

705.2 Means of egress, hazards. Hazard categories in regard to life safety and means of egress shall be in accordance with Table 705.2.

TABLE 705.2 MEANS OF EGRESS HAZARD CATEGORIES	
RELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (Highest Hazard)	H
2	I-2, I-3, I-4
3	A, E, I-1, M, R-1, R-2, R-4
4	B, F-1, R-3, S-1, R-5
5 (Lowest Hazard)	F-2, S-2, U

705.3 Means of egress for change to higher hazard category. When a change of occupancy classification is made to a higher hazard category (lower number) as shown in Table 705.2, the means of egress serving the area of the change of occupancy shall comply with the requirements of Chapter 10 of the VCC, except as modified in Sections 705.3.1 through 705.3.7.

705.3.1 Corridor fire-resistance ratings. The following exceptions apply to the fire-resistance rated corridor provisions in the VCC:

1. Existing corridor walls constructed on both sides of wood lath and plaster in good condition or 1/2-inch-thick (12.7 mm) gypsum wallboard are equivalent to a one-hour fire-resistance rating. Such walls shall either terminate at the underside of a ceiling of equivalent construction or extend to the underside of the floor or roof next above.

2. Dwelling unit or sleeping unit corridor doors and transom openings are permitted to comply with any of the following:

2.1 Be at least 13/8-inch (35 mm) solid core wood or approved equivalent and shall not have any glass panels other than approved wired glass or other approved glazing material in metal frames and equipped with approved door closers.

2.2 Meet the requirements of "Guidelines on Fire Ratings of Archaic Materials and Assemblies" (VEBC Resource A) for a rating of 15 minutes or more shall be accepted as meeting the provisions of this requirement.

2.3 In buildings protected throughout with an approved automatic sprinkler system, resist smoke, be reasonably tight fitting, and not contain louvers.

2.4 In group homes with a maximum of 15 occupants and that are protected with an approved automatic smoke detection system, closing devices may be omitted.

2.5 Transoms in corridor walls shall be either glazed with 1/4-inch (6.4 mm) wired glass set in metal frames or other glazing assemblies having a fire protection rating as required for the door and permanently secured in the closed position or sealed with materials consistent with the corridor construction.

3. Openings in a corridor and any window in a corridor not opening to the outside air shall be sealed with materials consistent with the corridor construction.

705.3.2 Dead-end corridors. Dead-end corridors shall not exceed 35 feet (10670 mm).

Exceptions:

1. Where dead-end corridors of greater length are permitted by the VCC.

2. In other than Groups A and H occupancies, the maximum length of an existing dead-end corridor shall be 50 feet (15240 mm) in buildings equipped throughout with an automatic fire alarm system installed in accordance with the VCC.

3. In other than Groups A and H occupancies, the maximum length of an existing dead-end corridor shall be 70 feet (21356 mm) in buildings equipped throughout with an automatic sprinkler system installed in accordance with the VCC.

4. In other than Groups A and H occupancies, the maximum length of an existing, newly constructed, or extended dead-end corridor shall not exceed 50 feet (15240 mm) on floors equipped with an automatic sprinkler system installed in accordance with the VCC.

705.3.3 Emergency escape and rescue openings. An existing operable window with clear opening area no less than 4 square feet (0.38 m^2) and minimum opening height and width of 22 inches (559 mm) and 20 inches (508 mm), respectively, shall be accepted as an emergency escape and rescue opening.

705.3.4 Fire escapes. Fire escapes in compliance with Section 303.

705.3.5 Interior stairway fire-resistance ratings. Existing interior stairways connecting two or more floors shall be enclosed with approved assemblies having a fire-resistance rating of not less than one hour with approved opening protectives from the highest floor where the change of occupancy classification occurs to, and including, the level of exit discharge and all floors below.

Exceptions:

1. Where interior stairway enclosure is not required by the VCC.

2. Unenclosed existing stairways need not be enclosed in a continuous vertical shaft if each story is separated from other stories by one-hour fire-resistance-rated construction or approved wired glass set in steel frames and all exit corridors are sprinklered. The openings between the corridor and the occupant space shall have at least one sprinkler head above the openings on the tenant side. The sprinkler system shall be permitted to be supplied from the domestic water supply systems, provided the system is of adequate pressure, capacity, and sizing for the combined domestic and sprinkler requirements.

3. In Group A occupancies, a minimum 30-minute enclosure shall be permitted to protect all interior stairways not exceeding three stories.

4. In Group B occupancies, a minimum 30-minute enclosure shall not be permitted to protect all interior stairways not exceeding three stories. This enclosure shall not be required in the following locations:

4.1 Buildings not exceeding 3,000 square feet (279 m^2) per floor.

4.2 Buildings protected throughout by an approved automatic fire sprinkler system.

5. In Group E occupancies, the enclosure shall not be required for interior stairways not exceeding three stories when the building is protected throughout by an approved automatic fire sprinkler system.

6. In Group F occupancies, the enclosure shall not be required in the following locations:

6.1 Interior stairways not exceeding three stories.

6.2 Special purpose occupancies where necessary for manufacturing operations and direct access is provided to at least one protected stairway.

6.3 Buildings protected throughout by an approved automatic sprinkler system.

7. In Group H occupancies, the enclosure shall not be required for interior stairways not exceeding three stories where stairways are necessary for manufacturing operations and every floor level has direct access to at least two remote enclosed stairways or other approved exits.

8. In Group M occupancies, a minimum 30-minute enclosure shall be permitted to protect all interior stairways not exceeding three stories. This enclosure shall not be required in the following locations:

8.1 Stairways connecting only two floor levels.

8.2 Occupancies protected throughout by an approved automatic sprinkler system.

9. In Group R-1 occupancies, the enclosure shall not be required for interior stairways not exceeding three stories in the following locations:

9.1 Buildings protected throughout by an approved automatic sprinkler system.

9.2 Buildings with fewer than 25 dwelling units or sleeping units where every sleeping room above the second floor is provided with direct access to a fire escape or other approved second exit by means of an approved exterior door or window having a sill height of not greater than 44 inches (1118 mm) and where:

9.2.1 Any exit access corridor exceeding 8 feet (2438 mm) in length that serves two means of egress, one of which is an unprotected vertical opening, shall have at least one of the means of egress separated from the vertical opening by a one-hour fire barrier; and

9.2.2 The building is protected throughout by an automatic fire alarm system, installed and supervised in accordance with the VCC.

10. In Group R-2 occupancies, a minimum 30-minute enclosure shall be permitted to protect interior stairways not exceeding three stories. This enclosure shall not be required in the following locations:

10.1 Interior stairways not exceeding two stories with not more than four dwelling units per floor.

10.2 Buildings protected throughout by an approved automatic sprinkler system.

10.3 Buildings with not more than four dwelling units per floor where every sleeping room above the second floor is provided with direct access to a fire escape or other approved second exit by means of an approved exterior door or window having a sill height of not greater than 44 inches (1118 mm), and the building is protected throughout by an automatic fire alarm system complying with the VCC.

11. Stairway enclosure is not required in one-family and two-family dwellings.

12. Group S occupancies where connecting not more than two floor levels or where connecting not more than three floor levels and the structure is equipped throughout with an approved automatic sprinkler system.

13. Group S occupancies where stairway protection is not required for open parking garages and ramps.

705.3.6 Stairway geometry. Existing stairways are not required to be altered to meet tread depth and riser height requirements of the VCC.

705.3.7 Stairway handrails. Existing stairways are required to have a VCC compliant handrail on one side up to a required egress width of 66 inches (1676 mm) and both sides when the required egress width exceeds 66 inches (1676 mm).

705.4 Means of egress for change of occupancy to equal or lower hazard category or without a change in classification. When a change of occupancy classification is made to an equal or lesser hazard category (higher number) as shown in Table 705.2 or a change of occupancy without a change of classification is made, the means of egress shall be deemed acceptable provided the means of egress serving the area of the change of occupancy meets the egress capacity and occupant load based means of egress provisions in Chapter 10 of the VCC for the new occupancy.

L. Change Section 706 to Heights and Areas.

M. Change Sections 706.1 through 706.3, including subsections, and add Sections 706.4 and 706.5 of the IEBC to read:

706.1 General. Heights and areas of buildings and structures undergoing a change of occupancy classification shall comply with this Section.

706.2 Heights and areas, hazards. Hazard categories in regard to height and area shall be in accordance with Table 706.2.

TABLE 706.2 HEIGHTS AND AREAS HAZARD CATEGORIES	
RELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (Highest Hazard)	H
2	A-1, A-2, A-3, A-4, I, R-1, R-2, R-4
3	E, F-1, S-1, M
4 (Lowest Hazard)	B, F-2, S-2, A-5, R-3, R-5, U

706.3 Height and area for change to higher hazard category. When a change of occupancy classification is made to a higher hazard category as shown in Table 706.2, heights and areas of buildings and structures shall comply with the requirements of Chapter 5 of the VCC for the new occupancy classification.

Exception: For high-rise buildings constructed in compliance with a previously issued permit, the type of construction reduction specified in Section 403.2.1 of the VCC is permitted. This shall include the reduction for columns. The high-rise building is required to be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC.

706.3.1 Fire wall alternative. In other than Groups H, F-1 and S-1, fire barriers and horizontal assemblies constructed in accordance with Sections 707 and 711, respectively, of the VCC shall be permitted to be used in lieu of fire walls to subdivide the building into separate buildings for the purpose of complying with the area limitations required for the new occupancy where all of the following conditions are met:

1. The buildings are protected throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the International Building Code.

2. The maximum allowable area between fire barriers, horizontal assemblies, or any combination thereof shall not exceed the maximum allowable area determined in accordance with Chapter 5 of the VCC without an increase allowed for an automatic sprinkler system in accordance with Section 506 of the VCC.

3. The fire-resistance rating of the fire barriers and horizontal assemblies shall be not less than that specified for fire walls in Table 706.4 of the VCC.

Exception: Where horizontal assemblies are used to limit the maximum allowable area, the required fire-resistance rating of the horizontal assemblies shall be permitted to be reduced by one hour provided the height and number of stories increases allowed for an automatic sprinkler system by Section 504 of the VCC are not used for the buildings.

706.4 Height and area for change to equal or lesser hazard category. When a change of occupancy classification is made to an equal or lesser hazard category as shown in Table 706.2, the height and area of the existing building shall be deemed acceptable.

706.5 Fire barriers. When a change of occupancy classification is made to a higher hazard category as shown in Table 706.2, fire barriers in separated mixed use buildings shall comply with the fire-resistance requirements of the VCC.

Exception: Where the fire barriers are required to have a one-hour-fire-resistance rating, existing wood lath and plaster in good condition or existing 1/2-inch-thick (12.7 mm) gypsum wallboard shall be permitted.

N. Change Section 707 to Exterior Wall Fire-Resistance Ratings.

O. Change Section 707.1 and add Sections 707.2 through 707.4 to the IEBC to read:

707.1 Exterior wall fire-resistance ratings, hazards. Hazard categories in regard to fire-resistance ratings of exterior walls shall be in accordance with Table 707.1.

TABLE 707.1 EXPOSURE OF EXTERIOR WALLS HAZARD CATEGORIES	
RELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (Highest Hazard)	H
2	F-1, M, S-1
3	A, B, E, I, R
4 (Lowest Hazard)	F-2, S-2, U

707.2 Exterior wall rating for change of occupancy classification to a higher hazard category. When a change of occupancy classification is made to a higher hazard category as shown in Table 707.1, exterior walls shall have fire resistance and exterior opening protectives as required by the VCC.

Exception: A two-hour-fire-resistance rating shall be allowed where the building does not exceed three stories in height and is classified as one of the following groups: A-2 and A-3 with an occupant load of less than 300, B, F, M, or S.

707.3 Exterior wall rating for change of occupancy classification to an equal or lesser hazard category. When a change of occupancy classification is made to an equal or lesser hazard category as shown in Table 707.1, existing exterior walls, including openings, shall be accepted.

707.4 Opening protectives. Openings in exterior walls shall be protected as required by the VCC. Where openings in the exterior walls are required to be protected because of their distance from the lot line, the sum of the area of such openings shall not exceed 50% of the total area of the wall in each story.

Exceptions:

1. Where the VCC permits openings in excess of 50%.

2. Protected openings shall not be required in buildings of Group R occupancy that do not exceed three stories in height and that are located not less than 3 feet (914 mm) from the lot line.

3. Where exterior opening protectives are required, an automatic sprinkler system throughout may be substituted for opening protection.

4. Exterior opening protectives are not required when the change of occupancy group is to an equal or lower hazard classification in accordance with Table 707.1.

P. Add Section 708 Electrical and Lighting.

Q. Add Sections 708.1 through 708.4 to the IEBC to read:

708.1 Special occupancies. Where a building undergoes a change of occupancy to one of the following special occupancies as described in NFPA 70, the electrical wiring and equipment of the building that contains the proposed occupancy shall comply with the applicable requirements of NFPA 70:

1. Hazardous locations.

2. Commercial garages, repair, and storage.

3. Aircraft hangars.

4. Gasoline dispensing and service stations.

5. Bulk storage plants.

6. Spray application, dipping, and coating processes.

7. Health care facilities.

8. Places of assembly.

9. Theaters, audience areas of motion picture and television studios, and similar locations.

10. Motion picture and television studios and similar locations.

11. Motion picture projectors.

12. Agricultural buildings.

708.2 Service upgrade. When a new occupancy is required to have a higher electrical load demand per NFPA 70 and the service cannot accommodate the increased demand, the service shall be upgraded to meet the requirements of NFPA 70 for the new occupancy.

708.3 Number of electrical outlets. Where a building undergoes a change of occupancy, the number of electrical outlets shall comply with NFPA 70 for the new occupancy.

708.4 Lighting. Lighting shall comply with the requirements of the VCC for the new occupancy.

R. Add Section 709 Mechanical and Ventilation.

S. Add Section 709.1 to the IEBC to read:

709.1 Mechanical and ventilation requirements. Where a building undergoes a change of occupancy such that the new occupancy is subject to different kitchen exhaust requirements or to increased ventilation requirements in accordance with the International Mechanical Code, the new occupancy shall comply with the respective International Mechanical Code provisions.

T. Add Section 710 Plumbing.

U. Add Sections 710.1 through 710.3 to the IEBC to read:

710.1 Increased demand. Where a building or portion thereof undergoes a change of occupancy, such that the new occupancy is subject to increased or different plumbing fixture requirements or to increased water supply requirements in accordance with the International Plumbing Code, the new occupancy shall comply with the respective International Plumbing Code provisions.

Exception: In other than Group R or I occupancies or child care facilities classified as Group E, where the occupant load is increased by 20% or less in the area where the change of occupancy occurs, additional plumbing fixtures required based on the increased occupant load in quantities specified in the International Plumbing Code are not required.

710.2 Interceptor required. If the new occupancy will produce grease or oil-laden wastes, interceptors shall be provided as required in the International Plumbing Code.

710.3 Chemical wastes. If the new occupancy will produce chemical wastes, the following shall apply:

1. If the existing piping is not compatible with the chemical waste, the waste shall be neutralized prior to entering the drainage system, or the piping shall be changed to a compatible material.

2. No chemical waste shall discharge to a public sewer system without the approval of the sewage authority.

V. Add Section 711 Structural.

W. Add Sections 711.1 through 711.3, including subsections, to the IEBC to read:

711.1 Gravity loads. Buildings subject to a change of occupancy where such change in the nature of occupancy results in higher uniform or concentrated loads based on Table 1607.1 of the VCC shall comply with the gravity load provisions of the VCC.

Exception: Structural elements whose stress is not increased by more than 5%.

711.2 Snow and wind loads. Buildings and structures subject to a change of occupancy where such change in the nature of occupancy results in higher wind or snow risk categories based on Table 1604.5 of the VCC shall be analyzed and shall comply with the applicable wind or snow load provisions of the VCC.

Exception: Where the new occupancy with a higher risk category is less than or equal to 10% of the total building floor area. The cumulative effect of the area of occupancy changes shall be considered for the purposes of this exception.

711.3 Seismic loads. Existing buildings with a change of occupancy shall comply with the seismic provisions of Sections 711.3.1 and 711.3.2.

711.3.1 Compliance with VCC-level seismic forces. Where a building is subject to a change of occupancy that results in the building being assigned to a higher risk category based on Table 1604.5 of the VCC, the building shall comply with the requirements for VCC-level seismic forces as specified in Section 305.2.1 for the new risk category.

Exceptions:

1. Specific detailing provisions required for a new structure are not required to be met where it can be shown that an equivalent level of performance and seismic safety is obtained for the applicable risk category based on the provision for reduced VCC-level seismic forces as specified in Section 305.2.2.

2. Where the area of the new occupancy with a higher hazard category is less than or equal to 10% of the total building floor area and the new occupancy is not classified as Risk Category IV. For the purposes of this exception, buildings occupied by two or more occupancies not included in the same risk category, shall be subject to the provisions of Section 1604.5.1 of the VCC. The cumulative effect of the area of occupancy changes shall be considered for the purposes of this exception.

3. Unreinforced masonry bearing wall buildings in Risk Category III when assigned to Seismic Design Category A or B shall be allowed to be strengthened to meet the requirements of Appendix Chapter A1 of this code Guidelines for the Seismic Retrofit of Existing Buildings (GSREB).

4. Specific seismic detailing requirements of Section 1613 of the VCC for a new structure shall not be required to be met where the seismic performance is shown to be equivalent to that of a new structure. A demonstration of equivalence shall consider the regularity, overstrength, redundancy, and ductility of the structure.

5. When a change of occupancy results in a structure being reclassified from Risk Category I or II to Risk Category III and the structure is located where the seismic coefficient, SDS, is less than 0.33, compliance with the seismic requirements of Section 1613 of the VCC is not required.

711.3.2 Access to Risk Category IV. Where a change of occupancy is such that compliance with Section 711.3.1 is required and the building is assigned to Risk Category IV, the operational access to the building shall not be through an adjacent structure, unless that structure conforms to the requirements for Risk Category IV structures. Where operational access is less than 10 feet (3048 mm) from either an interior lot line or from another structure, access protection from potential falling debris shall be provided by the owner of the Risk Category IV structure.

X. Add Section 712 Accessibility.

Y. Add Section 712.1 to the IEBC to read:

712.1 General. Existing buildings that undergo a change of occupancy classification shall comply with Section 402.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-434. Chapter 8 Additions.

A. Change Sections 801.1 through 801.3 of the IEBC to read:

801.1 Scope. Additions to any building or structure shall comply with the requirements of the VCC for new construction without requiring the existing building or structure to comply with any requirements of those codes or of these provisions, except as required by this chapter. Where an addition impacts the existing building or structure, that portion shall comply with this code. Where a fire wall that complies with Section 706 of the VCC is provided between the addition and the existing building, the addition shall be considered a separate building.

Note: Where one or more newly constructed fire walls that comply with Section 706 of the VCC are provided between an existing building or structure or portions thereof, and a new building, this chapter is not applicable per Section 102.2.3.

801.2 Creation or extension of nonconformity. An addition shall not create or extend any nonconformity in the existing building to which the addition is being made with regard to accessibility, structural strength, fire safety, means of egress, or the capacity of mechanical, plumbing, or electrical systems. Alterations to the existing building or structure shall be made so that the existing building or structure, together with the addition, are no less conforming to the provisions of the VCC than the existing building or structure was prior to the addition.

801.3 Other work. Any repair or alteration work within an existing building to which an addition is being made shall comply with the applicable requirements for the work as classified in this code.

B. Change Section 802 to Heights and Areas.

C. Change Sections 802.1 through 802.3, deleting subsections, of the IEBC to read:

802.1 Height limitations. No addition shall increase the height of an existing building beyond that permitted under the applicable provisions of Chapter 5 of the VCC for new buildings.

802.2 Area limitations. No addition shall increase the area of an existing building beyond that permitted under the applicable provisions of Chapter 5 of the VCC for new buildings unless fire separation as required by the VCC is provided.

Exceptions: The following shall be permitted beyond that permitted by the VCC.

1. In-filling of floor openings such as elevator and exit stairway shafts.

2. The addition of nonoccupiable spaces such as elevators, stairs, and vestibules.

802.3 Fire protection systems. Existing fire areas increased by the addition shall comply with Chapter 9 of the VCC.

D. Delete Sections 802.4 through 802.6, including subsections, of the IEBC.

E. Change Section 803 to Structural.

F. Change Sections 803.1 through 803.4, including subsections, and delete Sections 803.1.1, 803.2.1.1, 803.2.2, 803.2.2.1, 803.2.3, 803.2.4, and 803.4.1 through 803.4.3, including subsections, of the IEBC.

803.1 Compliance with the VCC. Additions to existing buildings or structures are new construction and shall comply with the VCC.

803.2 Existing structural elements carrying gravity load. Any existing gravity load-carrying structural element for which an addition and its related alterations cause an increase in design gravity load of more than 5.0% shall be strengthened, supplemented, replaced or otherwise altered as needed to carry the increased gravity load required by the VCC for new structures. Any existing gravity load-carrying structural element whose gravity load-carrying capacity is decreased shall be considered an altered element subject to the requirements of Section 603.7.3. Any existing element that will form part of the lateral load path for any part of the addition shall be considered an existing lateral load-carrying structural element subject to the requirements of Section 803.3.

Exception: Buildings of Group R occupancy with no more than five dwelling units or sleeping units used solely for residential purposes where the existing building and the addition comply with the conventional light-frame construction methods of the VCC or the provisions of the International Residential Code.

803.2.1 Design live load. Where the addition does not result in increased design live load, existing gravity load-carrying structural elements shall be permitted to be evaluated and designed for live loads approved prior to the addition. If the approved live load is less than that required by Section 1607 of the VCC, the area designed for the nonconforming live load shall be posted with placards of approved design indicating the approved live load. Where the addition does result in increased design live load, the live load required by Section 1607 of the VCC shall be used.

803.3 Existing structural elements carrying lateral load. Where the addition is structurally independent of the existing structure, existing lateral load-carrying structural elements shall be permitted to remain unaltered. Where the addition is not structurally independent of the existing structure, the existing structure and its addition acting together as a single structure shall be shown to meet the requirements of Sections 1609 and 1613 of the VCC. For purposes of this section, compliance with ASCE 41, using a Tier 3 procedure and the two-level performance objective in Table 305.2.1 for the applicable risk category, shall be deemed to meet the requirements of Section 1613.

Exceptions:

1. Any existing lateral load-carrying structural element whose demand-capacity ratio with the addition considered is not more than 10% greater than its demand-capacity ratio with the addition ignored shall be permitted to remain unaltered. For purposes of this exception, comparisons of demand-capacity ratios and calculation of design lateral loads, forces and capacities shall account for the cumulative effects of additions and alterations since original construction. For purposes of calculating demand-capacity ratios, the demand shall consider applicable load combinations involving VCC-level seismic forces in accordance with Section 305.2.1.

2. Buildings of Group R occupancy with no more than five dwelling or sleeping units used solely for residential purposes where the existing building and the addition comply with the conventional light-frame construction methods of the VCC or the provisions of the International Residential Code.

803.4 Voluntary addition of structural elements to improve the lateral force-resisting system. Voluntary addition of structural elements to improve the lateral force-resisting system of an existing building shall comply with Section 603.7.5.

G. Add Section 803.5 to the IEBC to read:

803.5 Snow drift loads. Any structural element of an existing building subjected to additional loads from the effects of snow drift as a result of an addition shall comply with the VCC.

Exceptions:

1. Structural elements whose stress is not increased by more than 5.0%.

2. Buildings of Group R occupancy with no more than five dwelling units or sleeping units used solely for residential purposes where the existing building and the addition comply with the conventional light-frame construction methods of the VCC or the provisions of the International Residential Code.

H. Change Section 804 to Flood Hazard Areas.

I. Change Section 804.1 of the IEBC to read:

804.1 Flood hazard areas. Additions and foundations in flood hazard areas shall comply with the following requirements:

1. For horizontal additions that are structurally interconnected to the existing building:

1.1. If the addition and all other proposed work, when combined, constitute substantial improvement, the existing building and the addition shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

1.2. If the addition constitutes substantial improvement, the existing building and the addition shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

2. For horizontal additions that are not structurally interconnected to the existing building:

2.1. The addition shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

2.2. If the addition and all other proposed work when combined constitute substantial improvement, the existing building and the addition shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

3. For vertical additions and all other proposed work that when combined constitute substantial improvement, the existing building shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

4. For a raised or extended foundation, if the foundation work and all other proposed work when combined constitute substantial improvement, the existing building shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

5. For a new foundation or replacement foundation, the foundation shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

J. Change Section 805 to Energy Conservation.

K. Change Sections 805.1, 805.2, 805.3, 805.3.1, and 805.3.2 and add Sections 805.2.1, 805.2.1.1, 805.2.1.2, 805.2.1.3, 805.2.1.4, and 805.2.2 to the IEBC to read:

805.1 General. Additions to an existing building, or portion thereof, shall conform to the provisions of the VECC as those provisions relate to new construction without requiring the unaltered portion of the existing building to comply with the VECC. Additions shall not overload existing building systems. An addition shall be deemed to comply with the VECC if the addition alone complies or if the existing building and addition comply with the VECC as a single building.

805.2 Residential compliance. Residential additions shall comply with Section 805.2.1 or 805.2.2.

805.2.1 Prescriptive compliance. Additions shall comply with Sections 805.2.1.1 through 805.2.1.4.

805.2.1.1 Building envelope. New building envelope assemblies that are part of the addition shall comply with Sections R402.1, R402.2, R402.3.1 through R402.3.5, and R402.4 of the VECC.

Exception: The building envelope of the addition shall be permitted to comply through a Total UA analysis, as determined in Section R402.1.5 of the VECC, where the existing building and the addition, and any alterations that are part of the project, is less than or equal to the Total UA generated for the existing building.

805.2.1.2 Heating and cooling systems. New heating, cooling and duct systems that are part of the addition shall comply with Section R403 of the VECC.

805.2.1.3 Service hot water systems. New service hot water systems that are part of the addition shall comply with Section R403.4 of the VECC.

805.2.1.4 Lighting. New lighting systems that are part of the addition shall comply with Section R404.1 of the VECC.

805.2.2 Performance compliance. The addition shall comply with the simulated performance alternative where the annual energy cost or energy use of the addition and the existing building, and any alterations that are part of the project, is less than or equal to the annual energy code of the existing building when modeled in accordance with Section R405 of the VECC.805.3 Commercial Compliance. Commercial additions shall comply with Section 805.3.1 or 805.3.2.

Exception: Commercial additions complying with ANSI/ASHRAE/IESNA 90.1.805.3.1 Prescriptive compliance. Additions shall comply with Sections C402, C403, C404, and C405 of the VECC.

805.3.2 Performance compliance. The addition shall comply with the simulated performance alternative where the annual energy cost or energy use of the addition and the existing building, and any alterations that are part of the project, is less than or equal to the annual energy cost or use of the existing building when modeled in accordance with Section C407 of the VECC.

L. Delete Sections 805.3.1.1, 805.3.1.2, 805.3.1.2.1, 805.3.1.2.2, 805.3.1.2.3, 805.3.3 through 805.11.2, 806, 807, 808, 809, and 810, including Tables, of the IEBC.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-434.5. Chapter 9 Historic buildings.

A. Change Sections 901.1 and 901.2 of the IEBC to read:

901.1 Scope. It is the intent of this chapter to provide means for the preservation of historic buildings. The provisions of this code relating to construction involving historic buildings shall not be mandatory unless such construction constitutes a life safety hazard. Accessibility shall be provided in accordance with Section 405.

901.2 Report. The code official shall be permitted to require that a historic building undergoing repair, alteration or change of occupancy be investigated and evaluated by an RDP or other qualified person or agency as a condition of determining compliance with this code.

B. Add Section 901.3 to the IEBC to read:

901.3 Special occupancy exceptions. When a building in Group R-3 is also used for Group A, B, or M purposes such as museum tours, exhibits, and other public assembly activities, or for museums less than 3,000 square feet (279 m^2), the code official may determine that the occupancy is Group B when life safety conditions can be demonstrated in accordance with Section 901.2. Adequate means of egress in such buildings, which may include a means of maintaining doors in an open position to permit egress, a limit on building occupancy to an occupant load permitted by the means of egress capacity, a limit on occupancy of certain areas or floors, or supervision by a person knowledgeable in the emergency exiting procedures, shall be provided.

C. Change Section 902 to Flood hazard areas.

D. Change Section 902.1 of the IEBC to read:

902.1 Flood hazard areas. In flood hazard areas, if all proposed work, including repairs, work required because of a change of occupancy, and alterations, constitutes substantial improvement, then the existing building shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

Exception: If an historic building will continue to be an historic building after the proposed work is completed, then the proposed work is not considered a substantial improvement. For the purposes of this exception, an historic building is:

1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places;

2. Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or

3. Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.

E. Delete Sections 902.1.1, 902.1.2, and 902.2 of the IEBC.

F. Change Section 903 to Repairs.

G. Change Sections 903.1 through 903.3, deleting subsections, of the IEBC to read:

903.1 General. Repairs to any portion of an historic building or structure shall be permitted with original or like materials and original methods of construction, subject to the provisions of this chapter. Hazardous materials, such as asbestos and lead-based paint, shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

903.2 Moved buildings. Foundations of moved historic buildings and structures shall comply with the VCC. Moved historic buildings shall otherwise be considered an historic building for the purposes of this code. Moved historic buildings and structures shall be sited so that exterior wall and opening requirements comply with the VCC or with the compliance alternatives of this code.

903.3 Replacement. Replacement of existing or missing features using original materials shall be permitted. Partial replacement for repairs that match the original in configuration, height, and size shall be permitted. Replacement glazing in hazardous locations shall comply with the safety glazing requirements of Chapter 24 of the VCC.

Exception: Glass block walls, louvered windows, and jalousies repaired with like materials.

H. Delete the technical provisions of Section 904 in their entirety and change the title of Section 904 to read:

SECTION 904 (RESERVED).

I. Change Section 905 to Alterations.

J. Change Sections 905.1 and 905.2 of the IEBC to read:

905.1 General. The provisions of Chapter 6, as applicable, shall apply to facilities designated as historic structures that undergo alterations, unless technically infeasible.

905.2 Exit signs and egress path markings. Where new exit signs or egress path markings would damage the historic character of the building or structure, alternative exit signs and egress path markings are permitted with approval of the code official. Alternative signs and egress path markings shall identify the exits and egress path.

K. Delete Section 905.3 of the IEBC.

L. Change Section 906 to Change of Occupancy.

M. Change Sections 906.1 through 906.7 of the IEBC to read:

906.1 General. Historic buildings undergoing a change of occupancy shall comply with the applicable provisions of Chapter 7, except as specifically permitted in this chapter. When Chapter 7 requires compliance with specific requirements of Chapter 6 and when those requirements are subject to exceptions elsewhere in this code, the same exceptions shall apply to this section.

906.2 Building area. When a change of occupancy classification is made to a higher hazard category as indicated in Table 706.2, the allowable floor area for historic buildings undergoing a change of occupancy shall be permitted to exceed by 20% the allowable areas specified in Chapter 5 of the VCC.

906.3 Location on property. Historic structures undergoing a change of use to a higher hazard category in accordance with Section 707.1 may use alternative methods to comply with the fire-resistance and exterior opening protective requirements. Such alternatives shall comply with Section 901.2.

906.4 Occupancy separation. Required occupancy separations of one hour may be omitted when the building is provided with an approved automatic sprinkler system throughout.

906.5 Automatic fire-extinguishing systems. Every historical building or portion thereof, that cannot be made to conform to the construction requirements specified in Chapter 7 or this chapter for the occupancy or use and such change constitutes a fire hazard, shall be deemed to be in compliance if those spaces undergoing a change of occupancy are provided with an approved automatic fire-extinguishing system.

Exception: When the building official approves an alternative life-safety system.

906.6 Means of egress. Existing door openings and corridor and stairway widths less than those required elsewhere in this code shall be permitted, provided there is sufficient width and height for a person to pass through the opening or traverse the exit and that the capacity of the exit system is adequate for the occupant load or where other operational controls to limit occupancy are approved by the code official.

906.7 Door swing. Existing front doors need not swing in the direction of exit travel, provided that other approved exits having sufficient capacity to serve the total occupant load are provided.

N. Add Sections 906.8 through 906.12 to the IEBC to read:

906.8 Transoms. In corridor walls required by Chapter 7 to be fire-resistance rated, existing transoms may be maintained if fixed in the closed position and fixed wired glass set in a steel frame or other approved glazing shall be installed on one side of the transom.

906.9 Interior finishes and trim materials. When a change of occupancy classification is made to a higher hazard category as indicated in Table 705.2, existing nonconforming interior finish and trim materials shall be permitted to be treated with an approved fire-retardant coating in accordance with the manufacturer's instructions to achieve the required fire rating.

Exception: Such nonconforming materials need not be treated with an approved fire-retardant coating where the building is equipped throughout with an automatic sprinkler system installed in accordance with the VCC and the nonconforming materials can be substantiated as being historic in character.

906.10 One-hour-fire-resistant assemblies. Where one-hour-fire-resistance-rated construction is required by this code, it need not be provided, regardless of construction or occupancy, where the existing wall and ceiling finish is wood lath and plaster.

906.11 Stairways, railings, and guards. Existing stairways, railings, and guards shall comply with the requirements of Section 705. The code official shall approve alternative stairways, railings, and guards if found to be acceptable or judged to meet the intent of Section 705.

Exception: For buildings less than 3,000 square feet (279 m^2), existing conditions are permitted to remain at all stairways, railings, and guards.

906.12 Exit stair live load. When a change of occupancy classification is made to a higher hazard category as indicated in Table 706.2, existing stairways shall be permitted to remain where it can be shown that the stairway can support a 75-pounds-per-square-foot (366 kg/m^2) live load.

O. Change Section 907 to Structural.

P. Change Section 907.1 of the IEBC to read:

907.1 General. Historic buildings shall comply with the applicable structural provisions for the work as classified in Section 103.9.

Exception: The code official shall be authorized to accept existing floors and approve operational controls that limit the live load on any such floor.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-435. Chapter 10 Moved buildings and structures.

A. Change Section 1001 to General.

B. Change Sections 1001.1 through 1001.3, deleting subsections, of the IEBC to read:

1001.1 Scope. This chapter provides requirements for moved buildings and structures.

1001.2 Conformance. Any repair, alteration, or change of occupancy undertaken within the moved building or structure shall comply with the requirements of this code applicable to the work being performed. Any field fabricated elements shall comply with the requirements of the VCC or the International Residential Code as applicable.

1001.3 Required inspection and repairs. The code official shall be authorized to inspect, or to require approved professionals to inspect at the expense of the owner, the various structural parts of a moved building or structure to verify that structural components and connections have not sustained structural damage. Any repairs required by the code official as a result of such inspection shall be made prior to the final approval.

C. Change Section 1002 to Requirements.

D. Change Sections 1002.1 and 1002.2 and add Section 1002.2.1 to the IEBC to read:

1002.1 Location on the lot. The building or structure shall be located on the lot in accordance with the requirements of the VCC or the International Residential Code as applicable.

1002.2 Foundation. The foundation system of moved buildings and structures shall comply with the VCC or the International Residential Code as applicable.

1002.2.1 Connection to the foundation. The connection of the moved building or structure to the foundation shall comply with the VCC or the International Residential Code as applicable.

E. Add Sections 1002.3 through 1002.6, including subsections, to the IEBC to read:

1002.3 Wind loads. Buildings and structures shall comply with VCC or International Residential Code wind provisions at the new location as applicable.

Exceptions:

1. Detached one-family and two-family dwellings and Group U occupancies where wind loads at the new location are not higher than those at the previous location.

2. Structural elements whose stress is not increased by more than 10%.

1002.4 Seismic loads. Buildings and structures shall comply with VCC or International Residential Code seismic provisions at the new location as applicable.

Exceptions:

1. Structures in Seismic Design Categories A and B and detached one-family and two-family dwellings in Seismic Design Categories A, B, and C where the seismic loads at the new location are not higher than those at the previous location.

2. Structural elements whose stress is not increased by more than 10%.

1002.5 Snow loads. Buildings and structures shall comply with VCC or International Residential Code snow loads as applicable where snow loads at the new location are higher than those at the previous location.

Exception: Structural elements whose stress is not increased by more than 5.0%.

1002.6 Flood hazard areas. If moved into a flood hazard area, buildings and structures shall comply with Section 1612 of the VCC, or Section R322 of the International Residential Code, as applicable.

F. Delete Sections 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, and 1011 of the IEBC in their entirety.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-435.5. Chapter 11 Retrofit requirements.

Replace Chapter 11 of the IEBC with the following

Section 1101 General

:

1101.1 Scope. In accordance with Section 103.3, the following buildings are required to be provided with certain fire protection equipment or systems or other retrofitted components.

1101.2 Smoke alarms in colleges and universities. In accordance with § 36-99.3 of the Code of Virginia, college and university buildings containing dormitories for sleeping purposes shall be provided with battery-powered or AC-powered smoke alarm devices installed therein in accordance with this code in effect on July 1, 1982. All public and private college and university dormitories shall have installed such alarms regardless of when the building was constructed. The chief administrative office of the college or university shall obtain a certificate of compliance with the provisions of this subsection from the building official of the locality in which the college or university is located or, in the case of state-owned buildings, from the Director of the Virginia Department of General Services. The provisions of this section shall not apply to any dormitory at a state-supported military college or university that is patrolled 24 hours a day by military guards.

1101.3 Smoke alarms in certain juvenile care facilities. In accordance with § 36-99.4 of the Code of Virginia, battery-powered or AC-powered smoke alarms shall be installed in all local and regional detention homes, group homes, and other residential care facilities for children and juveniles that are operated by or under the auspices of the Virginia Department of Juvenile Justice, regardless of when the building was constructed, by July 1, 1986, in accordance with the provisions of this code that were in effect on July 1, 1984. Administrators of such homes and facilities shall be responsible for the installation of the smoke alarm devices.

1101.4 Smoke alarms for the deaf and hearing-impaired. In accordance with § 36-99.5 of the Code of Virginia, smoke alarms providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than 20 individuals;

2. All multiple-family dwellings having more than two dwelling units, including all dormitories and boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or

3. All buildings arranged for use as one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke alarm in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke alarm for each 70 units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than 35 units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke alarms for the hearing impaired. Visual alarms shall be provided for all meeting rooms for which an advance request has been made.

1101.5 Assisted living facilities (formerly known as adult care residences or homes for adults). In accordance with § 36-99.5 of the Code of Virginia, existing assisted living facilities licensed by the Virginia Department of Social Services shall comply with Sections 1101.5.1 and 1101.5.2.

1101.5.1 Fire protective signaling system and fire detection system. A fire protective signaling system and an automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in assisted living facilities by August 1, 1994.

Exception: Assisted living facilities that are equipped throughout with a fire protective signaling system and an automatic fire detection system.

1101.5.2 Single-station and multiple-station smoke alarms. Battery-powered or AC-powered single-station and multiple-station smoke alarms meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in assisted living facilities by August 1, 1994.

Exception: Assisted living facilities that are equipped throughout with single-station and multiple-station smoke alarms.

1101.6 Smoke alarms in buildings containing dwelling units. AC-powered smoke alarms with battery backup or an equivalent device shall be required to be installed to replace a defective or inoperative battery-powered smoke alarm located in buildings containing one or more dwelling units or rooming houses offering to rent overnight sleeping accommodations when it is determined by the building official that the responsible party of such building or dwelling unit fails to maintain battery-powered smoke alarms in working condition.

1101.7 Fire suppression, fire alarm, and fire detection systems in nursing homes and facilities. In accordance with § 36-99.5 of the Code of Virginia, fire suppression systems as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing facilities licensed by the Virginia Department of Health by January 1, 1993, regardless of when such facilities or institutions were constructed. Units consisting of certified long-term care beds located on the ground floor of general hospitals shall be exempt from the requirements of this section.

Fire alarm or fire detector systems, or both, as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing homes and nursing facilities licensed by the Virginia Department of Health by August 1, 1994.

1101.8 Fire suppression systems in hospitals. In accordance with § 36-99.1 of the Code of Virginia, fire suppression systems shall be installed in all hospitals licensed by the Virginia Department of Health as required by the edition of this code in effect on October 1, 1995, regardless of when such facilities were constructed.

1101.9 Identification of disabled parking spaces by above grade signage. In accordance with § 36-99.11 of the Code of Virginia, all parking spaces reserved for the use of persons with disabilities shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of persons with disabilities. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the disabled within the meaning of this section. All above grade disabled parking space signs shall have the bottom edge of the sign no lower than 4 feet (1219 mm) nor higher than 7 feet (2133 mm) above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of Chapter 11 of this code. All disabled parking signs shall include the following language: "PENALTY, $100-500 Fine, TOW-AWAY ZONE." Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than 4 feet above the parking surface.

1101.10 Smoke alarms in hotels and motels. Smoke alarms shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, by the dates indicated, regardless of when constructed.

1101.11 Sprinkler systems in hotels and motels. By September 1, 1997, an automatic sprinkler system shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, regardless of when constructed.

1101.12 Fire suppression systems in dormitories. In accordance with § 36-99.3 of the Code of Virginia, an automatic fire suppression system shall be provided throughout all buildings having a Group R-2 fire area that are more than 75 feet (22,860 mm) or six stories above the lowest level of exit discharge and are used, in whole or in part, as a dormitory to house students by any public or private institution of higher education, regardless of when such buildings were constructed, in accordance with the edition of this code in effect on August 20, 1997, and the requirements for sprinkler systems under the edition of the NFPA 13 standard referenced by that code. The automatic fire suppression system shall be installed by September 1, 1999. The chief administrative office of the college or university shall obtain a certificate of compliance from the building official of the locality in which the college or university is located or, in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

Exceptions:

1. Buildings equipped with an automatic fire suppression system in accordance with Section 903.3.1.1 of the 1983 or later editions of NFPA 13.

2. Any dormitory at a state-supported military college or university that is patrolled 24 hours a day by military guards.

3. Application of the requirements of this section shall be modified in accordance with the following:

3.1. Building systems, equipment, or components other than the fire suppression system shall not be required to be added or upgraded except as necessary for the installation of the fire suppression system and shall only be required to be added or upgraded where the installation of the fire suppression system creates an unsafe condition.

3.2. Residential sprinklers shall be used in all sleeping rooms. Other sprinklers shall be quick response or residential unless deemed unsuitable for a space. Standard response sprinklers shall be used in elevator hoistways and machine rooms.

3.3. Sprinklers shall not be required in wardrobes in sleeping rooms that are considered part of the building construction or in closets in sleeping rooms when such wardrobes or closets (i) do not exceed 24 square feet (2.23 m^2) in area, (ii) have the smallest dimension less than 36 inches (914 mm), and (iii) comply with all of the following:

3.3.1. A single-station smoke alarm monitored by the building fire alarm system is installed in the room containing the wardrobe or closet that will activate the general alarm for the building if the single station smoke alarm is not cleared within five minutes after activation.

3.3.2. The minimum number of sprinklers required for calculating the hydraulic demand of the system for the room shall be increased by two, and the two additional sprinklers shall be corridor sprinklers where the wardrobe or closet is used to divide the room. Rooms divided by a wardrobe or closet shall be considered one room for the purpose of this requirement.

3.3.3. The ceiling of the wardrobe, closet, or room shall have a fire resistance rating of not less than 1/2 hour.

3.4. Not more than one sprinkler shall be required in bathrooms within sleeping rooms or suites having a floor area between 55 square feet (5.12 m^2) and 120 square feet (11.16 m^2), provided the sprinkler is located to protect the lavatory area and the plumbing fixtures are of a noncombustible material.

3.5. Existing standpipe residual pressure shall be permitted to be reduced when the standpipe serves as the water supply for the fire suppression system, provided the water supply requirements of NFPA 13-94 are met.

3.6. Limited service controllers shall be permitted for fire pumps when used in accordance with their listing.

3.7. Where a standby power system is required, a source of power in accordance with Section 701-11(d) or 701-11(e) of NFPA 70-96 shall be permitted.

1101.13 Fire extinguishers and smoke alarms in SRCFs. SRCFs shall be provided with at least one approved type ABC portable fire extinguisher with a minimum rating of 2A10BC installed in each kitchen. In addition, SRCFs shall provide at least one approved and properly installed battery operated smoke alarm outside of each sleeping area in the vicinity of bedrooms and bedroom hallways and on each additional floor.

1101.14 Smoke alarms in adult day care centers. In accordance with § 36-99.5 of the Code of Virginia, battery-powered or AC-powered smoke alarm devices shall be installed in all adult day care centers licensed by the Virginia Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke alarms shall be determined by the provisions of this code in effect on October 1, 1990. The licensee shall obtain a certificate of compliance from the building official of the locality in which the center is located or, in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

1101.15 Posting of occupant load. Every room or space that is an assembly occupancy, and where the occupant load of that room or space is 50 or more, shall have the occupant load of the room or space as determined by the building official posted in a conspicuous place near the main exit or exit access doorway from the room or space. Posted signs shall be of an approved legible permanent design and shall be maintained by the owner or owner's authorized agent.

1101.16 ALFSTs. Existing ALFSTs, regardless of when constructed, shall by October 1, 2011, meet the applicable requirements of API 653 and TFI RMIP for suitability for service and inspections and shall provide a secondary containment system complying with Section 430.3 of the VCC.

1101.17 Address identification. Existing buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall not be spelled out. Each character shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 1/2 inch (12.7 mm). Address identification shall be provided in additional approved locations to facilitate emergency response. Where access is by means of private road and the building address cannot be viewed from the public way, a monument, pole or other approved sign or means shall be used to identify the structure.

1101.18 Fire department connection sign. On existing buildings, wherever the fire department connection is not visible to approaching fire apparatus, the fire department connection shall be indicated by an approved sign mounted on the street front or on the side of the building. Such sign shall have the letters "FDC" not less than 6 inches (152 mm) high and words in letters not less than 2 inches (51 mm) high or an arrow to indicate the location. Such signs shall be maintained and subject to the approval of the fire code official.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-436. (Repealed.)

Statutory Authority

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; repealed, Virginia Register Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010.

13VAC5-63-437. (Repealed.)

Statutory Authority

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; repealed, Virginia Register, Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010.

13VAC5-63-438. Chapter 12 Construction safeguards.

Replace Chapter 12 of the IEBC with the following:

1. Section 1201 General.

1201.1 Scope. The provisions of this chapter shall govern safety during construction that is under the jurisdiction of this code and the protection of adjacent public and private properties.

1201.2 Storage and placement. Construction equipment and materials shall be stored and placed so as not to endanger the public, the workers, or adjoining property for the duration of the construction project.

1201.3 Alterations, repairs, and additions. Required exits, existing structural elements, fire protection devices, and sanitary safeguards shall be maintained at all times during alterations, repairs, or additions to any building or structure.

Exceptions:

1. When such required elements or devices are being altered or repaired, adequate substitute provisions shall be made.

2. When the existing building is not occupied.

1201.4 Manner of removal. Waste materials shall be removed in a manner which prevents injury or damage to persons, adjoining properties, and public rights-of-way.

1201.5 Fire safety during construction. Fire safety during construction shall comply with the applicable requirements of the International Building Code and the applicable provisions of Chapter 33 of the International Fire Code.

1201.6 Protection of pedestrians. Pedestrians shall be protected during construction and demolition activities as required by Sections 1201.6.1 through 1201.6.7 and Table 1201.6. Signs shall be provided to direct pedestrian traffic.

1201.6.1 Walkways. A walkway shall be provided for pedestrian travel in front of every construction and demolition site unless the applicable governing authority authorizes the sidewalk to be fenced or closed. Walkways shall be of sufficient width to accommodate the pedestrian traffic, but in no case shall they be less than 4 feet (1219 mm) in width. Walkways shall be provided with a durable walking surface. Walkways shall be accessible in accordance with Chapter 11 of the International Building Code and shall be designed to support all imposed loads and in no case shall the design live load be less than 150 pounds per square foot (psf) (7.2 kN/m^2).

1201.6.2 Directional barricades. Pedestrian traffic shall be protected by a directional barricade where the walkway extends into the street. The directional barricade shall be of sufficient size and construction to direct vehicular traffic away from the pedestrian path.

1201.6.3 Construction railings. Construction railings shall be at least 42 inches (1067 mm) in height and shall be sufficient to direct pedestrians around construction areas.

1201.6.4 Barriers. Barriers shall be a minimum of 8 feet (2438 mm) in height and shall be placed on the side of the walkway nearest the construction. Barriers shall extend the entire length of the construction site. Openings in such barriers shall be protected by doors which are normally kept closed.

1201.6.4.1 Barrier design. Barriers shall be designed to resist loads required in Chapter 16 of the International Building Code unless constructed as follows:

1. Barriers shall be provided with 2-inch by 4-inch top and bottom plates.

2. The barrier material shall be a minimum of 3/4-inch (19.1 mm) boards or 1/4-inch (6.4 mm) wood structural use panels.

3. Wood structural use panels shall be bonded with an adhesive identical to that for exterior wood structural use panels.

4. Wood structural use panels 1/4-inch (6.4 mm) or 1/16-inch (1.6 mm) in thickness shall have studs spaced not more than 2 feet (610 mm) on center.

5. Wood structural use panels 3/8-inch (9.5 mm) or 1/2-inch (12.7 mm) in thickness shall have studs spaced not more than 4 feet (1219 mm) on center, provided a 2-inch by 4-inch (51 mm by 102 mm) stiffener is placed horizontally at the mid-height where the stud spacing exceeds 2 feet (610 mm) on center.

6. Wood structural use panels 5/8-inch (15.9 mm) or thicker shall not span over 8 feet (2438 mm).

1201.6.5 Covered walkways. Covered walkways shall have a minimum clear height of 8 feet (2438 mm) as measured from the floor surface to the canopy overhead. Adequate lighting shall be provided at all times. Covered walkways shall be designed to support all imposed loads. In no case shall the design live load be less than 150 psf (7.2 kN/m^2) for the entire structure.

Exception: Roofs and supporting structures of covered walkways for new, light-frame construction not exceeding two stories above grade plane are permitted to be designed for a live load of 75 psf (3.6 kN/m^2) or the loads imposed on them, whichever is greater. In lieu of such designs, the roof and supporting structure of a covered walkway are permitted to be constructed as follows:

1. Footings shall be continuous 2-inch by 6-inch members.

2. Posts not less than 4-inches by 6-inches shall be provided on both sides of the roof and spaced not more than 12 feet (3658 mm) on center.

3. Stringers not less than 4-inches by 12-inches shall be placed on edge upon the posts.

4. Joists resting on the stringers shall be at least 2-inches by 8-inches and shall be spaced not more than 2 feet (610 mm) on center.

5. The deck shall be planks at least 2 inches (51 mm) thick or wood structural panels with an exterior exposure durability classification at least 2-3/32-inch (18.3 mm) thick nailed to the joists.

6. Each post shall be knee-braced to joists and stringers by 2-inch by 4-inch minimum members 4 feet (1219 mm) long.

7. A 2-inch by 4-inch minimum curb shall be set on edge along the outside edge of the deck.

1201.6.6 Repair, maintenance and removal. Pedestrian protection required by Section 1201.6 shall be maintained in place and kept in good order for the entire length of time pedestrians may be endangered. The owner or the owner's agent, upon the completion of the construction activity, shall immediately remove walkways, debris, and other obstructions and leave such public property in as good a condition as it was before such work was commenced.

TABLE 1201.6
PROTECTION OF PEDESTRIANS

HEIGHT OF CONSTRUCTION	DISTANCE OF CONSTRUCTION TO LOT LINE	TYPE OF PROTECTION REQUIRED
8 feet or less	Less than 5 feet	Construction railings
	5 feet or more	None
More than 8 feet	Less than 5 feet	Barrier and covered walkway
	5 feet or more, but not more than 1/4 the height of construction	Barrier and covered walkway
	5 feet or more, but between 1/4 and 1/2 the height of construction	Barrier
	5 feet or more, but exceeding 1/2 the height of construction	None

1201.6.7 Adjacent to excavations. Every excavation on a site located 5 feet (1524 mm) or less from the street lot line shall be enclosed with a barrier not less than 6 feet (1829 mm) high. Where located more than 5 feet (1524 mm) from the street lot line, a barrier shall be erected when required by the code official. Barriers shall be of adequate strength to resist wind pressure as specified in Chapter 16 of the International Building Code.

1201.7 Facilities required. Sanitary facilities shall be provided during construction or demolition activities in accordance with the International Plumbing Code.

2. Section 1202 Protection of Adjoining Properties.

1202.1 Protection required. Adjoining public and private property shall be protected from damage during construction and demolition work. Protection must be provided for footings, foundations, party walls, chimneys, skylights, and roofs. Provisions shall be made to control water runoff and erosion during construction or demolition activities. The person making or causing an excavation to be made shall provide written notice to the owners of adjoining buildings advising them that the

excavation is to be made and that the adjoining buildings should be protected. This notification shall be delivered not less than 10 days prior to the scheduled starting date of the excavation.

3. Section 1203 Temporary Use of Streets, Alleys and Public Property.

1203.1 Storage and handling of materials. The temporary use of streets or public property for the storage or handling of materials or equipment required for construction or demolition and the protection provided to the public shall comply with the provisions of the applicable governing authority and this chapter.

1203.2 Obstructions. Construction materials and equipment shall not be placed or stored so as to obstruct access to fire hydrants, standpipes, fire or police alarm boxes, catch basins, or manholes nor shall such material or equipment be located within 20 feet (6.1 m) of a street intersection or placed so as to obstruct normal observations of traffic signals or to hinder the use of public transit loading platforms.

1203.3 Utility fixtures. Building materials, fences, sheds or any obstruction of any kind shall not be placed to obstruct free approach to any fire hydrant, fire department connection, utility pole, manhole, fire alarm box, or catch basin or to interfere with the passage of water in the gutter. Protection against damage shall be provided to such utility fixtures during the progress of the work, but sight of them shall not be obstructed.

4. Section 1204 Fire Extinguishers.

1204.1 Where required. All structures under construction, alteration, or demolition shall be provided with not less than one approved portable fire extinguisher in accordance with Section 906 of the International Building Code and sized for not less than ordinary hazard as follows:

1. At each stairway on all floor levels where combustible materials have accumulated.

2. In every storage and construction shed.

3. Additional portable fire extinguishers shall be provided where special hazards exist including the storage and use of flammable and combustible liquids.

1204.2 Fire hazards. The provisions of this code and of the International Fire Code shall be strictly observed to safeguard against all fire hazards attendant upon construction operations.

5. Section 1205 Means of Egress.

1205.1 Stairways required. Where a building has been constructed to a building height of 50 feet (15,240 mm) or four stories, or where an existing building exceeding 50 feet (15,240 mm) in building height is altered, at least one temporary lighted stairway shall be provided unless one or more of the permanent stairways are erected as the construction progresses.

1205.2 Maintenance of means of egress. Required means of egress shall be maintained at all times during construction, demolition, remodeling or alterations, and additions to any building.

Exception: Approved temporary means of egress systems and facilities.

6. Section 1206 Standpipe Systems.

1206.1 Where required. In buildings required to have standpipes by Section 905.3.1 of the International Building Code, not less than one standpipe shall be provided for use during construction. Such standpipes shall be installed prior to construction exceeding 40 feet (12,192 mm) in height above the lowest level of fire department vehicle access. Such standpipe shall be provided with fire department hose connections at accessible locations adjacent to usable stairways. Such standpipes shall be extended as construction progresses to within one floor of the highest point of construction having secured decking or flooring.

1206.2 Buildings being demolished. Where a building or portion of a building is being demolished and a standpipe is existing within such a building, such standpipe shall be maintained in an operable condition to be available for use by the fire department. Such standpipe shall be demolished with the building but shall not be demolished more than one floor below the floor being demolished.

1206.3 Detailed requirements. Standpipes shall be installed in accordance with the provisions of Chapter 9 of the International Building Code.

Exception: Standpipes shall be either temporary or permanent in nature and with or without a water supply, provided that such standpipes conform to the requirements of Section 905 of the International Building Code as to capacity, outlets and materials.

7. Section 1207 Automatic Sprinkler System.

1207.1 Completion before occupancy. In portions of a building where an automatic sprinkler system is required by this code, it shall be unlawful to occupy those portions of the building until the automatic sprinkler system installation has been tested and approved, except as provided in Section 110.3.

1207.2 Operation of valves. Operation of sprinkler control valves shall be permitted only by properly authorized personnel and shall be accompanied by notification of duly designated parties. When the sprinkler protection is being regularly turned off and on to facilitate connection of newly completed segments, the sprinkler control valves shall be checked at the end of each work period to ascertain that protection is in service.

8. Section 1208 Accessibility.

1208.1 Construction sites. Structures, sites, and equipment directly associated with the actual process of construction, including scaffolding, bridging, material hoists, material storage, or construction trailers are not required to be accessible.

9. Section 1209 Water Supply for Fire Protection.

1209.1 When required. An approved water supply for fire protection, either temporary or permanent, shall be made available as soon as combustible material arrives on the site.

10. Section 1210 Demolition.

1210.1 Construction documents. Construction documents and a schedule for demolition shall be submitted where required by the building official. Where such information is required, no work shall be done until such construction documents, schedule, or both are approved.

1210.2 Pedestrian protection. The work of demolishing any building shall not be commenced until pedestrian protection is in place as required by Chapter 33 of the VCC.

1210.3 Means of egress. A horizontal exit shall not be destroyed unless and until a substitute means of egress has been provided and approved.

1210.4 Vacant lot. Where a structure has been demolished or removed, the vacant lot shall be filled and maintained to the existing grade or in accordance with the ordinances of the jurisdiction having authority.

1210.5 Water accumulation. Provision shall be made to prevent the accumulation of water or damage to any foundations on the premises or the adjoining property.

1210.6 Utility connections. Service utility connections shall be discontinued and capped in accordance with the approved rules and the requirements of the applicable governing authority.

1210.7 Fire safety during demolition. Fire safety during demolition shall comply with the applicable requirements of the VCC and the applicable provisions of Chapter 33 of the International Fire Code.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-439. Chapter 13 Referenced standards.

Replace Chapter 13 of the IEBC with the following:

Referenced standards are listed in the following table:

Standard reference number	Title	Referenced in code section number
API 653-09	Tank Inspection, Repair, Alteration and Reconstruction	1101.16
ASCE/SEI 7-16	American Society of Civil Engineers Structural Engineering Institute	305.2.1, 603.7.4, 603.7.6
ASCE/SEI 41-17	American Society of Civil Engineers Structural Engineering Institute	305.2, 305.2.1, 305.2.2, 502.3.1, 502.3.3, 603.7.4, 603.7.5, 603.7.6, 803.3
ASHRAE 62.1-2016	American Society of Heating, Refrigerating and Air Conditioning Engineers	603.5
ASHRAE 90.1-2016	American Society of Heating, Refrigerating and Air Conditioning Engineers	805.3
ASME A17.1/CSA B44-2016	American Society of Mechanical Engineers	404.4.2
ASME A18.1-2014	American Society of Mechanical Engineers	404.4.3
ASTM F2006-17	ASTM International	304.2
ASTM F2090-17	ASTM International	304.2
IBC-18	International Building Code	404.4.10.1, 706.3.1, 804.1, 902.1, 1201.5, 1201.6.1, 1201.6.4.1, 1201.6.7, 1204.1, 1206.1, 1206.3, 1403.19
ICC A117.1-09	Accessible and Usable Buildings and Facilities	404.4.2, 404.4.3, 404.4.10
IECC-18	International Energy Conservation Code	602.3.2
IFC-18	International Fire Code	103.3, 1201.5, 1204.2, 1210.7
IFGC-18	International Fuel Gas Code	602.3.3
IMC-18	International Mechanical Code	602.3.2, 709.1, 1403.7.1, 1403.8, 1403.8.1
IPC-18	International Plumbing Code	506.1, 602.3.2, 603.6, 710.1, 710.2, 1201.7
IRC-18	International Residential Code	304.3, 503.1, 601.3, 603.7.3, 803.2, 803.3, 803.5, 804.1, 902.1, 1001.2, 1002.1, 1002.2, 1002.3, 1002.5, 1002.6, 1401.3, 1401.5
NFPA 13-16	Standard for the Installation of Sprinkler Systems	1101.12
NFPA 70-96	National Electrical Code	1101.12
NFPA 70-17	National Electrical Code	504.1.1, 504.1.2, 504.1.3, 504.1.4, 504.1.5, 708.1, 708.2, 708.3
NFPA 99-18	Health Care Facilities Code	504.1.4

UL 217-06	Single and Multiple Station Smoke Alarms - with revisions through October 2015	302.3
TFI RMIP-09	Aboveground Storage Tanks Containing Liquid Fertilizer, Recommended Mechanical Integrity Practices	1101.16

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-440. Chapter 14 Compliance alternative - Change of occupancy.

Replace Chapter 14 of the IEBC with the following:

Section 1401 General

1401.1 Scope. The provisions of this chapter are intended to maintain or increase the current degree of public safety, health, and general welfare in existing buildings or structures, while permitting changes of occupancy without requiring full compliance with Chapter 7, except where compliance with other provisions of this code is specifically required in this chapter.

Exception: The provisions of this chapter shall not apply to buildings with occupancies in Group H or I.

1401.2 Complete change of occupancy. Where an entire existing building undergoes a change of occupancy, the applicable provisions of this chapter for the new occupancy shall be used to determine compliance with this code.

Exception: Plumbing, mechanical, and electrical systems in buildings undergoing a change of occupancy shall be subject to any applicable requirements of Chapter 7.

1401.3 Partial change of occupancy. Where a portion of the building undergoes a change of occupancy and that portion is separated from the remainder of the building with fire barrier or horizontal assemblies having a fire-resistance rating as required by Table 508.4 of the VCC or Section R317 of the International Residential Code for the separate occupancies, or with approved compliance alternatives, the portion changed shall be made to conform to the provisions of this chapter.

Where a portion of the building undergoes a change of occupancy and that portion is not separated from the remainder of the building with fire barriers or horizontal assemblies having a fire-resistance rating as required by Table 508.4 of the VCC or Section R317 of the International Residential Code for the separate occupancies, or with approved compliance alternatives, the provisions of this chapter which apply to each occupancy shall apply to the entire building. Where there are conflicting provisions, those requirements that are the most restrictive shall apply to the entire building or structure.

1401.4 Accessibility requirements. All portions of the building proposed for a change of occupancy shall conform to the applicable accessibility provisions of Chapter 4.

1401.5 Compliance with flood hazard provisions. In flood hazard areas, buildings or structures that are evaluated in accordance with this chapter shall comply with Section 1612 of the VCC or Section R322 of the VRC, as applicable if the work covered by this chapter constitutes substantial improvement.

Section 1402 Evaluation Process

1402.1 Evaluation process. The evaluation process specified herein shall be followed in its entirety to evaluate existing buildings for work covered by this chapter. The existing building shall be evaluated in accordance with the provisions of this section and Sections 1403 and 1401.4. The evaluation shall be comprised of three categories as described in Sections 1402.1.1 through 1402.1.3.

1402.1.1 Fire safety. Included within the fire safety category are the structural fire resistance, automatic fire detection, fire alarm, automatic sprinkler system, and fire suppression system features of the facility.

1402.1.2 Means of egress. Included within the means of egress category are the configuration, characteristics, and support features for means of egress in the facility.

1402.1.3 General safety. Included within the general safety category are the fire safety parameters and the means-of-egress parameters.

1402.2 Structural evaluation. The existing building shall be evaluated to determine adequacy of the existing structural systems for the proposed change of occupancy. The evaluation shall demonstrate that the existing building with the work completed is capable of resisting the loads specified in Chapter 16 of the VCC.

1402.3 Submittal. The results of the evaluation as required in Section 1402.1 shall be submitted to the code official. Table 1404.1 shall be utilized for tabulating the results of the evaluation. References to other sections of this code indicate that compliance with those sections is required in order to gain credit in the evaluation herein outlined.

Section 1403 Evaluation data

1403.1 Building height and number of stories. The value for building height and number of stories shall be the lesser value determined by the formula in Section 1403.1.1. Section 504 of the VCC shall be used to determine the allowable height and number of stories of the building. Subtract the actual building height from the allowable height and divide by 12-1/2 feet (3810 mm). Enter the height value and its sign (positive or negative) in Table 1404.1 under Safety Parameter 1403.1, Building Height, for fire safety, means of egress, and general safety. The maximum score for a building shall be 10.

1403.1.1 Height formula. The following formulas shall be used in computing the building height value.

Equation 14-1:

$$\text{Height value, feet} = \frac{(AH) - (EBH)}{125} \times CF$$

(Equation 14-1)

Note: Where mixed occupancies are separated and individually evaluated as indicated in Section 1404.3.1, the values AH, AS, EBH, and EBS shall be based on the height of the occupancy being evaluated.

Equation 14-2:

$$\text{Height value, stories} = (AS - EBS) \times CF$$

(Equation 14-2)

AH = Allowable height in feet (mm) from Section 504 of the VCC.

EBH = Existing building height in feet (mm).

AS = Allowable height in stories from Section 504 of the VCC.

EBS = Existing building height in stories.CF = 1 if (AH) - (EBH) is positive.

CF = Construction-type factor shown in Table 1403.6(2) if (AH) - (EBH) is negative.

1403.2 Building area. The value for building area shall be determined by the formula in Section 1403.2.2. Section 506 of the VCC and the formula in Section 1403.2.1 shall be used to determine the allowable area of the building. Subtract the actual building area from the allowable area and divide by 1,200 square feet (112 m^2). Enter the area value and its sign (positive or negative) in Table 1404.1 under Safety Parameter 1403.2, Building Area, for fire safety, means of egress and general safety. In determining the area value, the maximum permitted positive value for area is 50% of the fire safety score as listed in Table 1404.2, Mandatory Safety Scores.

1403.2.1 Allowable area formula. The following formula shall be used in computing allowable area:

Equation 14-3:

$$A_a = A_t(NS \times I_f)$$

Equation (14-3)

where:

A_a = Allowable building area per story (square feet).

A_t = Tabular allowable area factor (NS, S1, S13R, or SM value, as applicable) in accordance with Table 506.2 of the VCC.

N_S = Tabular allowable area factor in accordance with Table 506.2 of the VCC for a nonsprinklered building (regardless of whether the building is sprinklered).

I_f = Area factor increase due to frontage as calculated in accordance with Section 506.3 of the VCC.

1403.2.2 Area formula. The following formula shall be used in computing the area value. Determine the area value for each occupancy floor area on a floor-by-floor basis. For each occupancy, choose the minimum area value of the set of values obtained for the particular occupancy.

Equation 14-4:

$$Actual\ value_i = \frac{Allowable\ area_i}{1200\ square\ feet}\left[1 - \left(\frac{Actual\ area_1}{Allowable\ area_1} + \ldots + \frac{Actual\ area_n}{Allowable\ area_n}\right)\right]$$

Equation (14-4)

where:

i = Value for an individual separated occupancy on a floor.

n = Number of separated occupancies on a floor.

1403.3 Compartmentation. Evaluate the compartments created by fire barriers or horizontal assemblies that comply with Sections 1403.3.1 and 1403.3.2 and which are exclusive of the wall elements considered under Sections 1403.4 and 1403.5. Conforming compartments shall be figured as the net area and do not include shafts, chases, stairways, walls, or columns. Using Table 1403.3, determine the appropriate compartmentation value (CV) and enter that value into Table 1404.1 under Safety Parameter 1403.3, Compartmentation, for fire safety, means of egress, and general safety. For compartment sizes that fall between categories, the determination of the CV shall be permitted to be obtained by linear interpolation.

TABLE 1403.3 COMPARTMENTATION VALUES

OCCUPANCY	CATEGORIES				
	a Compartment size equal to or greater than 15,000 square feet	b Compartment size	c Compartment size	d Compartment size of 5,000	e Compartment size of

		of 10,000 square feet	of 7,500 square feet	square feet	2,500 square feet or less
A-1, A-3	0	6	10	14	18
A-2	0	4	10	14	18
A-4, B, E, S-2	0	5	10	15	20
F, M, R, S-1	0	4	10	16	22

For SI: 1 square foot = 0.0929m^2.

1403.3.1 Wall construction. A wall used to create separate compartments shall be a fire barrier conforming to Section 707 of the VCC with a fire-resistance rating of not less than two hours. Where the building is not divided into more than one compartment, the compartment size shall be taken as the total floor area on all floors. Where there is more than one compartment within a story, each compartmented area on such story shall be provided with a horizontal exit conforming to Section 1026 of the VCC. The fire door serving as the horizontal exit between compartments shall be so installed, fitted, and gasketed that such fire door will provide a substantial barrier to the passage of smoke.

1403.3.2 Floor/ceiling construction. A floor/ceiling assembly used to create compartments shall conform to Section 711 of the VCC and shall have a fire-resistance rating of not less than two hours.

1403.4 Tenant and dwelling unit separations. Evaluate the fire-resistance rating of floors and walls separating tenants, including dwelling units, and not evaluated under Sections 1403.3 and 1403.5.

Table 1403.4 SEPARATION VALUES

OCCUPANCY	CATEGORIES				
	a	b	c	d	e
A-1	0	0	0	0	1
A-2	-5	-3	0	1	3
R	-4	-2	0	2	4
A-3, A-4, B, E, F, M, S-1	-4	-3	0	2	4
S-2	-5	-2	0	2	4

1403.4.1 Categories. The categories for tenant and dwelling unit separations are:

1.Category a—No fire partitions; incomplete fire partitions; no doors; doors not self-closing or automatic-closing.

2. Category b—Fire partitions or floor assemblies with less than one-hour fire-resistance ratings or not constructed in accordance with Section 708 or 711 of the VCC, respectively.

3. Category c—Fire partitions with 1-hour or greater fire-resistance ratings constructed in accordance with Section 708 of the VCC and floor assemblies with one-hour but less than two-hour fire-resistance ratings constructed in accordance with Section 711 of the VCC or with only one tenant within the floor area.

4. Category d—Fire barriers with one-hour but less than two-hour fire-resistance ratings constructed in accordance with Section 707 of the VCC and floor assemblies with two-hour or greater fire-resistance ratings constructed in accordance with Section 711 of the VCC.

5. Category e—Fire barriers and floor assemblies with two-hour or greater fire-resistance ratings and constructed in accordance with Sections 707 and 711 of the VCC, respectively.

1403.5 Corridor walls. Evaluate the fire-resistance rating and degree of completeness of walls which create corridors serving the floor and that are constructed in accordance with Section 1020 of the VCC. This evaluation shall not include the wall elements considered under Sections 1403.3 and 1403.4. Under the categories and groups in Table 1403.5, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.5, Corridor Walls, for fire safety, means of egress, and general safety.

Table 1403.5 CORRIDOR WALL VALUES

OCCUPANCY	CATEGORIES			
	a	b	c[a]	d[a]
A-1	-10	-4	0	2
A-2	-30	-12	0	2
A-3, F, M, R, S-1	-7	-3	0	2
A-4, B, E, S-2	-5	-2	0	5

a. Corridors not providing at least one-half the exit access travel distance for all occupants on a floor shall use Category b.

1403.5.1 Categories. The categories for corridor walls are:

1. Category a—No fire partitions; incomplete fire partitions; no doors; or doors not self-closing.

2. Category b—Less than one-hour fire-resistance rating or not constructed in accordance with Section 708.4 of the VCC.

3. Category c—one-hour to less than 2-hour fire-resistance rating, with doors conforming to Section 716 of the VCC or without corridors as permitted by Section 1020 of the VCC.

4. Category d—two-hour or greater fire-resistance rating, with doors conforming to Section 716 of the VCC.1403.6 Vertical openings. Evaluate the fire-resistance rating of interior exit stairways or ramps, hoistways, escalator openings, and other shaft enclosures within the building, and openings between two or more floors. Table1403.6(1) contains the appropriate protection values. Multiply that value by the construction-type factor found in 1403.6(2). Enter the vertical opening value and its sign (positive or negative) in Table 1404.1 under Safety Parameter 1403.6, Vertical Openings, for fire safety, means of egress, and general safety. If the structure is a one-story building or if all the unenclosed vertical openings within the building conform to the requirements of Section 713 of the VCC, enter a value of two. The maximum positive value for this requirement shall be two.

Table 1403.6(1) VERTICAL OPENING PROTECTION VALUE

PROTECTION	VALUE
None (unprotected opening)	-2 times number of floors connected
Less than 1 hour	-1 times number of floors connected
1 to less than 2 hours	1
2 hours or more	2

TABLE 1403.6(2) CONSTRUCTION-TYPE FACTOR

FACTOR	TYPE OF CONSTRUCTION								
	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
	1.2	1.5	2.2	3.5	2.5	3.5	2.3	3.3	7

1403.6.1 Vertical opening formula. The following formula shall be used in computing vertical opening value.

$$VO = PV \times CF$$

VO = Vertical opening value.

PV = Protection value from Table 1403.6(1).

CF = Construction-type factor from Table 1403.6(2).

1403.7 HVAC systems. Evaluate the ability of the HVAC system to resist the movement of smoke and fire beyond the point of origin. Under the categories in Section 1403.7.1, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.7, HVAC Systems, for fire safety, means of egress, and general safety.

1403.7.1 Categories. The categories for HVAC systems are:

1. Category a—Plenums not in accordance with Section 602 of the International Mechanical Code. - 10 points.

2. Category b—Air movement in egress elements not in accordance with Section 1018.5 of the VCC. - 5 points.

3. Category c—Both Categories a and b are applicable. - 15 points.

4. Category d—Compliance of the HVAC system with Section 1020.5 of the VCC and Section 602 of the International Mechanical Code. - 0 points.

5. Category e—Systems serving one story; or a central boiler/chiller system without ductwork connecting two or more stories. - 5 points.

1403.8 Automatic fire detection. Evaluate the smoke detection capability based on the location and operation of automatic fire detectors in accordance with Section 907 of the VCC and Section 606 of the International Mechanical Code. Under the categories and occupancies in Table 1403.8, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.8, Automatic Fire Detection, for fire safety, means of egress, and general safety.

Table 1403.8 AUTOMATIC FIRE DETECTION VALUES

OCCUPANCY	CATEGORIES					
	a	b	c	d	e	f
A-1, A-3, F, M, R, S-1	-10	-5	0	2	6	-
A-2	-25	-5	0	5	9	-
A-4, B, E, S-2	-4	-2	0	4	8	-

1403.8.1 Categories. The categories for automatic fire detection are:

1. Category a - None.

2. Category b - Existing smoke detectors in HVAC systems.

3. Category c - Smoke detectors in HVAC systems. The detectors are installed in accordance with the requirements for new buildings in the International Mechanical Code.

4. Category d - Smoke detectors throughout all floor areas other than individual sleeping units, tenant spaces, and dwelling units.

5. Category e - Smoke detectors installed throughout the floor area.

6. Category f - Smoke detectors in corridors only.

1403.9 Fire alarm systems. Evaluate the capability of the fire alarm system in accordance with Section 907 of the VCC. Under the categories and occupancies in Table 1403.9, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.9, Fire Alarm System, for fire safety, means of egress, and general safety.

Table 1403.9 FIRE ALARM SYSTEM VALUES

OCCUPANCY	CATEGORIES			
	a	b[a]	c	d
A-1, A-2, A-3, A-4, B, E, R	-10	-5	0	5
F, M, S	0	5	10	15

a. For buildings equipped throughout with an automatic sprinkler system, add two points for activation by a sprinkler water-flow device.

1403.9.1 Categories. The categories for fire alarm systems are:

1. Category a—None.

2. Category b—Fire alarm system with manual fire alarm boxes in accordance with Section 907.4 of the VCC and alarm notification appliances in accordance with Section 907.5.2 of the VCC.

3. Category c—Fire alarm system in accordance with Section 907 of the VCC.

4. Category d—Category c plus a required emergency voice/alarm communications system and a fire command station that conforms to Section 911 of the VCC and contains the emergency voice/alarm communications system controls, fire department communication system controls, and any other controls specified in Section 911 of the VCC where those systems are provided.

1403.10 Smoke control. Evaluate the ability of a natural or mechanical venting, exhaust, or pressurization system to control the movement of smoke from a fire. Under the categories and occupancies in Table 1403.10, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.10, Smoke Control, for means of egress and general safety.

Table 1403.10 SMOKE CONTROL VALUES

OCCUPANCY	CATEGORIES					
	a	b[a]	c	d	e	f
A-1, A-2, A-3	0	1	2	3	6	6
A-4, E	0	0	0	1	3	5
B, M, R	0	2a	3a	3a	3a	4a
F, S	0	2a	2s	3a	3a	3a

a. This value shall be zero if compliance with Category d or e in Section 1403.8.1 has not been obtained.

1403.10.1 Categories. The categories for smoke control are:

1. Category a—None.

2. Category b—The building is equipped throughout with an automatic sprinkler system. Openings are provided in exterior walls at the rate of 20 square feet (1.86 m^2) per 50 linear feet (15 240 mm) of exterior wall in each story and distributed around the building perimeter at intervals not exceeding 50 feet (15 240 mm). Such openings shall be readily openable from the inside without a key or separate tool and shall be provided with ready access thereto. In lieu of operable openings, clearly and permanently marked tempered glass panels shall be used.

3. Category c—One enclosed exit stairway, with ready access thereto, from each occupied floor of the building. The stairway has operable exterior windows, and the building has openings in accordance with Category b.

4. Category d—One smokeproof enclosure and the building has openings in accordance with Category b.

5. Category e—The building is equipped throughout with an automatic sprinkler system. Each floor area is provided with a mechanical airhandling system designed to accomplish smoke containment. Return and exhaust air shall be moved directly to the outside without recirculation to other floor areas of the building under fire conditions. The system shall exhaust not less than six air changes per hour from the floor area. Supply air by mechanical means to the floor area is not required. Containment of smoke shall be considered as confining smoke to the floor area involved without migration to other floor areas. Any other tested and approved design that will adequately accomplish smoke containment is permitted.

6. Category f—Each stairway shall be one of the following: a smokeproof enclosure in accordance with Section 1023.11 of the VCC, pressurized in accordance with Section 909.20.5 of the VCC, or shall have operable exterior windows.

1403.11 Means of egress capacity and number. Evaluate the means of egress capacity and the number of exits available to the building occupants. In applying this section, the means of egress are required to conform to the following sections of the VCC: 1003.7, 1004, 1005, 1006, 1007, 1016.2, 1026.1, 1028.2, 1028.5, 1029.2,

1029.3, 1029.4, and 1030. The number of exits credited is the number that is available to each occupant of the area being evaluated. Existing fire escapes shall be accepted as a component in the means of egress when conforming to Section 405.

Under the categories and occupancies in Table 1403.11, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.11, Means of Egress Capacity, for means of egress and general safety.

Table 1403.11 MEANS OF EGRESS VALUES[a]

OCCUPANCY	CATEGORIES				
	a	b	c	d	e
A-1, A-2, A-3, A-4, E	-10	0	2	8	10
M	-3	0	1	2	4
B, F, S	-1	0	0	0	0
R	-3	0	0	0	0

a. The values indicated are for buildings six stories or less in height. For buildings over six stories above grade plane, add an additional -10 points.

1403.11.1 Categories. The categories for means-of-egress capacity and number of exits are:

1. Category a—Compliance with the minimum required means-of-egress capacity or number of exits is achieved through the use of a fire escape in accordance with Section 405.

2. Category b—Capacity of the means of egress complies with Section 1005 of the VCC, and the number of exits complies with the minimum number required by Section 1006 of the VCC.

3. Category c—Capacity of the means of egress is equal to or exceeds 125% of the required means-of-egress capacity, the means of egress complies with the minimum required width dimensions specified in the VCC, and the number of exits complies with the minimum number required by Section 1006 of the VCC.

4. Category d—The number of exits provided exceeds the number of exits required by Section 1006 of the VCC. Exits shall be located a distance apart from each other equal to not less than that specified in Section 1007 of the VCC.

5. Category e—The area being evaluated meets both Categories c and d.

1403.12 Dead ends. In spaces required to be served by more than one means of egress, evaluate the length of the exit access travel path in which the building occupants are confined to a single path of travel. Under the categories and occupancies in Table 1403.12, determine the appropriate value and enter that value into 1404.1 under Safety Parameter 1403.12, Dead Ends, for means of egress and general safety.

Table 1403.12 DEAD-END VALUES

OCCUPANCY	CATEGORIES[a]			
	a	b	c	d
A-1, A-3, A-4, B, F, M, R, S	-2	0	2	-4
A-2, E	-2	0	2	-4

a. For dead-end distances between categories, the dead-end value shall be obtained by linear interpolation.

1403.12.1 Categories. The categories for dead ends are:

1. Category a—Dead end of 35 feet (10 670 mm) in nonsprinklered buildings or 70 feet (21 340 mm) in sprinklered buildings.

2. Category b—Dead end of 20 feet (6096 mm); or 50 feet (15 240 mm) in Group B in accordance with Section 1020.4, Exception 2, of the VCC.

3. Category c—No dead ends; or ratio of length to width (l/w) is less than 2.5:1.4. Category d—Dead ends exceeding Category a.

1403.13 Maximum exit access travel distance to an exit. Evaluate the length of exit access travel to an approved exit. Determine the appropriate points in accordance with the following equation and enter that value into Table 1404.1 under Safety Parameter 1403.13, Maximum Exit Access Travel Distance for means of egress and general safety. The maximum allowable exit access travel distance shall be determined in accordance with Section 1017.1 of the VCC.

1403.14 Elevator control. Evaluate the passenger elevator equipment and controls that are available to the fire department to reach all occupied floors. Emergency recall and in-car operation of elevators shall be provided in accordance with the building code under which the building or the affected portion thereof was constructed or previously approved. Under the categories and occupancies in Table 1403.14, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.14, Elevator Control, for fire safety, means of egress and general safety. The values shall be zero for a single-story building.

Table 1403.14 Elevator Control Values

ELEVATOR TRAVEL	CATEGORIES			
	a	b	c	d
Less than 25 feet of travel above or below the primary level of elevator access for emergency fire-fighting or rescue personnel	-2	0	0	2
Travel of 25 feet or more above or below the primary level of elevator access for emergency fire-fighting or rescue personnel	-4	NP	0	4

1403.14.1 Categories. The categories for elevator controls are:

1. Category a - No elevator.

2. Category b - Any elevator without Phase I emergency recall operation and Phase II emergency in-car operation.

3. Category c - All elevators with Phase I emergency recall operation and Phase II emergency in-car operation as required by the building code under which the building or the affected portion thereof was constructed or previously approved.

4. Category d - All meet Category c or Category b where permitted to be without Phase I emergency recall operation and Phase II emergency in-car operation, and there is at least one elevator that complies with new construction requirements serves all occupied floors.

1403.15 Means-of-egress emergency lighting. Evaluate the presence of and reliability of means-of-egress emergency lighting. Under the categories and occupancies in Table 1403.15, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.15, Means-of-Egress Emergency Lighting, for means of egress and general safety.

Table 1403.15 MEANS-OF-EGRESS EMERGENCY LIGHTING VALUES

NUMBER OF EXITS REQUIRED BY SECTION 1015 OF THE INTERNATIONAL BUILDING BODE	CATEGORIES		
	a	b	c
Two or more exits	NP	0	4
Minimum of one exit	0	1	1

NP= Not permitted

1403.15.1 Categories. The categories for means-of-egress emergency lighting are:

1. Category a—Means-of-egress lighting and exit signs not provided with emergency power in accordance with Section 2702 of the VCC.

2. Category b—Means-of-egress lighting and exit signs provided with emergency power in accordance with Section 2702 of the VCC.

3. Category c—Emergency power provided to means-of-egress lighting and exit signs, which provides protection in the event of power failure to the site or building.

1403.16 Mixed occupancies. Where a building has two or more occupancies that are not in the same occupancy classification, the separation between the mixed occupancies shall be evaluated in accordance with this section. Where there is no separation between the mixed occupancies or the separation between mixed occupancies does not qualify for any of the categories indicated in Section 1403.16.1, the building shall be evaluated as indicated in Section 1404.3.1, and the value for mixed occupancies shall be zero. Under the categories and occupancies in Table 1403.16, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.16, Mixed Occupancies, for fire safety and general safety. For buildings without mixed occupancies, the value shall be zero.

Table 1403.16 MIXED OCCUPANCY VALUES[a]

OCCUPANCY	CATEGORIES		
	a	b	c
A-1, A-2, R	-10	0	10
A-3, A-4, B, E, F, M, S	-5	0	5

a. For fire-resistance ratings between categories, the value shall be obtained by linear interpolation.

1403.16.1 Categories. The categories for mixed occupancies are:

1. Category a—Occupancies separated by minimum one-hour fire barriers or minimum one-hour horizontal assemblies, or both.

2. Category b—Separations between occupancies in accordance with Section 508.4 of the VCC.

3. Category c—Separations between occupancies having a fire-resistance rating of not less than twice that required by Section 508.4 of the VCC.

1403.17 Automatic sprinklers. Evaluate the ability to suppress a fire based on the installation of an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC. "Required sprinklers" shall be based on the requirements of this code. Under the categories and occupancies in Table 1403.17, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.17, Automatic Sprinklers, for fire safety, means of egress divided by two, and general safety. High-rise buildings defined in Chapter 2 of the VCC that undergo a change of occupancy to Group R shall be equipped throughout with an automatic sprinkler system in accordance with Section 403 of the VCC and Chapter 9 of the VCC.

Table 1403.17 SPRINKLER SYSTEM VALUES

OCCUPANCY	CATEGORIES					
	a[a]	b[a]	c	d	e	f
A-1, A-3, F, M, R, S-1	-6	-3	0	2	4	6
A-2	-4	-2	0	1	2	4
A-4, B, E, S-2	-12	-6	0	3	6	12

a. These options cannot be taken if Category a in Section 1403.18 is used.

1403.17.1 Categories. The categories for automatic sprinkler system protection are:

1. Category a—Sprinklers are required throughout; sprinkler protection is not provided or the sprinkler system design is not adequate for the hazard protected in accordance with Section 903 of the VCC.

2. Category b—Sprinklers are required in a portion of the building; sprinkler protection is not provided or the sprinkler system design is not adequate for the hazard protected in accordance with Section 903 of the VCC.

3. Category c—Sprinklers are not required; none are provided.

4. Category d—Sprinklers are required in a portion of the building; sprinklers are provided in such portion; the system is one that complied with the code at the time of installation and is maintained and supervised in accordance with Section 903 of the VCC.

5. Category e—Sprinklers are required throughout; sprinklers are provided throughout in accordance with Chapter 9 of the VCC.

6. Category f—Sprinklers are not required throughout; sprinklers are provided throughout in accordance with Chapter 9 of the VCC.

1403.18 Standpipes. Evaluate the ability to initiate attack on a fire by a making supply of water available readily through the installation of standpipes in accordance with Section 905 of the VCC. "Required Standpipes" shall be based on the requirements of the VCC. Under the categories and occupancies in Table 1403.18, determine the appropriate value and enter that value into Table 1404.1 under Safety Parameter 1403.18, Standpipes, for fire safety, means of egress, and general safety.

Table 1403.18 STANDPIPE SYSTEM VALUES

OCCUPANCY	CATEGORIES			
	a[a]	b	c	d
A-1, A-3, F, M, R, S-1	-6	0	4	6
A-2	-4	0	2	4
A-4, B, E, S-2	-12	0	6	12

1403.18.1 Standpipe categories. The categories for standpipe systems are:

1. Category a—Standpipes are required; standpipe is not provided or the standpipe system design is not in compliance with Section 905.3 of the VCC.

2. Category b—Standpipes are not required; none are provided.

3. Category c—Standpipes are required; standpipes are provided in accordance with Section 905 of the VCC.

4. Category d—Standpipes are not required; standpipes are provided in accordance with Section 905 of the VCC.

1403.19 Incidental uses. Evaluate the protection of incidental uses in accordance with Section 509.4.2 of the VCC. Do not include those where this code requires automatic sprinkler systems throughout the building, including covered and open mall buildings, high-rise buildings, public garages, and unlimited area buildings. Assign the lowest score from Table 1403.19 for the building or floor area being evaluated and enter that value into Table 1404.1 under Safety Parameter 1403.19, Incidental Uses, for fire safety, means of egress and general safety. If there are no specific occupancy areas in the building or floor area being evaluated, the value shall be zero.

Table 1403.19 INCIDENTAL USE AREA VALUES

PROTECTION REQUIRED BY TABLE 509 OF THE VCC	PROTECTION PROVIDED						
	None	1 hour	AS	AS with CRS	1 hour and AS	2 hours	2 hours and AS
2 hours and AS	-4	-3	-2	-2	-1	-2	0
2 hours, or 1 hour and AS	-3	-2	-1	-1	0	0	0
1 hour and AS	-3	-2	-1	-1	0	-1	0
1 hour	-1	0	-1	-1	0	0	0
1 hour, or AS with CRS	-1	0	-1	-1	0	0	0
AS with CRS	-1	-1	-1	-1	0	-1	0
1 hour or AS	-1	0	0	0	0	0	0

AS = Automatic sprinkler system;

CRS - Construction capable of resisting the passage of smoke (see Section 509.4.2 of the VCC).

1403.20 Smoke compartmentation. Evaluate the smoke compartments for compliance with Section 407.5 of the VCC. Under the categories and occupancies in Table 1403.20, determine the appropriate smoke compartmentation value (SCV) and enter that value into Table 1404.1 under Safety Parameter 1403.20, Smoke Compartmentation, for fire safety, means of egress and general safety.

TABLE 1403.20 SMOKE COMPARTMENT VALUES

OCCUPANCY	CATEGORIES[a]		
	a	b	c
A, B, E, F, M, R and S	0	0	0

For SI: 1 square foot = 0.093 m^2

NP = Not permitted

a. For areas between categories, the smoke compartmentation value shall be obtained by linear interpolation.

1403.20.1 Categories. Categories for smoke compartment size are:

Category a - Smoke compartment size equal to or less than 22,500 square feet (2092 m^2).

Category b - Smoke compartment size is greater than 22,500 square feet (2092 m^2).

Category c - Smoke compartments are not provided.

Section 1404 Evaluation Scores

1404.1 Building Score. After determining the appropriate data from Section 1403, enter those data in Table 1404.2 and total the building score.

TABLE 1404.1 SUMMARY SHEET-BUILDING CODE

Existing occupancy _____			Proposed Occupancy _____		
Year building was constructed _____			Number of stories_____ Height in feet _____		
Type of construction _____			Area per floor _____		
Percentage of open perimeter increase _____%					
Completely suppressed:	Yes___	No___	Corridor wall rating_____		
			Type: _____		
Fire-resistance rating of vertical opening enclosures _____					
Type of HVAC system _____, serving number of floors _____					
Automatic fire detection:	Yes___	No___	Type and Location: _____		
Fire alarm system:	Yes___	No___	Type: _____		
Smoke control:	Yes___	No___	Type: _____		
Adequate exit route:	Yes___	No___	Dead ends: _____	Yes___	No___
Maximum exist access travel distance _____			Elevator controls:	Yes___	No___
Means of egress lighting:	Yes___	No___	Mixed occupancies:	Yes___	No___
Standpipes	Yes___	No___	Patient ability for self-preservation _____		
Incidental use	Yes___	No___	Patient concentration _____		
Smoke compartmentation less than 22,500 sq. feet (2092 m^2)	Yes___	No___	Attendant-to-patient ratio _____		

SAFETY PARAMETERS	FIRE SAFETY (FS)	MEANS OF EGRESS (ME)	GENERAL SAFETY (GS)
1403.1 Building Height			
1403.2 Building Area			
1403.3 Compartmentation			
1403.4 Tenant and Dwelling Unit Separations			
1403.5 Corridor Walls			
1403.6 Vertical Openings			
1403.7 HVAC Systems			
1403.8 Automatic Fire Detection			
1403.9 Fire Alarm System			
1403.10 Smoke Control	****		
1403.11 Means of Egress	****		
1403.12 Dead Ends	****		
1403.13 Maximum Exit Access Travel Distance	****		
1403.14 Elevator Control			
1403.15 Means of Egress Emergency Lighting	****		
1403.16 Mixed Occupancies		****	
1403.17 Automatic Sprinklers		÷ 2 =	
1403.18 Standpipes			
1403.19 Incidental Use			
1403.20 Smoke Compartmentation			

Building score - total value			

****No applicable value to be inserted.

1404.2 Safety scores. The values in Table 1404.2 are the required mandatory safety scores for the evaluation process listed in Section 1403.

TABLE 1404.2 MANDATORY SAFETY SCORES[a]

OCCUPANCY	FIRE SAFETY (MFS)	MEANS OF EGRESS (MME)	GENERAL SAFETY (MGS)
A-1	20	31	31
A-2	21	32	32
A-3	22	33	33
A-4, E	29	40	40
B	30	40	40
F	24	34	34
M	23	40	40
R	21	38	38
S-1	19	29	29
S-2	29	39	39

a. MFS = Mandatory Fire Safety, MME = Mandatory Means of Egress, MGS = Mandatory General Safety

1404.3 Final scores. The mandatory safety score in Table 1404.2 shall be subtracted from the building score in Table 1404.2 for each category. Where the final score for any category equals zero or more, the building is in compliance with the requirements of this section for that category. Where the final score for any category is less than zero, the building is not in compliance with the requirements of this section.

1404.3.1 Mixed occupancies. For mixed occupancies, the following provisions shall apply:

1. Where the separation between mixed occupancies does not qualify for any category indicated in Section 1403.16, the mandatory safety scores for the occupancy with the lowest general safety score in Table 1404.2 shall be utilized. (See Section 1404.3.1).

2. Where the separation between mixed occupancies qualifies for any category indicated in Section 1403.16, the mandatory safety scores for each occupancy shall be placed against the evaluation scores for the appropriate occupancy.

TABLE 1404.3 FINAL SCORES[a]

FORMULA	T1401.7	T1401.8		SCORE	PASS	FAIL
FS - MFS ≥ 0	_____ (FS) -	_____ (MFS)	=	_____	_____	_____
ME - MME ≥ 0	_____ (ME) -	_____ (MME)	=	_____	_____	_____
GS - MGS ≥ 0	_____ (GS) -	_____ (MGS)	=	_____	_____	_____

a. FE = MFS = Mandatory Fire Safety,

ME = MME = Mandatory Means of Egress,

GS = MGS = Mandatory General Safety

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-441. Chapter 15 Construction safeguards.

Delete Chapter 15 of the IEBC in its entirety.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-443. Chapter 16 Referenced standards.

Delete Chapter 16 of the IEBC in its entirety.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 30, Issue 16, eff. July 14, 2014; amended, Virginia Register Volume 34, Issue 18, eff. September 4, 2018; Errata, 34:19 VA.R. 2048 May 14, 2018.

13VAC5-63-444. Appendix B Supplementary accessibility requirements for existing buildings and facilities.

A. Change Sections B101.3 and B101.4 of the IEBC to read:

B101.3 Qualified historic buildings and facilities subject to Section 106 of the National Historic Preservation Act. Where an alteration or change of occupancy is undertaken to a qualified historic building or facility that is subject to Section 106 of the National Historic Preservation Act, the federal agency with jurisdiction over the undertaking shall follow the Section 106 process. Where the state historic preservation officer or Advisory Council on Historic Preservation determines that compliance with the requirements for accessible routes, ramps, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the alternative requirements of Section 405 for that element are permitted.

B101.4. Qualified historic buildings and facilities not subject to Section 106 of the National Historic Preservation Act. Where an alteration or change of occupancy is undertaken to a qualified historic building or facility that is not subject to Section 106 of the National Historic Preservation Act, and the entity undertaking the alterations believes that compliance with the requirements for accessible routes, ramps, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the entity shall consult with the state historic preservation officer. Where the state historic preservation officer determines that compliance with the accessibility requirements for accessible routes, ramps, entrances, or toilet facilities would threaten or destroy the historical significance of the building or facility, the alternative requirements of Section 405 for the element are permitted.

B. Change the first sentence in Section B101.5 of the IEBC to read:

B101.5 Displays. In qualified historic buildings and facilities where alternative requirements of Section 405 are permitted, displays and written information shall be located where they can be seen by a seated person.

C. Change the first sentence in Section 102.2.3 of the IEBC to read:

B102.2.3 Direct connections. New direct connections to commercial, retail, or residential facilities shall, to the maximum extent feasible, have an accessible route complying with Section 404.3 from the point of connection to boarding platforms and transportation system elements used by the public.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-445. (Repealed.)

Statutory Authority

Historical Notes

Derived from Virginia Register Volume 30, Issue 16, eff. July 14, 2014; repealed, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

Part III. Maintenance

13VAC5-63-450. Chapter 1 Administration; Section 101 General.

A. Section 101.1 Short title. The Virginia Uniform Statewide Building Code, Part III, Maintenance, may be cited as the "Virginia Maintenance Code," or as the "VMC."

B. Section 101.2 Incorporation by reference. Chapters 2 - 8 of the 2018 International Property Maintenance Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the VMC. The term "IPMC" means the 2018 International Property Maintenance Code, published by the International Code Council, Inc. Any codes and standards referenced in the IPMC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference.

C. Section 101.3 Numbering system. A dual numbering system is used in the VMC to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IPMC. IPMC numbering system designations are provided in the catchlines of the Virginia Administrative Code sections and cross references between sections or chapters of the Virginia Maintenance Code use only the IPMC numbering system designations. The term "chapter" is used in the context of the numbering system of the IPMC and may mean a chapter in the VMC, a chapter in the IPMC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

D. Section 101.4 Arrangement of code provisions. The VMC is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 - 8 of the IPMC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IPMC which are specifically identified. The terminology "changes to the text of the incorporated chapters of the IPMC which are specifically identified" shall also be referred to as the "state amendments to the IPMC." Such state amendments to the IPMC are set out using corresponding chapter and section numbers of the IPMC numbering system.

E. Section 101.5 Use of terminology and notes. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 - 8 of the IPMC, or in the state amendments to the IPMC, means the VMC, unless the context clearly indicates otherwise. The term "this code," or "the code," where used in a code or standard referenced in the IPMC, means that code or standard, unless the context clearly indicates otherwise. The term "USBC" where used in this code means the VCC unless the context clearly indicates otherwise. In addition, the use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision. Notes in the IPMC, in the codes and standards referenced in the IPMC, and in the state amendments to the IPMC, may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

F. Section 101.6 Order of precedence. The provisions of this code shall be used as follows:

1. The provisions of Chapter 1 of this code supersede any provisions of Chapters 2 - 8 of the IPMC that address the same subject matter and impose differing requirements.

2. The provisions of Chapter 1 of this code supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.

3. The state amendments to the IPMC supersede any provisions of Chapters 2 - 8 of the IPMC that address the same subject matter and impose differing requirements.

4. The state amendments to the IPMC supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.

5. The provisions of Chapters 2 - 8 of the IPMC supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.

G. Section 101.7 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-460. Section 102 Purpose and scope.

A. Section 102.1 Purpose. In accordance with § 36-103 of the Code of Virginia, the Virginia Board of Housing and Community Development may adopt and promulgate as part of the Virginia Uniform Statewide Building Code, building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost to ensure the protection of the public health, safety and welfare. Further, in accordance with § 36-99 of the Code of Virginia, the purpose of this code is to protect the health, safety and welfare of the residents of the Commonwealth of Virginia, provided that buildings and structures should be permitted to be maintained at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged.

B. Section 102.2 Scope. In accordance with § 36-98 of the Code of Virginia, the VMC shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

C. Section 102.3 Exemptions. This code shall not regulate those buildings and structures specifically exempt from the VCC, except that existing industrialized buildings and manufactured homes shall not be exempt from this code.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014.

13VAC5-63-470. Section 103 Application of code.

A. Section 103.1 General. This code prescribes regulations for the maintenance of all existing buildings and structures and associated equipment, including regulations for unsafe buildings and structures.

B. Section 103.2 Maintenance requirements. Buildings, structures and systems shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy.

C. 103.2.1 Maintenance of nonrequired components and systems. Nonrequired components and systems may be discontinued in use provided that no hazard results from such discontinuance of use.

D. 103.2.2 Maintenance of nonrequired fire protection systems. Nonrequired fire protection systems shall be maintained to function as originally installed. If any such systems are to be reduced in function or discontinued, approval shall be obtained from the building official in accordance with Section 103.3.1 of the VCC.

E. 103.2.3 Responsibility. The owner of a structure shall provide and maintain all buildings, structures, systems, facilities and associated equipment in compliance with this code unless it is specifically expressed or implied that it is the responsibility of the tenant or occupant.

Note: Where an owner states that a tenant is responsible for performing any of the owner's duties under this code, the code official may request information needed to verify the owner's statement, as allowed by § 55-1-1209 A 5 of the Code of Virginia.

F. Section 103.3 Continued approval. Notwithstanding any provision of this code to the contrary, alterations shall not be required to be made to existing buildings or structures which are occupied in accordance with a certificate of occupancy issued under any edition of the USBC.

G. Section 103.4 Rental Inspections. In accordance with § 36-105.1:1 of the Code of Virginia, these provisions are applicable to rental inspection programs. For purposes of this section:

"Dwelling unit" means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

"Owner" means the person shown on the current real estate assessment books or current real estate assessment records.

"Residential rental dwelling unit" means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit that has its own cooking and sleeping areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with this code and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided for in subdivision 3 of this subsection, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section; and

2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize one or more locality-wide rental inspection districts and a local governing body shall limit the boundaries of the proposed rental inspection districts to such areas of the locality that meet the criteria set out in this subsection; or

3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of this code that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties contained in the enforcement authority granted to the building department by this section.

Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental dwelling units in the designated rental inspection district, or their designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

The rental inspection ordinance may include a provision that requires the owners of dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to $50. For purposes of this subsection, notice sent by regular first-class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for above, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of this code that affect the safe, decent and sanitary living conditions for the tenants of such property.

If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10% of the dwelling units, of a multifamily development, that includes all of the multifamily buildings that are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of this code that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce these provisions, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in the fee schedule established pursuant to this section.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under these provisions to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of this code that affect the safe, decent and sanitary living conditions for the tenants.

Except as provided for above, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with these provisions, provided that there are no violations of this code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided above, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of this code during the exemption period, the building department may revoke the exemption previously granted under this section.

A local governing body may establish a fee schedule for enforcement of these provisions, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

The provisions of this section shall not in any way alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia.

The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 of the Code of Virginia to enforce the USBC.

Unless otherwise provided for in § 36-105.1:1 of the Code of Virginia, penalties for violation of this section shall be the same as the penalties provided for violations of other sections of the USBC.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Errata, 34:22 VA.R. 2153%u20112154 June 25, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-480. Section 104 Enforcement, generally.

A. Section 104.1 Scope of enforcement. This section establishes the requirements for enforcement of this code in accordance with subdivision C 1 of § 36-105 of the Code of Virginia. The local governing body may also inspect and enforce the provisions of the USBC for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

In accordance with subdivision C 3 of § 36-105 of the Code of Virginia, if the local building department receives a complaint that a violation of this code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the code official or his agent to have access to the subject building or structure, the code official or his agent may make an affidavit under oath before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the code official or his agent an inspection warrant to enable the code official or his agent to enter the subject building or structure for the purpose of determining whether violations of this code exist. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in a manner prescribed by § 19.2-54 of the Code of Virginia. After executing the warrant, the code official or his agents shall return the warrant to the clerk of the circuit court of the city or county wherein the inspection was made. The code official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

Note: Generally, official action must be taken by the local government to enforce the VMC. Consultation with the legal counsel of the jurisdiction when initiating or changing such action is advised.

B. Section 104.1.1 Transfer of ownership. In accordance with subdivision C 4 of § 36-105 of the Code of Virginia, if the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50%, the pending enforcement action shall continue to be enforced against the owner.

C. Section 104.2 Fees. In accordance with subdivision C 7 of § 36-105 of the Code of Virginia, fees may be levied by the local governing body in order to defray the cost of enforcement and appeals. For the purposes of this section, "defray the cost" may include the fair and reasonable costs incurred for such enforcement during normal business hours, but shall not include overtime costs unless conducted outside of the normal working hours established by the locality. A schedule of such costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge overtime rate for inspections conducted during the normal business hours established by the locality. Nothing in this provision shall be construed to prohibit a private entity from conducting such inspections, provided the private entity has been approved to perform such inspections in accordance with the written policy of the code official for the locality.

D. Section 104.3 State buildings. In accordance with § 36-98.1 of the Code of Virginia, this code shall be applicable to state-owned buildings and structures. Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings.

E. Section 104.3.1 Certification of state enforcement personnel. State enforcement personnel shall comply with the applicable requirements of Sections 104.4.2 and 104.4.3 for certification.

Note: Continuing education and periodic training requirements for DHCD certifications are set out in the VCS.

F. Section 104.4 Local enforcing agency. In jurisdictions enforcing this code, the local governing body shall designate the agency within the local government responsible for such enforcement and appoint a code official. The local governing body may also utilize technical assistants to assist the code official in the enforcement of this code. A permanently appointed code official shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. DHCD shall be notified by the appointing authority within 30 days of the appointment or release of a permanent or acting code official and within 60 days after retaining or terminating a technical assistant.

Note: Code officials and technical assistants are subject to sanctions in accordance with the VCS.

G. Section 104.4.1 Qualifications of code official and technical assistants. The code official shall have at least five years of building experience as a licensed professional engineer or architect, building, fire or trade inspector, contractor, housing inspector or superintendent of building, fire or trade construction or at least five years of building experience after obtaining a degree in architecture or engineering, with at least three years in responsible charge of work. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The code official shall have general knowledge of sound engineering practice in respect to the design and construction of structures, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

A technical assistant shall have at least three years of experience and general knowledge in at least one of the following areas: building construction, building, fire or housing inspections, plumbing, electrical or mechanical trades, fire protection, elevators or property maintenance work. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The locality may establish additional certification requirements.

H. Section 104.4.2 Certification of code official and technical assistants. An acting or permanent code official shall be certified as a code official in accordance with the VCS within one year after being appointed as acting or permanent code official. A technical assistant shall be certified in the appropriate subject area within 18

months after becoming a technical assistant. When required by a locality to have two or more certifications, a technical assistant shall obtain the additional certifications within three years from the date of such requirement.

Exception: A code official or technical assistant in place prior to April 1, 1995, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

I. Section 104.4.3 Noncertified code official. Except for a code official exempt from certification under the exception to Section 104.4.2, any acting or permanent code official who is not certified as a code official in accordance with the VCS shall attend the core module of the Virginia Building Code Academy or an equivalent course in an individual or regional code academy accredited by DHCD within 180 days of appointment. This requirement is in addition to meeting the certification requirement in Section 104.4.2.

Note: Continuing education and periodic training requirements for DHCD certifications are set out in the VCS.

J. Section 104.4.4 Conflict of interest. The standards of conduct for code officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

K. Section 104.4.5 Records. The local enforcing agency shall retain a record of applications received, permits, certificates, notices and orders issued, fees collected and reports of inspections in accordance with The Library of Virginia's General Schedule Number Six.

L. Section 104.5 Powers and duties, generally. The code official shall enforce this code as set out herein and as interpreted by the State Review Board and shall issue all necessary notices or orders to ensure compliance with the code.

M. Section 104.5.1 Delegation of authority. The code official may delegate powers and duties except where such authority is limited by the local government. When such delegations are made, the code official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.

N. Section 104.5.2 Issuance of modifications. Upon written application by an owner or an owner's agent, the code official may approve a modification of any provision of this code provided the spirit and intent of the code are observed and public health, welfare and safety are assured. The decision of the code official concerning a modification shall be made in writing and the application for a modification and the decision of the code official concerning such modification shall be retained in the permanent records of the local enforcing agency.

O. Section 104.5.2.1 Substantiation of modification. The code official may require or may consider a statement from a professional engineer, architect or other person competent in the subject area of the application as to the equivalency of the proposed modification.

P. Section 104.5.3 Inspections. The code official may inspect buildings or structures to determine compliance with this code and shall carry proper credentials when performing such inspections. The code official is authorized to engage such expert opinion as deemed necessary to report upon unusual, detailed, or complex technical issues in accordance with local policies.

Q. Section 104.5.3.1 Observations. When, during an inspection, the code official or authorized representative observes an apparent or actual violation of another law, ordinance, or code not within the official's authority to enforce, such official shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures.

R. Section 104.5.3.2 Approved inspection agencies and individuals. The code official may accept reports of inspections or tests from individuals or inspection agencies approved in accordance with the code official's written policy required by Section 104.5.3.3. The individual or inspection agency shall meet the qualifications and reliability requirements established by the written policy. Reports of inspections by approved individuals or agencies shall be in writing, shall indicate if compliance with the applicable provisions of this code have been met, and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. Reports of inspections conducted for the purpose of verifying compliance with the requirements of the USBC for elevators, escalators, and related conveyances shall include the name and certification number of the elevator mechanic performing the tests witnessed by the third-party inspector or agency. The code official shall review and approve the report unless there is cause to reject it. Failure to approve a report shall be in writing within five working days of receiving it, stating the reasons for rejection.

S. Section 104.5.3.3 Third-party inspectors. Each code official charged with the enforcement of this code and who accepts third-party reports shall have a written policy establishing the minimum acceptable qualifications for third-party inspectors. The policy shall include the format and time frame required for submission of reports, any prequalification or preapproval requirements before conducting a third-party inspection, and any other requirements and procedures established by the code official.

T. Section 104.5.3.4 Qualifications. In determining third-party qualifications, the code official may consider such items as DHCD inspector certification, other state or national certifications, state professional registrations, related experience, education, and any other factors that would demonstrate competency and reliability to conduct inspections.

U. 104.5.4 Manufactured home park tenant notification. If a notice of violation is issued to a manufactured home park owner for violations of this code that jeopardize the health or safety of tenants of the park, a copy of the notice shall be provided to each affected tenant of the manufactured home park. The terms, "manufactured home park" and "owner," as used in this section, shall be as defined in the Manufactured Home Lot Rental Act (Chapter 13.3 (§ 55-248.41 et seq.) of Title 55 of the Code of Virginia).

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 22, Issue 20, eff. July 12, 2006; Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-485. Section 105 Violations.

105.1 Violation a misdemeanor; civil penalty. In accordance with § 36-106 of the Code of Virginia, it shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any code provisions, to violate any such provisions. Any locality may adopt an ordinance that establishes a uniform

schedule of civil penalties for violations of specified provisions of the code that are not abated or remedied promptly after receipt of a notice of violation from the local enforcement officer.

Note: See the full text of § 36-106 of the Code of Virginia for additional requirements and criteria pertaining to legal action relative to violations of the code.

105.2 Notices, reports and orders. Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner, tenant or the person responsible for the maintenance of the structure. Work done to correct violations of this code subject to the permit, inspection and approval provisions of the VCC shall not be construed as authorization to extend the time limits established for compliance with this code. When the owner is not the responsible party to whom the notice of violation or correction notice is issued, a copy of the notice shall also be delivered to the owner.

105.3 Correction notice. The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation within a reasonable time unless an emergency condition exists as provided under the unsafe building provisions of Section 106. Upon request, the correction notice shall reference the code section that serves as the basis for the defects and shall state that such defects shall be corrected and reinspected in a reasonable time designated by the code official.

105.4 Notice of violation. If the code official determines there are violations of this code a written notice of violation may be issued to the owner, tenant, or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 105.3. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 105.3. The code official shall provide the section numbers for any code provisions cited in the notice of violation to the owner, tenant, or the person responsible for the maintenance or use of the building or structure. The notice shall require correction of the violation within a reasonable time. The owner, tenant, or person to whom the notice of violation has been issued shall be responsible for contacting the code official within the timeframe established for any reinspections to assure the violations have been corrected. The code official will be responsible for making such inspection and verifying the violations have been corrected. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.

Exceptions:

1. Notices issued and legal proceedings or emergency actions taken under Section 106 for unsafe structures, unsafe equipment, or structures unfit for human occupancy.

2. Notices issued for failing to maintain buildings and structures as required by Section 103.2, as evidenced by multiple or repeated violations on the same property are not required to include a compliance deadline for correcting defects.

105.5 Coordination of inspections. The code official shall coordinate inspections and administrative orders with any other state or local agencies having related inspection authority and shall coordinate those inspections required by the Virginia Statewide Fire Prevention Code (13VAC5-51) for maintenance of fire protection devices, equipment, and assemblies so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The Fire Prevention Code requires the fire official to coordinate such inspections with the code official.

105.6 Further action when violation not corrected. If the responsible party has not complied with the notice of violation, the code official may request the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality or legal counsel so authorizes, the code official may issue or obtain a summons or warrant.

105.6.1 Further action for corrected violations: Compliance with a notice of violation notwithstanding, the code official may request legal proceedings be instituted for prosecution when a responsible party is served with three or more separate notices of violation for the same property within any five consecutive years. Legal proceedings shall not be instituted under this section for violation notices issued pursuant to the initial inspection of the property. Legal proceedings for violations that have been abated in residential rental dwelling units within a multifamily apartment development may only be instituted for such violations that affect safe, decent, or sanitary living conditions.

Exception: Legal proceedings shall not be instituted for violations that have been abated on owner-occupied single family dwellings.

105.7 Penalties and abatement. Penalties for violations of this code shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the code shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-490. Section 106 Unsafe structures or structures unfit for human occupancy.

A. Section 106.1 General. This section shall apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed and removed. Vacant and secured structures shall still be subject to other applicable requirements of this code. Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

Note: Structures which become unsafe during construction are regulated under the VCC.

B. Section 106.2 Inspection of unsafe or unfit structures. The code official shall inspect any structure reported or discovered as unsafe or unfit for human habitation and shall prepare a report to be filed in the records of the local enforcing agency and a copy issued to the owner. The report shall include the use of the structure and a description of the nature and extent of any conditions found.

C. Section 106.3 Notice of unsafe structure or structure unfit for human occupancy. When a structure is determined to be unsafe or unfit for human occupancy by the code official, a written notice of unsafe structure or structure unfit for human occupancy shall be issued by personal service to the owner, the owner's agent or the person in control of such structure. The notice shall specify the corrections necessary to comply with this code, or if the structure is required to be demolished, the notice shall specify the time period within which the demolition must occur. Requirements in Section 105.2 for notices of violation are also applicable to notices issued under this section to the extent that any such requirements are not in conflict with the requirements of this section.

Note: Whenever possible, the notice should also be given to any tenants of the affected structure.

D. Section 106.3.1 Vacating unsafe structure. If the code official determines there is actual and immediate danger to the occupants or public, or when life is endangered by the occupancy of an unsafe structure, the code official shall be authorized to order the occupants to immediately vacate the unsafe structure. When an unsafe structure is ordered to be vacated, the code official shall post a notice with the following wording at each entrance: "THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY (OR USE) IS PROHIBITED BY THE CODE OFFICIAL." After posting, occupancy or use of the unsafe structure shall be prohibited except when authorized to enter to conduct inspections, make required repairs or as necessary to demolish the structure.

E. Section 106.4 Posting of notice. If the notice is unable to be issued by personal service as required by Section 106.3, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises.

F. Section 106.5 Posting of placard. In the case of a structure unfit for human habitation, at the time the notice is issued, a placard with the following wording shall be posted at the entrance to the structure: "THIS STRUCTURE IS UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL." In the case of an unsafe structure, if the notice is not complied with, a placard with the above wording shall be posted at the entrance to the structure. After a structure is placarded, entering the structure shall be prohibited except as authorized by the code official to make inspections, to perform required repairs or to demolish the structure. In addition, the placard shall not be removed until the structure is determined by the code official to be safe to occupy, nor shall the placard be defaced.

G. Section 106.6 Revocation of certificate of occupancy. If a notice of unsafe structure or structure unfit for human habitation is not complied with within the time period stipulated on the notice, the code official shall be permitted to request the local building department to revoke the certificate of occupancy issued under the VCC.

H. Section 106.7 Vacant and open structures. When an unsafe structure or a structure unfit for human habitation is open for public entry at the time a placard is issued under Section 106.5, the code official shall be permitted to authorize the necessary work to make such structure secure against public entry whether or not legal action to compel compliance has been instituted.

I. Section 106.8 Emergency repairs and demolition. To the extent permitted by the locality, the code official may authorize emergency repairs to unsafe structures or structures unfit for human habitation when it is determined that there is an imminent danger of any portion of the unsafe structure or structure unfit for human habitation collapsing or falling and when life is endangered. Emergency repairs may also be authorized where there is a code violation resulting in the immediate serious and imminent threat to the life and safety of the occupants. The code official shall be permitted to authorize the necessary work to make the structure temporarily safe whether or not legal action to compel compliance has been instituted. In addition, whenever an owner of an unsafe structure or structure unfit for human habitation fails to comply with a notice to demolish issued under Section 106.3 in the time period stipulated, the code official shall be permitted to cause the structure to be demolished. In accordance with §§ 15.2-906 and 15.2-1115 of the Code of Virginia, the legal counsel of the locality may be requested to institute appropriate action against the property owner to recover the costs associated with any such emergency repairs or demolition and every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made and shall be enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia.

Note: Code officials and local governing bodies should be aware that other statutes and court decisions may impact on matters relating to demolition, in particular whether newspaper publication is required if the owner cannot be located and whether the demolition order must be delayed until the owner has been given the opportunity for a hearing. In addition, historic building demolition may be prevented by authority granted to local historic review boards in accordance with § 15.2-2306 of the Code of Virginia unless determined necessary by the code official.

J. Section 106.9 Closing of streets. When necessary for public safety, the code official shall be permitted to order the temporary closing of sidewalks, streets, public ways or premises adjacent to unsafe or unfit structures and prohibit the use of such spaces.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-500. Section 107 Appeals.

A. Section 107.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the VCC shall be permitted to serve as the appeals board required by this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality.

B. Section 107.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

C. Section 107.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

D. Section 107.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

E. Section 107.5 Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

F. Section 107.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

G. Section 107.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the code official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse, or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of the written decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

H. Section 107.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with § 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the code official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, a copy of the code official's decision and the written decision of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the Office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the code official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 35, Issue 3, eff. November 1, 2018.

13VAC5-63-510. Chapter 2 Definitions.

A. Change Section 201.3 of the IPMC to read:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the IBC, IFC, IFGC, IPC, IMC, International Existing Building Code, IRC, International Zoning Code or NFPA 70, such terms shall have the meanings ascribed to them as stated in those codes, except that terms defined in the VCC shall be used for this code and shall take precedence over other definitions.

B. Change Section 201.5 of the IPMC to read:

201.5 Parts. Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming unit," "housekeeping unit," or "story" are stated in this code, they shall be construed as though they were followed by the words "or part thereof."

C. Add the following definitions to Section 202 of the IPMC to read:

Applicable building code. The local or statewide building code and referenced standards in effect at the time the building or portion thereof was constructed, altered, renovated or underwent a change of occupancy. See Section 103 for the application of the code.

Maintained. To keep unimpaired in an appropriate condition, operation, and continuance as installed in accordance with the applicable building code, or as previously approved, and in accordance with the applicable operational and maintenance provisions of this code.

Structure unfit for human occupancy. An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.

Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment that is in such disrepair or condition that such equipment is determined by the code official to be dangerous to the health, safety and welfare of the occupants of a structure or the public.

Unsafe structure. An existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

D. Change the following definition in Section 202 of the IPMC to read:

Infestation. The presence of insects, rodents, vermin, or other pests in sufficient number to adversely affect the structure or health, safety, and welfare of the occupants.

E. Delete the following definitions from Section 202 of the IPMC:

Condemn

Cost of such demolition of emergency repairs

Equipment support

Inoperable motor vehicle

Labeled

Neglect

Openable area

Pest elimination

Strict liability offense

Ultimate deformation

Workmanlike

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 35, Issue 3, eff. November 1, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-520. Chapter 3 General requirements.

A. Delete the following sections from Chapter 3 of the IPMC:

1. Section 301.2 Responsibility.

2. Section 302.1 Sanitation.

3. Section 302.4 Weeds.

4. Section 302.6 Exhaust vents.

5. Section 302.8 Motor vehicles.

6. Section 302.9 Defacement of property.

7. Section 303.2 Enclosures.

8. Section 304.1.1 Unsafe conditions.

9. Section 304.18.1 Doors.

10. Section 304.18.2 Windows.

11. Section 304.18.3 Basement hatchways.

12. Section 305.1.1 Unsafe conditions.

13. Section 306 Component serviceability (all provisions).

14. Section 308.2 Disposal of rubbish.

15. Section 308.2.1 Rubbish storage facilities.

16. Section 308.2.2 Refrigerators.

17. Section 308.3 Disposal of garbage.

18. Section 308.3.1 Garbage facilities.

19. Section 308.3.2 Containers.

20. Section 309.2 Owner.

21. Section 309.3 Single occupant.

22. Section 309.4 Multiple occupancy.

23. Section 309.5 Occupant.

B. Change the following sections in Chapter 3 of the IPMC to read:

1. Section 301.1 Scope. The provisions of this chapter shall govern the minimum conditions for the maintenance of structures and equipment and for the maintenance of exterior property to the extent that this code is applicable.

2. Section 301.3 Vacant structures. Vacant structures shall be maintained in a clean, safe, secure, and sanitary condition as provided for in this code.

3. Section 302.2 Grading and drainage. All premises shall be graded and maintained to protect the foundation walls or slab of the structure from the accumulation and drainage of surface or stagnant water in accordance with the applicable building code.

4. Section 302.3 Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces, and similar spaces regulated under the VCC shall be kept in a proper state of repair and maintained free from hazardous conditions.

5. Section 302.5 Rodent harborage. All structures shall be kept free from rodent harborage and infestation. Structures in which rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

6. Section 303.2 Enclosures. Swimming pool, hot tub, and spa barriers shall be maintained in accordance with the applicable building code or ordinance under which such barriers were constructed.

7. Section 304.1 General. The exterior of a structure shall be maintained in good repair and structurally sound.

8. Section 304.3 Premises identification. Address numbers of buildings shall be maintained in accordance with the applicable building code or when required by ordinance.

9. Section 304.7 Roofs and drainage. The roof and flashing shall be sound, tight, and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof water shall be discharged in a manner to protect the foundation or slab of buildings and structures from the accumulation of roof drainage.

10. Section 304.14 Insect screens. During the period from April 1 to December 1, every door, window, and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored shall be supplied with an approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as mechanical ventilation, air curtains, or insect repellant fans, are used.

11. Section 304.18 Building security. Devices designed to provide security for the occupants and property within, when required by the applicable building code or when provided, shall be maintained unless their removal is approved by the building official.

12. Section 304.19 Gates. To the extent required by the applicable building code or to the extent provided when constructed, exterior gates, gate assemblies, operator systems if provided, and hardware shall be maintained in good condition. Latches at all entrances shall tightly secure the gates.

13. Section 305.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound, and in a sanitary condition.

14. Section 307.1 General. Handrails and guards required or provided when a building was constructed shall be maintained in accordance with the applicable building code.

15. Section 308.1 Accumulation of rubbish or garbage. The interior of every structure shall be free from excessive accumulation of rubbish or garbage.

16. Section 309 Pest Infestation and extermination.

17. Section 309.1 Infestation. All structures shall be kept free from insect and rodent infestation. Structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

C. Add the following sections to Chapter 3 of the IPMC:

1. Section 305.7 Carbon monoxide alarms. Carbon monoxide alarms shall be maintained as approved.

2. Section 310 Lead-based paint.

3. Section 310.1 General. Interior and exterior painted surfaces of dwellings and child care facilities, including fences and outbuildings, that contain lead levels equal to or greater than 1.0 milligram per square centimeter or in excess of 0.50% lead by weight shall be maintained in a condition free from peeling, chipping, and flaking paint or removed or covered in an approved manner. Any surface to be covered shall first be identified by an approved warning as to the lead content of such surface.

4. Section 311 Aboveground liquid fertilizer storage tanks (ALFST).

5. Section 311.1 General. ALFSTs shall be maintained in accordance with the requirements of Section 1101.16 of the VEBC and the requirements of the VCC applicable to such ALFSTs when newly constructed and the requirements of the VEBC when undergoing a change of occupancy to an ALFST and when repaired, altered, or reconstructed, including the requirements for inspections and for a secondary containment system.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register Volume 24, Issue 14, eff. May 1, 2008; Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-524. Chapter 4 Light, ventilation, and occupancy limitations.

A. Delete the following sections from Chapter 4 of the IPMC:

1. Section 401.2 Responsibility.

2. Section 401.3 Alternative devices.

3. Section 402.2 Common halls and stairways.

4. Section 402.3 Other spaces.

5. Section 403.2 Bathrooms and toilet rooms.

6. Section 403.5 Clothes dryer exhaust.

B. Change the following sections in Chapter 4 of the IPMC to read:

1. Section 401.1 Scope. The provisions of this chapter shall govern the maintenance of structures for light, ventilation, and space for occupancy.

2. Section 402.1 Natural or artificial light. Every habitable space, hallway, stairway, bathroom, and other spaces shall be maintained to provide natural or artificial light to the extent required or provided in accordance with the applicable building code.

3. Section 403.1 Natural or mechanical ventilation. Every habitable space, hallway, stairway, bathroom, and other spaces shall be maintained to provide natural or mechanical ventilation to the extent required by the applicable building code.

4. Section 403.4 Process ventilation. Local exhaust systems required by the applicable building code or that are provided that exhaust injurious, toxic, irritating, or noxious fumes, gases, dusts, or mists to the exterior of a building shall be maintained to prevent compromising the required ventilation system.

C. Add the following section to Chapter 4 of the IPMC:

Section 404.05 Limitation of application of section. The provisions of Section 404 that address construction aspects of occupancy limitations shall apply only to the extent that such requirements were part of the applicable building code. Operational requirements such as the use of rooms or minimum areas per occupant are part of this code only to the extent that they do not require alterations to be made to a building.

Statutory Authority

§ 36-98 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-525. (Repealed.)

Historical Notes

Derived from Virginia Register Volume 24, Issue 14, eff. May 1, 2008; repealed, Virginia Register Volume 30, Issue 16, eff. July 14, 2014.

Statutory Authority

Historical Notes

13VAC5-63-530. Chapter 5 Plumbing requirements.

A. Change the title of Chapter 5 of the IPMC to "Plumbing Requirements."

B. Delete the following sections from Chapter 5 of the IPMC:

1. Section 501.2 Responsibility.

2. Section 502 Required facilities (all provisions).

3. Section 503 Toilet rooms (all provisions).

4. Section 505.3 Supply.

5. Section 505.5.1 Abandonment of systems.

C. Change the following sections in Chapter 5 of the IPMC to read:

1. Section 501.1 General. The provisions of this chapter shall govern the maintenance of structures for plumbing systems, facilities, and fixtures.

2. Section 504.1 General. Required or provided plumbing systems and facilities shall be maintained in accordance with the applicable building code.

3. Section 504.2 Plumbing fixtures. All plumbing fixtures shall be maintained in a safe, sanitary, and working condition. A kitchen sink shall not be used as a substitute for a required lavatory.

4. Section 504.3 Plumbing system hazards. Where it is found that a plumbing system in a structure constitutes a hazard to the public, the occupants, or the structure, the code official shall require the defects to be corrected to eliminate the hazard.

5. Section 505.1 Supply. Required or provided water supply systems shall be maintained in accordance with the applicable building code. All water supply systems shall be free from obstructions, defects, and leaks.

6. Section 505.2 Protection of water supply systems. Protection of water supply systems shall be provided and maintained in accordance with the applicable building code.

7. Section 505.3 Inspection and testing of backflow prevention systems. Inspection and testing shall comply with Sections 505.3.1 and 505.3.2.

8. Section 505.4 Water heating facilities. Water heating facilities shall be maintained. Combination temperature and pressure-relief valves and relief valve discharge pipes shall be maintained on water heaters.

9. Section 505.5 Nonpotable water reuse systems. Where installed, nonpotable water reuse and rainwater collection and conveyance systems shall be maintained in a safe and sanitary condition. Where such systems are not property maintained, the systems shall be repaired to provide for safe and sanitary conditions, or the system shall be abandoned in accordance with the following:

1. All system piping connecting to a utility provided or private water system shall be removed or disabled. Proper cross-connection control and backwater prevention measures shall comply with the applicable building code.

2. Where required, the distribution piping system shall be replaced with an approved potable water supply piping system.

3. The storage tank shall be secured from accidental access by sealing or locking tank inlets and access points or filling with sand or equivalent.

10. Section 506.1 Drainage and venting. Required or provided sanitary drainage and venting systems shall be maintained in accordance with the applicable building code.

11. Section 506.2 Maintenance. Every building drainage and sewer system shall function properly and be kept free from obstructions, leaks, and defects.

12. Section 507.1 General. Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall be discharged in a manner to protect the buildings and structures from the accumulation of overland water runoff.

D. Add the following sections to Chapter 5 of the IPMC:

1. Section 504.1.1 Public and employee facilities. Except for periodic maintenance or cleaning, access and use shall be provided to facilities at all times during occupancy of the premises in accordance with the applicable building code.

2. Section 504.2.1 Fixture clearances. Adequate clearances for usage and cleaning of plumbing fixtures shall be maintained as approved when installed.

3. Section 505.1.1 Tempered water. Tempered water shall be supplied to fixtures and facilities when required by the applicable building code.

4. Section 505.2.1 Attached hoses. Shampoo basin faucets, janitor sink faucets, and other hose bibs or faucets to which hoses are attached and left in place shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

5. Section 505.3.1 Inspections. Inspections shall be made of all backflow assemblies and air gaps to determine whether they are operable.

6. Section 505.3.2 Testing. Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, double-detector check valve assemblies, and pressure vacuum breaker assemblies shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5010-1013-1, Sections 1 and 2; ASSE 5010-1015-1, Sections 1 and 2; ASSE 5010-1015-2; ASSE 5010-1015-3, Sections 1 and 2; ASSE 5010-1015-4, Sections 1 and 2; ASSE 5010-1020-1, Sections 1 and 2; ASSE 5010-1047-1, Sections 1, 2, 3 and 4; ASSE 5010-1048-1, Sections 1, 2, 3 and 4; ASSE 5010-1048-2; ASSE 5010-1048-3, Sections 1, 2, 3 and 4; ASSE 5010-1048-4, Sections 1, 2, 3 and 4; or CAN/CSA B64.10.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register, Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-540. Chapter 6 Mechanical and electrical requirements.

A. Delete the following sections from Chapter 6 of the IPMC:

1. Section 601.2 Responsibility.

2. Section 603.6 Energy conservation devices.

3. Section 604.2 Service.

4. Section 604.3.2 Abatement of electrical hazards associated with fire exposure.

B. Change the following sections in Chapter 6 of the IPMC to read:

1. Section 601.1 General. The provisions of this chapter shall govern the maintenance of mechanical and electrical facilities and equipment.

2. Section 602 Heating and cooling facilities.

3. Section 602.1 Facilities required. Heating and cooling facilities shall be maintained and operated in structures as required by this section.

4. Section 602.2 Heat supply. Every owner and operator of a Group R-2 apartment building or other residential building who rents, leases, or lets one or more dwelling unit, rooming unit, dormitory, or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from October 15 to May 1 to maintain a temperature of not less than 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates.

Exception: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the IPC.

5. Section 602.3 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to May 15 to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage, and operation areas that require cooling or special temperature conditions.

2. Areas in which persons are primarily engaged in vigorous physical activities.

6. Section 602.4 Cooling supply. Every owner and operator of a Group R-2 apartment building who rents, leases, or lets one or more dwelling units, rooming units, or guestrooms on terms, either expressed or implied, to furnish cooling to the occupants thereof shall supply cooling during the period from May 15 to October 1 to maintain a temperature of not more than 77°F (25°F) in all habitable rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates.

Exception: When the outdoor temperature is higher than the summer design temperature for the locality, maintenance of the room temperature shall not be required provided that the cooling system is operating at its full design capacity. The summer outdoor design temperature for the locality shall be as indicated in the IECC.

7. Section 603.1 Mechanical equipment and appliances. Required or provided mechanical equipment, appliances, fireplaces, solid fuel-burning appliances, cooking appliances, chimneys, vents, and water heating appliances shall be maintained in compliance with the code under which the appliances, system, or equipment was installed, kept in safe working condition, and capable of performing the intended function.

8. Section 603.2 Removal of combustion products. Where required by the code under which installed, fuel-burning equipment and appliances shall be connected to an approved chimney or vent.

9. Section 603.5 Combustion air. Where required by the code under which installed, a supply of air for complete combustion of the fuel shall be provided for the fuel-burning equipment.

10. Section 604.1 Electrical system. Required or provided electrical systems and facilities shall be maintained in accordance with the applicable building code.

11. Section 604.3 Electrical system hazards. Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of deterioration or damage or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

12. Section 604.3.1.1 Electrical equipment. Electrical distribution equipment, motor circuits, power equipment, transformers, wire, cable, flexible cords, wiring devices, ground fault circuit interrupters, surge protectors, molded case circuit breakers, low-voltage fuses, luminaires, ballasts, motors, and electronic control, signaling, and communication equipment that have been exposed to water shall be replaced in accordance with the provisions of the VEBC.

Exception: The following equipment shall be allowed to be repaired or reused where an inspection report from the equipment manufacturer, an approved representative of the equipment manufacturer, a third-party inspector per Section 113.7 of the VCC, or an electrical engineer indicates that the exposed equipment has not sustained damage that requires replacement:

1. Enclosed switches, rated 600 volts or less;

2. Busway, rated 600 volts or less;

3. Panelboards, rated 600 volts or less;

4. Switchboards, rated 600 volts or less;

5. Fire pump controllers, rated 600 volts or less;

6. Manual and magnetic motor controllers;

7. Motor control centers;

8. Alternating current high-voltage circuit breakers;

9. Low-voltage power circuit breakers;

10. Protective relays, meters, and current transformers;

11. Low-voltage and medium-voltage switchgear;

12. Liquid-filled transformers;

13. Cast-resin transformers;

14. Wire or cable that is suitable for wet locations and whose ends have not been exposed to water;

15. Wire or cable, not containing fillers, that is suitable for wet locations and whose ends have not been exposed to water;

16. Luminaires that are listed as submersible;

17. Motors; or

18. Electronic control, signaling, and communication equipment.

13. 604.3.2.1 Electrical equipment. Electrical switches, receptacles and fixtures, including furnace, water heating, security system and power distribution circuits, that have been exposed to fire shall be replaced in accordance with the provisions of the VEBC.

Exception: Electrical switches, receptacles and fixtures that shall be allowed to be repaired or reused where an inspection report from the equipment manufacturer or an approved representative of the equipment manufacturer, a third party licensed or certified electrician, or an electrical engineer indicates that the equipment has not sustained damage that requires replacement.

14. Section 605.1 Electrical components. Electrical equipment, wiring, and appliances shall be maintained in accordance with the applicable building code.

15. Section 605.2 Power distribution and receptacles. Required or provided power circuits and receptacles shall be maintained in accordance with the applicable building code, and ground fault and arc-fault circuit interrupter protection shall be provided where required by the applicable building code. All receptacle outlets shall have the appropriate faceplate cover for the location when required by the applicable building code.

16. Section 605.3 Lighting distribution and luminaires. Required or provided lighting circuits and luminaires shall be maintained in accordance with the applicable building code.

17. Section 605.4 Flexible cords. Flexible cords shall not be run through doors, windows, or cabinets or concealed within walls, floors, or ceilings.

18. Section 606.1 General. Elevators, dumbwaiters, and escalators shall be maintained in compliance with ASME A17.1. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, be available for public inspection in the office of the building operator, or be posted in a publicly conspicuous location approved by the code official. Where not displayed in the elevator or attached on the escalator or dumbwaiter, there shall be a notice of where the certificate of inspection is available for inspection. An annual periodic inspection and test is required of elevators and escalators. A locality shall be permitted to require a six-month periodic inspection and test. All periodic inspections shall be performed in accordance with Section 8.11 of ASME A17.1. The code official may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership, or corporation who has met the certification requirements established by the VCS.

C. Add the following sections to Chapter 6 of the IPMC:

1. Section 602.2.1 Prohibited use. In dwelling units subject to Section 602.2, one or more unvented room heaters shall not be used as the sole source of comfort heat in a dwelling unit.

2. Section 603.7 Fuel tanks and systems. Fuel gas or combustible or flammable liquid containers, tanks, and piping systems shall be maintained in compliance with the code under which they were installed, kept in safe working condition, and capable of performing the intended function, or removed or abandoned in accordance with the Virginia Statewide Fire Prevention Code.

3. Section 607.2 Clothes dryer exhaust duct. Required or provided clothes dryer exhaust systems shall be maintained in accordance with the applicable building code.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; amended, Virginia Register, Volume 27, Issue 2, eff. March 1, 2011; Change in Effective Date, 27:5 VA.R. 534 November 8, 2010; amended, Virginia Register Volume 30, Issue 16, eff. July 14, 2014; Volume 34, Issue 18, eff. September 4, 2018; Volume 36, Issue 26, eff. September 17, 2020; Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-545. Chapter 7 Fire safety requirements.

A. Delete the following sections from Chapter 7 of the IPMC:

1. Section 701.2 Responsibility.

2. Section 704.5 Fire department connection.

3. Section 704.6.1 Where required.

4. Section 704.6.1.1 Group R-1.

5. Section 704.6.1.2 Groups R-2, R-3, R-4, and I-1.

6. Section 704.6.1.3 Installation near cooking appliances.

7. Section 704.6.1.4 Installation near bathrooms.

8. Section 704.6.2 Interconnection.

9. Section 704.6.3 Power source.

10. Section 704.6.4 Smoke detection system.

11. Section 704.7 Single-station and multiple-station smoke alarms.

B. Change the following sections in Chapter 7 of the IPMC:

1. Section 701.1 General. The provisions of this chapter shall govern the maintenance of fire safety facilities and equipment.

2. Section 702.1 General. The means of egress system shall be maintained in accordance with the applicable building code and Chapter 10 of the SFPC to provide a safe, continuous, and unobstructed path of travel from any point in a building or structure to the public way.

3. Section 702.2 Aisles. The required width of aisles shall be maintained in accordance with the applicable building code.

4. Section 702.3 Doors. Means of egress doors shall be maintained and, to the extent required by the code in effect at the time of construction, shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge, or effort.

5. Section 702.4 Emergency escape openings. Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction and to the extent required by the code in effect at the time of construction shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates, or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the code that was in effect at the time of construction and such devices shall be releasable or removable from the inside without the use of a key, tool, or force greater than that which is required for normal operation of the escape and rescue opening.

6. Section 704.1 General. Systems, devices, and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times.

7. Section 704.1.1 Maintenance and alterations. Fire protection systems shall be maintained in accordance with the original installation standards for that system. Alterations and repairs to fire protection systems shall be done in accordance with the applicable building code and the applicable standards.

8. Section 704.1.2 Required fire protection systems. Fire protection systems shall be repaired, operated, tested, and maintained in accordance with this code. A fire protection system for which a design option, exception, or reduction to the provisions of this code or the applicable building code has been granted shall be considered to be a required system.

9. Section 704.1.3 Fire protection systems. Fire protection systems shall be maintained in accordance with the Statewide Fire Prevention Code.

10. Section 704.3.1 Preplanned impairment programs. Preplanned impairments shall be authorized by the impairment coordinator. Before authorization is given, a designated individual shall be responsible for verifying that all of the following procedures have been implemented:

1. The extent and expected duration of the impairment have been determined.

2. The areas or buildings involved have been inspected, and the increased risks determined.

3. Recommendations have been submitted to management or the building owner or manager.

4. The fire department has been notified.

5. The insurance carrier, the alarm company, the building owner or manager, and other authorities having jurisdiction have been notified.

6. The supervisors in the areas to be affected have been notified.

7. A tag impairment system has been implemented.

8. Necessary tools and materials have been assembled on the impairment site.

11. Section 704.4 Removal of or tampering with equipment. It shall be unlawful for any person to remove, tamper with, or otherwise disturb any fire hydrant, fire detection and alarm system, fire suppression system, or other fire appliance required by this code or the applicable building code except for the purpose of extinguishing fire, for training purposes, for recharging or making necessary repairs, or where approved by the fire code official.

12. Section 704.4.2 Removal of existing occupant-use hose lines. The fire code official is authorized to permit the removal of existing occupant-use hose lines where all of the following conditions exist:

1. Installation is not required by this code or the applicable building code.

2. The hose line would not be utilized by trained personnel or the fire department.

3. The remaining outlets are compatible with local fire department fittings.

13. Section 704.6 Single-station and multiple-station smoke alarms. Required or provided single-station and multiple-station smoke alarms shall be maintained in accordance with the applicable building code.

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018; amended, Virginia Register Volume 37, Issue 14, eff. July 1, 2021.

13VAC5-63-549. Chapter 8 Referenced standards.

Change the referenced standards in Chapter 8 of the IPMC as follows (standards not shown remain the same):

Standard reference number	Title	Referenced in code section number
ASSE 5010-1013-1	Field Test Procedure for a Reduced Pressure Principle Assembly Using a Differential Pressure Gauge, 1991	505.3.2
ASSE 5010-1015-1	Field Test Procedure for a Double Check Valve Assembly Using a Duplex Gauge, 1991	505.3.2
ASSE 5010-1015-2	Field Test Procedure for a Double Check Valve Assembly Using	505.3.2

	a Differential Pressure Gauge - High- and Low-Pressure Hose Method, 1991	
ASSE 5010-1015-3	Field Test Procedure for a Double Check Valve Assembly Using a Differential Pressure Gauge - High Pressure Hose Method, 1991	505.3.2
ASSE 5010-1015-4	Field Test Procedure for a Double Check Valve Assembly Using a Site Tube, 1991	505.3.2
ASSE 5010-1020-1	Field Test Procedures for a Pressure Vacuum Breaker Assembly, 1991	505.3.2
ASSE 5010-1047-1	Field Test Procedure for a Reduced Pressure Detector Assembly Using a Differential Pressure Gauge, 1991	505.3.2
ASSE 5010-1048-1	Field Test Procedure for a Double Check Detector Assembly Using a Duplex Gauge, 1991	505.3.2
ASSE 5010-1048-2	Field Test Procedure for a Double Check Detector Assembly Using a Differential Pressure Gauge - High- and Low-Pressure Hose Method, 1991	505.3.2
ASSE 5010-1048-3	Field Test Procedure for a Double Check Detector Assembly Using a Differential Pressure Gauge - High-Pressure Hose Method, 1991	505.3.2
ASSE 5010-1048-4	Field Test Procedure for a Double Check Detector Assembly Using a Site Tube, 1991	505.3.2
CAN/CSA-B64.10-01	Manual for the Selection and Installation of Backflow Prevention Devices/Manual for the Maintenance and Field Testing of Backflow Prevention Devices	505.3.2

Statutory Authority
§ 36-98 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 34, Issue 18, eff. September 4, 2018.

13VAC5-63-550. (Repealed.)
Historical Notes
Derived from Virginia Register Volume 22, Issue 3, eff. November 16, 2005; repealed, Virginia Register Volume 24, Issue 14, eff. May 1, 2008.
Statutory Authority

Historical Notes

Documents Incorporated by Reference (13VAC5-63).

International Code Council, Inc., 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001-2070 (http://www.iccsafe.org/):

International Building Code - 2018 Edition

International Energy Conservation Code - 2018 Edition

International Existing Building Code - 2018 Edition

International Fire Code - 2018 Edition

International Fuel Gas Code - 2018 Edition

International Mechanical Code - 2018 Edition

International Property Maintenance Code - 2018 Edition

International Plumbing Code - 2018 Edition

International Residential Code - 2018 Edition

International Swimming Pool and Spa Code - 2018 Edition

International Zoning Code - 2018 Edition

ICC 600 - 14, Standard for Residential Construction in High-wind Regions

ICC/ANSI A117.1-09, Accessible and Usable Buildings and Facilities, Approved November 26, 2003

ANSI/DASMA 108 - 2017, Standard Method for Testing Sectional Garage Doors, Rolling Doors and Flexible Doors: Determination of Structural Performance Under Uniform Static Air Pressure Difference

ANSI/RESNET/ICC 380 - 2016, Standard for Testing Airtightness of Building Enclosures, Airtightness of Heating and Cooling Air Distribution and Airflow of Mechanical Ventilation Systems

CSA B805 - 2018/ICC 805 - 2018, Rainwater Harvesting Systems

Air Conditioning Contractors of America, 2800 Shirlington Road, Suite 300, Arlington, VA 22206 (https://www.acca.org/):

Manual J-16, Residential Load Calculation, Eighth Edition

Manual S-14, Residential Equipment Selection

ACI 318-14, Building Code Requirements for Structural Concrete, American Concrete Institute, 38800 Country Club Drive, Farmington Hills, MI 48331 (http://www.concrete.org/)

American Iron and Steel Institute, 25 Massachusetts Avenue, NW Suite 800, Washington, DC 20001

AISI S230-15, Standard for Cold-formed Steel Framing - Prescriptive Method for One- and Two-family Dwellings

American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005-4070 (http://www.api.org/):

API 650-09, Welded Tanks for Oil Storage, Eleventh Edition, June 2007 (Addendum 1, November 2008, Addendum 2, November 2009, effective May 1, 2010)

API 653-09, Tank Inspection, Repair, Alteration, and Reconstruction

ANSI LC1/CSA 6.26-18, Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing (CSST), American National Standards Institute, 25 West 43rd Street, Fourth Floor, New York, NY 10036

American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329-2305 (https://www.ashrae.org/)

ASHRAE 62.1-13, Ventilation for Acceptable Indoor Air Quality

American Society of Testing Materials International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 (http://www.astm.org/):

ASTM C199-84(2011), Standard Test Method for Pier Test for Refractory Mortar

ASTM C315-07(2011), Standard Specification for Clay Flue Liners and Chimney Pots

ASTM C1261-13, Standard Specification for Firebox Brick for Residential Fireplaces

ASTM D1003-13, Standard Test Method for Haze and Luminous Transmittance of Transparent Plastics

ASTM D1557-12e1, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft^3(2700 kN-m/m^3))

ASTM E84-2016, Standard Test Methods for Surface Burning Characteristics of Building Materials

ASTM E90-90, Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions

ASTM E108-11, Standard Test Methods for Fire Tests of Roof Coverings

ASTM E119-2016, Standard Test Methods for Fire Tests of Building Construction and Materials

ASTM E329-02, Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction

ASTM E330/E330M-14, Standard Test Method for Structural Performance of Exterior Windows, Doors, Skylights and Curtain Walls by Uniform Static Air Pressure Difference

ASTM E779-10, Standard Test Method for Determining Air Leakage Rate by Fan Pressurization

ASTM E1827-11, Standard Test Methods for Determining Airtightness of Buildings Using an Orifice Blower Door

ASTM F1504-14, Standard Specification for Folded Poly (Vinyl Chloride (PVC) Pipe for Existing Sewer and Conduit Rehabilitation

ASTM F1871-11, Standard Specification for Folded/Formed Poly (Vinyl Chloride) Pipe Type A for Existing Sewer and Conduit Rehabilitation

ASTM F2006-17, Standard Safety Specification for Window Fall Prevention Devices for Nonemergency Escape (Egress) and Rescue (Ingress) Windows

ASTM F2090-17, Standard Specification for Window Fall Prevention Devices with Emergency Escape (Egress) Release Mechanisms

CAN/CSA-B64.10-01, Manual for the Selection and Installation of Backflow Prevention Devices/Manual for the Maintenance and Field Testing of Backflow Prevention Devices, June 2003, National Standards of Canada, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, Canada L4W5N6 (http://www.csa.ca)

American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990 (https://www.asme.org/):

ASME A17.1/CSA B44-16, Safety Code for Elevators and Escalators

ASME A17.3 2008, Safety Code for Existing Elevators and Escalators

ASME A18.1 2008, Safety Standard for Platform Lifts and Stairway Chairlifts

American Society of Sanitary Engineering, 901 Canterbury Road, Suite A, Westlake, OH 44145 (http://www.asse-plumbing.org/):

ASSE 1010-2004, Performance Requirements for Water Hammer Arrestors

ASSE 1022-03, Performance Requirements for Backflow Preventer for Beverage Dispensing Equipment

ASSE 1024-04, Performance Requirements for Dual Check Valve Type Backflow Preventers (for Residential Supply Service or Individual Outlets)

ASSE 5010-1013-1, Field Test Procedure for a Reduced Pressure Principle Assembly Using a Differential Pressure Gauge, 1991

ASSE 5010-1015-1, Field Test Procedure for a Double Check Valve Assembly Using a Duplex Gauge, 1991

ASSE 5010-1015-2, Field Test Procedure for a Double Check Valve Assembly Using a Differential Pressure Gauge - High- and Low-Pressure Hose Method, 1991

ASSE 5010-1015-3, Field Test Procedure for a Double Check Valve Assembly Using a Differential Pressure Gauge - High Pressure Hose Method, 1991

ASSE 5010-1015-4, Field Test Procedure for a Double Check Valve Assembly Using a Site Tube, 1991

ASSE 5010-1020-1, Field Test Procedures for a Pressure Vacuum Breaker Assembly, 1991

ASSE 5010-1047-1, Field Test Procedure for a Reduced Pressure Detector Assembly Using a Differential Pressure Gauge, 1991

ASSE 5010-1048-1, Field Test Procedure for a Double Check Detector Assembly Using a Duplex Gauge, 1991

ASSE 5010-1048-2, Field Test Procedure for a Double Check Detector Assembly Using a Differential Pressure Gauge - High- and Low-Pressure Hose Method, 1991

ASSE 5010-1048-3, Field Test Procedure for a Double Check Detector Assembly Using a Differential Pressure Gauge - High-Pressure Hose Method, 1991

ASSE 5010-1048-4, Field Test Procedure for a Double Check Detector Assembly Using a Site Tube, 1991

American Society of Civil Engineers/Structural Engineering Institute, 1801 Alexander Bell Drive, Reston, VA 20191-4400 (http://www.asce.org/sei/)

ASCE/SEI 7-16, Minimum Design Loads for Buildings and Other Structures

ASCE/SEI 24-14, Flood Resistant Design and Construction

ASCE/SEI 41-13, Seismic Evaluation and Retrofit of Existing Buildings

American Wood Council, 222 Catocin Circle, Suite 201, Leesburg, VA 20175 (http://www.awc.org/):

AWC NDS-15, National Design Specification for Wood Construction-with 2005 Supplement

AWC STJR-15, Span Table for Joists and Rafters

AWC WFCM-18, Wood Frame Construction Manual for One- and Two-Family Dwellings

National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471 (http://www.nfpa.org/):

NFPA 13-16, Installation of Sprinkler Systems

NFPA 13R-16, Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height

NFPA 70-17, National Electrical Code

NFPA 72-16, National Fire Alarm Code

NFPA 91-15, Standard for Exhaust Systems for Air Conveying of Vapors, Mists and Particulate Solids

NFPA 99-15, Health Care Facilities Code

NFPA 101-15, Life Safety Code

NFPA 105-16, Standard for the Installation of Smoke Door Assemblies

NFPA 285-17, Standard Method of Test for the Evaluation of Flammability Characteristics of Exterior Nonload-bearing Wall Assemblies Containing Combustible Components

NFPA 495-18, Explosive Materials Code

NFPA 701-15, Standard Methods of Fire Tests for Flame-propagation of Textiles and Films

NFPA 720-15, Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment

National Fenestration Rating Council, Inc., 6305 Ivy Lane, Suite 140, Greenbelt, MD 20770

NFRC 100 - 2017, Procedure for Determining Fenestration Products U-factors

NSF 50-2015, Equipment for Swimming Pools, Spas, Hot Tubs and Other Recreational Water Facilities, NSF International, 789 Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113 (http://nsf.org)

TFI RMIP-09, Aboveground Storage Tanks Containing Liquid Fertilizer, Recommended Mechanical Integrity Practices, December 2009, The Fertilizer Institute, 820 First Street, NE, Suite 430, Washington, DC 20002

Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062 (http://www.ul.com):

UL 217-06, Single- and Multiple-station Smoke Alarms-with revisions through April 2012

UL 263-11, Fire Tests of Building Construction and Materials

UL 723-2008, Standard for Test of Surface Burning Characteristics of Building Materials-with Revisions through September 2010

UL 790-04, Standard Test Methods for Fire Tests of Roof Coverings-with Revisions through October 2008

UL 1784-01, Air Leakage Tests of Door Assemblies, revised July 2009

UL 1978-2010, Grease Ducts

UL 2034-2008, Standard for Single and Multiple Station Carbon Monoxide Alarms, revised February 2009

UL 2075-2013, Gas and Vapor Detectors and Sensors (Second Edition, March 5, 2013)

UL 8782-2017, Pollution Control Units for Commercial Cooking

Interim Remediation Guidance for Homes with Corrosion from Problem Drywall, April 2, 2010, Joint Report, Consumer Products Safety Commission and Department of Housing and Urban Development

Statutory Authority

Historical Notes

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.

GUIDELINES FOR THE DEVELOPMENT OF RESERVE STUDIES FOR CAPITAL COMPONENTS

ADOPTED BY THE
COMMON INTEREST COMMUNITY BOARD
September 5, 2019

PREFACE

Chapters 33 and 44 of the 2019 Virginia Acts of Assembly, which resulted from the passage of House Bill 2030 and Senate Bill 1538, direct the Common Interest Community Board ("Board") to *"…develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study."*

In accordance with the General Assembly's directive, the Board convened a committee of industry experts including Board members to assist in developing these guidelines for the development of reserve studies for capital components, as defined in the Code of Virginia. This document reflects the significant input and contributions of those industry professionals experienced in the development of reserve studies for common interest communities, and generally reflects standard and accepted industry practice.

This document is intended to provide useful information and guidance to members of the public, including members of association governing boards and those who provide management services to associations, regarding developing reserves studies. This document is not intended to regulate the development of or define a "standard of care" for reserve studies, and does not prescribe, or proscribe, any specific method for developing such studies.

Introduction

Throughout the United States various forms of real property ownership in which multiple homeowners agree to share in the common ownership of certain real property have emerged for mutual benefit and enjoyment. Developers have employed this approach to, among other things, create neighborhoods, increase density, comply with local zoning and proffer requirements, and allow neighbors to establish shared services, facilities and expenses, take advantage of economies of scale and sustain and enhance property values.

In Virginia, developments of this type are called *common interest communities* (CICs), and are administered and governed by one of the following: property owners' association, condominium unit owners' association, or real estate cooperative association. Generally, in a CIC individuals own a lot or unit in the community and have shared ownership with other owners in the remaining real property, the ***common area or common elements***. Real estate cooperatives are somewhat different in that the real property is owned by a corporation, and the membership of the association is made up of proprietary lessees, who are entitled to exclusive use and possession of a unit through a proprietary lease from the company.

CICs have three general characteristics:

1. Property is subject to ***governing documents*** that organize the community, provide for the administration of the community and common area or common elements through an association, and establish the rights and obligations of the association, individual owners, and the association's governing board.

2. By virtue of ownership, membership in the association is mandatory and automatic.

3. CIC members are required to pay ***assessments*** to fund the association and maintain the property.

In a CIC, responsibility for maintenance and upkeep of the property is established by the community's governing documents. Generally, these responsibilities are divided between the association and the individual lot or unit owners. Items that the association is obligated to maintain, repair, and replace, regardless of whether such items are part of the common area or common elements, and for which the association governing board has determined funding is necessary, are called ***capital components***.

The number and nature of capital components vary from community to community. For some communities there may only be a few components, such as a shared road or entrance feature, signage for the community, and landscaping. Other communities may have significantly more components, including structures such as parking garages or recreational facilities (e.g.

exercise rooms, pools, tennis courts). In addition, many communities have stormwater management facilities, which are often required to be installed as a measure to protect the environment. These might take the form of a pond or other waterway in the community. Stormwater management facilities, if part of the common area or common elements, are the responsibility of the association to maintain. A list of typical common area or common elements components is located at Appendix C. This list is not exhaustive, and does not reflect every type of component that may be found in a community.

In order to ensure capital components are properly maintained, repaired, and timely replaced, associations establish a *reserve fund* consisting of a budgeted portion of monies collected from assessments imposed on lot or unit owners. Funds in reserve are set aside for the dedicated purpose of paying for costs to repair and replace capital components when the need arises. In this sense, a reserve fund is like a "piggy bank." By establishing and funding a reserve, associations can lessen the potential of having to impose costly special assessments to pay for repairing or replacing capital components.

Toward this end, Virginia law requires the governing board of an association to conduct a study, called a ***reserve study***, periodically to determine the necessity and amount of reserves required to repair, replace and restore the capital components. A reserve study is a capital budget planning tool used to determine the physical status and repair or replacement cost of a community's capital components, and an analysis of an association's funding capacity to maintain, repair, and replace capital components.

Sections 55-79.83:1, 55-471.1, and 55-514.1 of the Code of Virginia state, in part[1]:

> Except to the extent otherwise provided in the [governing documents], the [governing board] shall:
>
> 1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components, as defined in [applicable section of the Code of Virginia];
>
> 2. Review the results of that study at least annually to determine if reserves are sufficient; and
>
> 3. Make any adjustments the [governing board] deems necessary to maintain reserves, as appropriate.

In addition, these provisions in the Code stipulate that:

[1] Note: These provisions of the Code of Virginia will be recodified effective October 1, 2019. See Appendix A for the complete sections of the Code.

To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in [applicable section of the Code of Virginia];

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

Because an association governing board has a fiduciary duty to manage association funds and property, establishing a reserve fund and making provision in the association budget for reserves is important. The information provided by a reserve study aids association members in understanding the physical condition of the property, and the financial condition of the association, in order to allow for adequate planning. A reserve study can serve as an important tool for the association to balance and optimize long-term property values and costs for members, as reserve planning helps assure property values by protecting against decline in value due to deferred maintenance and inability to keep up with aging components.

By establishing a reserve fund and maintaining sufficient reserves, a governing board can reduce the need to impose special assessments on association members when it comes time to replace capital components, particularly if the replacement cost is high. Even if a community only has a limited number of components, such as a simple road or driveway, setting aside funds in advance will help guard against financial shock when repair or replacement is needed. In addition, it creates a more equitable balance between newer owners in a community, and older owners, as newer owners will not have to assume the burden of the cost to repair or replace older components in the community.

Moreover, a reserve study is beneficial to purchasers of property in a CIC. A reserve study can aid in the evaluation of the value of property being purchased by knowing the condition of the capital components, and show a more accurate and complete picture of the association's financial position to handle the expense of maintaining the capital components.

In addition to establishing a reserve fund for capital components, associations should also consider establishing an operating reserve for budget overages. An operating reserve provides the association with funds in case of unexpected budget overages or unforeseen operating expenses. Replacement reserve funds should not be used to cover unanticipated operating expenses.

The Basics of Reserve Studies

Components of a Reserve Study

There are two components of a reserve study: (i) a ***physical analysis*** and (ii) a ***financial analysis***. The physical analysis provides information about the physical status and the repair or ***replacement cost*** of components the association is obligated to maintain. The physical analysis entails conducting an ***inventory*** of components, an assessment of component condition, and ***life and valuation estimates***. The financial analysis assesses the association's reserve income and expenses, by examining the reserve ***fund status***, measured in cash or ***percent funded***, and recommending an appropriate contribution for the fund.

Types of Reserve Studies

Reserve studies can be grouped into four types, each of which reflects differing levels of service. The Community Associations Institute (CAI) identifies the following four levels of service.

1. Full Study: A full reserve study is the most comprehensive level of service. A full study involves performing: (i) a ***component inventory***, (ii) a ***condition assessment*** (based upon on-site visual observations), and (iii) life and valuation estimates of components; then determining (iv) the reserve fund status, and (v) a funding plan.
2. Update, With-Site-Visit/On-site Review: A reserve study update which involves performing (i) a component inventory (verification only, not quantification), (ii) condition assessment (based upon on-site visual observation), and (iii) life and valuation estimates of components; then determining (iv) the reserve fund status, and (v) a funding plan.
3. Update, No-Site-Visit/Off Site Review: A reserve study update with no on-site visual observations in which involves performing (i) life and valuation estimates of components; then determining (ii) the reserve fund status, and (iii) a funding plan.
4. Preliminary, Community Not Yet Constructed: A reserve study prepared before construction that is generally used for budget estimates. It is based on design documents such as the architectural and engineering plans, and involves performing (i) a component inventory, (ii) life and valuation estimates of components; then determining (iii) a funding plan.

Contents of a Reserve Study

A reserve study should consist of the following:

- A summary of the community, including the number of units, physical description, and the financial condition of the reserve fund;
- A projection of the reserve starting balance, recommended reserve contributions, projected reserve expenses, and the projected ending reserve fund balance for typically a 30-year period; but at least a minimum of 20 years;
- A tabular listing of the component inventory, component quantity or identifying descriptions, useful life, remaining useful life, and current replacement cost;
- A description of the methods and objectives utilized in computing the fund status in the development of the funding plan;
- Source(s) utilized to obtain component repair or replacement cost estimates; and
- A description of the level of service by which the reserve study was prepared and the fiscal year for the reserve study was prepared.

Governing Board Action Steps to Providing for Adequate Reserves

In order to provide for reserves adequately, an association should employ a systematic approach involving specific action steps. First, the association's governing board should **resolve to have a reserve study** by passing a resolution that a reserve study be performed and commit the association to taking action to ensure the study is conducted.

Communities that have been operating without a reserve study are not in compliance with Virginia law and must undertake to schedule and implement a reserve study. The statutes require the governing board of an association to conduct a reserve study at least once every five years, and review the results of the study annually in conjunction with budget development.

Second, the governing board should **identify the reserve study products needed**. A governing board may contract for the preparation of the physical analysis, financial analysis, and ***operating budget*** by professionals, or may elect to produce one or more of these items on its own. The governing board may also choose to perform part of the work, and have a professional perform the rest.

Third, the governing board should **establish a work plan**, specifying the nature of the tasks to be performed, before conducting the study. The work plan should establish (i) the types

of components to be included or excluded; (ii) the timeframe for funding common area or common elements components; and (iii) budget for conducting the study.

Identifying components to include. Components that the association is obligated to maintain, repair, or restore should not be excluded from the reserve study, even if the components are not part of the common area or common elements. Components for which individual lot or unit owners are responsible should be excluded from the study. The community's governing documents establish those components that are the responsibility of the association to maintain, and those for which owners are individually responsible. Governing documents may contain a ***maintenance responsibilities chart*** which can be useful for this purpose. In addition, local governments may have information or documents on file (e.g. subdivision documents, easements) regarding the community which can help identify components, including components for which the local government, and not the association, are responsible. (See Appendix C for a list of components that are typically addressed in reserve studies.)

Timeframe. There is not universal agreement of the appropriate timeframe for a reserve study. A good approach is to forecast for a time period that will include the replacement year of the component with the longest estimated useful life. Professionals recommend that the study include all components that will fail before the building itself. "Life-of-the-building" components such as the building foundation and structure are generally excluded from the reserve study budget. However, if there is reason to expect an item will wear out before the building does, or the item may wear out within the time span of the reserve study, then the item should be included as an item in the study.

Careful consideration should be given to the timing of the initial reserve study. In a community governed by a property owners' association, the initial study should take place after the first time a capital component is put into use. In a community governed by a condominium unit owners' association, the initial study should be completed as soon as practicable prior to the transfer of declarant control, and may be in conjunction with the association's preparation of the structural warranty statement.

Budget Available for the Study. Another consideration is funds available to conduct the study. In order to comply with reserve study requirements, associations should, on an annual basis, include in the annual budget funds adequate to enable either a study, or engagement of outside professionals to complete the study, once every five years.

Next, the governing board needs to **identify the components** that must be included in the reserve study. The governing board should identify documents, including the community's

governing documents (i.e. declaration, bylaws), the most accurate drawings of the development, and the maintenance history of major common area and common elements components. If "as built" plans exist, these would be the best source of information about the nature of the major components. The maintenance history should include the actual dollar cost figures of that maintenance. An association should consider creating a "permanent" maintenance history file for each major component.

The governing board should also take into account that existing components may be outdated and may not meet current code requirements, and that components may need to be replaced with newer products that comply with code requirements.

Finally, once the study has been completed, the governing board needs to **accept, disclose, and implement the results** of the study. The governing board reviews and accepts the results of the reserve study, and incorporates this information into the association budget plan. State law specifies that to the extent a reserve study indicates a need to budget reserves, the association budget shall include, <u>without limitation</u>:

> (i) the current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;
>
> (ii) the current amount, as of the beginning of the fiscal year for which the budget is prepared, of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that fiscal year;
>
> (iii) a statement describing the procedures used for estimation and accumulation of cash reserves; and
>
> (iv) a statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

Association governing boards are also required by state law to review the results of the reserve study at least once annually to determine if reserves are sufficient, and make any adjustments they deem necessary to maintain reserves.

Conducting a Physical Analysis

The goals of a ***physical analysis*** are to (i) estimate useful and remaining life of major components; and (ii) estimate current replacement cost of major components. The analysis lists

and estimates replacement costs and timing for replacement of components whose repair or replacement is funded through association reserves. The study determines when such repairs or replacements will be needed and what repair and replacement will cost. The major steps in conducting a physical analysis are:

1. Identify components.
2. Specify quantities.
3. Inspect components; define scope and methodology for inspection.
4. Determine useful life; document maintenance assumptions.
5. Assess remaining life; determine replacement year.
6. Determine cost of replacement.

There are a number of professional firms that perform reserve studies for CICs in Virginia. This explanation of how to perform a physical analysis will help associations to contract for this service and interpret the study results. For associations that cannot, or do not wish to, hire a professional reserve study preparer, this explanation will provide guidelines for governing board members who decide to perform their own physical analysis. As with other decisions it makes in the conduct of managing association business, governing boards must carefully consider the pros and cons of choosing to undertake their own study, and should consider seeking legal advice before proceeding.

Identify Components

For each community, the list of major components is unique. Lists from other communities or industry publications may serve as a general guide, but are rarely usable without modification and addition. An inaccurate or incomplete list of components can materially distort an association's long-term funding plan. Professionals recommend that items be placed on the list of components for the reserve budget if these components meet all of the following criteria:

- The item is the responsibility of the association to maintain or replace, rather than the responsibility of individual homeowners;
- The item costs over a certain amount to replace (amount to be determined by the governing board)[2]; and
- The estimated remaining useful life of the item is greater than one year; and the estimated remaining useful life of the item is less than 30 years at the time of the study.

[2] One possible guideline is to include items that cost 1% or more of the total association budget. Another possible guideline is to include items that cost over $500 or $1,000 to replace, including groups of related items (e.g. gates in the development) that cost over $1,000 to replace. The dollar amount or percentage to use as a guideline should be discussed and adopted by the governing board.

There is often no one document with a comprehensive list of components for a development. Therefore, it is not easy to identify components accurately, although it is nonetheless essential that the association develop an accurate list of all items for which repair or replacement must be budgeted.

The list of components to include depends upon the physical characteristics of the development, as well as upon the legal allocation of responsibility among owners, the association, and local government. Appendix C provides a list of items that might be listed as components for association reserves. However, this list is not exhaustive of all possible items.

A community's governing documents can help provide a list of components. Governing documents, including the declaration for the community, typically provide a general description of the common areas or common elements of the development. In a condominium, the governing documents, called condominium instruments, describe that which is part of each unit and what is outside of the unit. Governing documents usually specify the allocation of responsibilities between the association and individual owners, and can serve as a guide to the components to be included in a reserve study.

The developer's reserve budget should list components the builder identified while planning the project. Such items as streets, roofs, exterior paint, and recreation areas are usually included in the developer's original reserve budget. However, governing documents and the developer's budget may not always account for all components for which the association is responsible. A site analysis by knowledgeable individuals should produce a comprehensive list of items for which the association is, or might be responsible.

Local governments and utility companies can often help to identify capital components by stating where their responsibility for certain components ends, and that of the association begins. For instance, the governing documents or developer budget may be unclear about whether sidewalks along the edge of a development belong to or are the responsibility of the community or the locality. If the sidewalks are an association responsibility, then sidewalks are components which should be included in the reserve budget; if not, then the budget need not account for repair and replacement.

Quantifying Components

Although existing maps and construction drawings of a development may serve as a guide to component quantities, a detailed site and building analysis is the best way to obtain an accurate count of these items. For some components, such streets, roofs, and fences, the square or linear footage must be measured in order to describe the quantity; while for other items, such as utility room doors, it may be sufficient to know the number required. The approved plans and

specifications on file with the locality, and the ***as-built plans***, if different from those filed with the local government, can be an excellent source of information for these quantities.[3]

For components that are actually made up of a number of items, the nature and quantity of the constituent parts should be stated (e.g., the metal flashing for a shake roof as well as the square footage of shingles). It is common to overlook the "extra" pieces that are in fact necessary to the construction of essential items such as roofs, siding, and irrigation systems.

Once the number and constituent parts of each component are detailed, it is necessary to give some consideration to the quality and specifications of those parts. For instance, is the asphalt two inches thick, or four inches thick? Is the roof a two-ply roof? What grade of paint was used? An accurate description of the materials is essential to proper reserves. If significant in dollar amount, quantities of the same type of component existing in very different conditions should be noted separately (e.g., the square footage of siding with western or southern exposure as compared to the square footage with eastern or northern exposure).

Determining Useful Life and Remaining Life of Components

Useful life (UL) is typically defined as the number of years the component is expected to serve its intended purpose if given regular and proper maintenance. If the association fails to provide proper maintenance, then it may become difficult to anticipate the useful life of components.

One estimate of useful life is material manufacturer's warranty. This estimate presumes, usually in writing in the fine print of the warranty, that the product was installed with the purported quality of materials and according to the manufacturer's specifications. Sometimes components may have been installed with lesser quality materials or inferior workmanship, thereby making the effective useful life shorter. When no knowledgeable inspection is made of the materials and installation, the manufacturer's warranty may not be an accurate description of the useful life of the component.

There are also commercially available manuals that have estimates of useful life. Published data may not be consistent with the location, exposure, or type of a particular component. The estimated life of a street as predicted from national data may well be lower than that of a street in a comparatively mild climate, but the estimated life of exterior paint as predicted from national averages may be higher than that of paint on buildings in windy or coastal areas. In using published estimates, it is necessary to consider how the specific case in question may differ from the average case considered by the manual's author. Useful life estimates may vary considerably from manual to manual, so consulting more than one manual

[3] The drawings filed when the development was begun represent builder plans, but may not reflect the development as actually constructed. Therefore, they can be useful, but should verified by physical inspection.

may guard against the risk of underestimating or overestimating the life of a component. The source(s) of component useful life estimates should be identified specifically.

Remaining useful life (RUL) is generally defined as the expected number of years the component will continue to serve its intended purpose prior to repair or replacement. If the development is new and the developer-prepared estimates are correct, the remaining useful life might be estimated simply by subtracting the age of the development from the useful life of each component. The older the components, the less accurate this method will be.

Some of the factors that affect the remaining useful life of a component are (i) current age, (ii) apparent physical condition, and (iii) past maintenance record (or absence of maintenance). The current age of the component may be determined from association records. The apparent current condition must be determined through physical inspection, preferably by someone familiar with the component. Records of past maintenance must be compared with recommended maintenance in order to determine whether the item has been properly maintained or may wear out sooner than expected due to inadequate care.

In determining the remaining useful life of a component, a certain level of continued preventative maintenance may be assumed. These maintenance assumptions should be explicitly stated so that proper maintenance can be continued through the component's remaining life.

The remaining life of a component implicitly specifies the year in which it may be repaired or replaced. The ***effective age*** of a component is the difference between the component's useful life (UL) and remaining useful life (RUL). A budget timeline can be used to show the replacement year for each component. This timeline can serve as a schedule for expected replacement of components and can be updated or changed when the physical analysis is updated, or as components last for shorter or longer periods than expected.

Sample Replacement Schedule

Component	Age in Years as of 12/31/2018 (Effective Age)	Estimated Useful Life (UL)	Estimated Remaining Useful Life (RUL)	Year to Replace
Stormwater management facility	3	5	2	2021
Paving (slurry coat)	4	7	3	2022
Roofing (wood shingle)	11	15	4	2023

Determining Replacement Cost

Replacement costs can be obtained from manufacturers or their representatives for some items, and from local licensed contractors on others. It is important to remember that the cost of component replacement should also include the cost of removing the existing component, along with the cost of obtaining permits and compliance with local building requirements, if applicable. It is also important to take into consideration that some existing components may be outdated and may not meet current code requirements. These components may need to be replaced with newer products that comply with code requirements, which may factor into replacement cost.

There are a number of recognized cost estimating manuals available with pricing information that can be used. Cost estimates are generally comparable among manuals for the same geographic area, so there is less need to consult multiple manuals for replacement costs than for estimates for useful life. However, there are some considerations to factor in when using these manuals to determine costs. The majority of professionals performing reserve studies for associations obtain cost estimates from a database based on the experience of these professionals. Cost estimates derived from this data may vary significantly from estimates based on manuals alone. Accordingly, associations performing their own study may want to obtain additional supporting data for their manual cost estimates from other sources, such as contractors, material suppliers, etc. This collection of data should then be considered in conjunction with the results of an inspection by a reasonably qualified person when making a final determination of replacement cost.

It is important to determine the specific geographic area for which the manual offers a cost average. If a manual has national averages, it may underestimate the cost of labor in certain areas, such urban areas. It is also important to determine the base year in which the manual's cost estimates were made. The current replacement cost for components is not shown in the manual, and should be adjusted for ***inflation*** since the time cost data was obtained.

Documenting Maintenance Assumptions

An important adjunct to determining UL and RUL of a component is to document the type and schedule of maintenance that is assumed for the component to survive that life. For example, if the 20-year life expectancy of a roof is based upon annual cleaning of the roof and gutters, the association will be able to take action to help ensure that all the roofs will indeed last. Documentation of maintenance assumptions can lead to improved maintenance throughout the project and thereby lower replacement costs. On the other hand, ignoring maintenance assumptions, or improper maintenance, can put the replacement schedule and costs in jeopardy.

A properly prepared physical analysis will lead to a better maintenance program for the association. Clear and concise maintenance suggestions are a useful supplement to a

professionally prepared physical analysis. These suggestions may save more than the cost of the original study on future repairs and replacements.

Using Component Data to Develop the Funding Analysis

Once charts of replacement schedule and future replacement costs are completed, the physical analysis is finished. The next step is to determine how much will be spent in each year for all components, and that step is part of the financial analysis.

Conducting a Financial Analysis

The goals of a ***financial analysis*** are to (i) establish ***funding goals***; (ii) identify annual funding requirements; and (iii) disclose limitations and assumptions. Once the estimated useful life, estimated remaining life, and estimated current replacement costs of components are identified, the association is ready to develop a plan for funding the ***reserve account***.

In preparing the ***funding plan***, the association will have to make decisions about the amount of current assessments and the need for ***special assessments***, balanced against projected liability. The financial viability of the association will depend a great deal upon the ability of the association to replace components as they wear out, and not to defer major maintenance items.

A product of the financial analysis process is the development of a funding plan (***cash flow*** forecast or projection) to estimate future reserve cash receipts and disbursements. This is most easily presented in a spread sheet format. All supporting assumptions and methodology should be carefully documented.

The major steps in conducting a financial analysis are:

1. Obtain component information (from physical analysis).
2. Determine funding goal.
3. Calculate replacement fund liability.
4. Identify reserve account asset (cash balance).
5. Estimate annual association reserve fund income (from regular assessments).
6. Project expenditures and reserve fund needs, including regular and special assessments.
7. Prepare statement of limitations and assumptions.
8. Disclose reserve study information in association budget.

As an association completes these steps, the governing board will make major policy decisions. Professionals may be able to advise the governing board on key decisions, but it is important for the governing board to understand each of these decisions, since they independently affect the overall results of the funding plan. Because the amount of regular assessments and the need for

special assessments should be indicated in the plan, these decisions will affect monthly costs and property values.

Determine Funding Goal

Determination of the funding strategy, including establishment of the funding goal, is one of the most important fiscal decisions to be made by the governing board. The association budget should clearly indicate estimated revenues and expenses, describe the funding goal, and indicate current status in meeting the goal.

The funding plan should show the funds required to replace each component as it comes to the end of its useful life, and indicate how the association will fund the replacements. The association should decide how much should be raised through regular assessments for the reserve account each year, and how much should be raised by special assessment, if any. In addition, the association should consider how much cash will remain in the reserve account at the end of the planning period relative to the projected balance needed at that date.

Associations will have to make difficult policy choices in determining the funding goal. Many associations underfund reserves. This is due to lack of attention to reserve budgets in the past, and underestimation of replacement costs. An ideal goal for an association is to eliminate any ***deficit*** or shortage in reserve fund by building up the reserve fund to where the cash in the replacement reserve account is at least equal to the estimated value of accumulated wear of all major components. However, this goal may not be within reach of many associations in the short term, except through special assessments**.**

Funding Models

There are at least four basic funding models. All of these funding models have appropriate application. Furthermore, if done correctly, all of these models adequately fund the reserves.

- **Full Funding Model** – (Also called the Component Method.) This is the most conservative funding model. It funds each component as its own line item budget. This method is required in some states; however, Virginia does not require this method. The goal of this model is to attain and maintain the reserves at or near 100%. For example, if a community has a component with a 10-year life and a $10,000 replacement cost, it should have $3,000 set aside for its replacement after three years. In this case, $3,000 equals full funding. Note that this model may not account for inflation.
- **Baseline Funding Model** – (Also called a Minimum Funded Model.) The goal of this model is to keep the reserve cash balance above zero. This means that at any time during the funding period the ***reserve balance*** does not drop below zero dollars.

This is the least conservative model. An association using this model must understand that even a minor reduction in a component's remaining useful life can result in a deficit in the reserve cash balance. Associations can implement this model more safely by conducting annual reserve updates that include field observations.

- **Threshold Funding Model** – (Also called the Cash Flow Method.) This model is based on the Baseline Funding concept. However, in this model the minimum cash reserve balance is established at some predetermined dollar amount. Associations should take into consideration that depending on the mix of common area or common elements major components this model may be more or less conservative than the fully funded model.
- **Statutory Funding Model** – This model is based on local statutes. To use it, associations set aside a specific minimum amount of reserves as required by statutes. At this time, Virginia statutes are silent on which funding model an association may choose.

Each of the funding models depends on an analysis of cash flows into and out of the reserve fund over the next 30 years. Assessment calculations are then made sufficient to reach the governing board's funding goals.

An association may wish to include information in a reserve study report about full funding to provide in effect a funding measuring stick for the association.

Calculate the Reserve Deficit

The association should employ the ***accrual method*** to estimate fund contributions and expenses. This will ensure payments to the reserve account remain level, and that sufficient funds will be available when expenses come due. With respect to revenues, this estimate includes regular and special assessments, as well as the after-tax ***interest*** income earned on accumulated cash reserves. Expenses can be accrued by spreading the eventual replacement cost of each component over its total useful life or obtaining an estimate of annual component wear. For instance, if a component currently valued at $10,000 has a useful life of ten years, then one can estimate the annual wear, or the annual provision for the replacement fund, at $1,000. By year five, this component would then have accrued a liability of $5,000, assuming no inflation. (If the association fully funded its reserves, then this $5,000 would already be in the reserve account by the end of the fifth year.)

After estimated revenues and expenses are established, this information can be used to calculate the required estimated reserves for components, and calculate any deficit or shortage in the reserve fund.

Begin by determining the ***accrued fund balance*** for each component. This can be calculated according to the following formula: Replacement Cost divided by Useful Life (UL) times Effective Age. For example, consider a roofing component with a replacement cost of $30,000, a useful life of 15 years, and an effective age of 11 years:

$$\frac{Replacement\ Cost}{Useful\ Life\ (UL)}\ x\ Effective\ Age$$

$$\downarrow$$

$$\frac{\$30{,}000}{15}\ x\ 11 = \$2{,}000\ x\ 11 = \$22{,}000$$

Analyze each component in this manner, and then total together the accrued fund balance for components to determine the projected reserve fund balance. Then determine the reserve deficit by calculating the difference between the projected reserve fund balance and the estimated cash balance in the reserve fund. Once the reserve deficit (if any) is established, this information can be used to determine the amount of reserve deficit per lot or unit. In addition, the reserve balance funding percentage can be determined.

Component Replacement	Replacement Cost	Useful Life (UL) (years)	Effective Age (years)	Desired Fund Balance
Stormwater management facility	$10,000	5	3	$6,000
Paving	$14,000	7	4	$8,000
Roofing	$30,000	15	11	$22,000
Total Reserve Balance (current)				$36,000
Estimated Cash Reserves (current)				$22,000
Reserve Deficit (current)				$14,000
Reserve Deficit per unit ($14,000 ÷ 35 units)				$400
Percentage of Funding				61%

Desired Fund Balance = Replacement Cost/Useful Life (UL) x Effective Age

Reserve Deficit = Total Reserve Balance – Estimated Cash Reserves

Percentage Funding = Estimated Cash Reserves / Reserve Deficit x 100

Although this approach is relatively simple, there are challenges posed by the fact that it does not factor the effects of interest or of inflation. Interest rates and inflation play a significant role in whether a reserve fund can meet its goals. An alternative reserve deficit model, which does take into account interest and inflation, is as follows[4]:

$$Desired\ Balance = \left(\frac{Replacment\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age\right) + \left(\frac{\frac{Replacement\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age}{(1 + Interest\ Rate)^{Remaining\ \ Life\ (RUL)}}\right) - \left(\frac{\frac{Replacement\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age}{(1 + Inflation\ Rate)^{Remaining\ Life\ (RUL)}}\right)$$

Assuming an inflation rate of 3% and interest rate of 5% after taxes, the following are calculated.

Component Replacement	Replacement Cost	Useful Life (UL) (years)	Effective Age (years)	Desired Fund Balance
Stormwater management facility	$10,000	5	3	$5,787
Paving	$14,000	7	4	$7,590
Roofing	$30,000	15	11	$22,553
Total Reserve Balance (current)				$33,930
Estimated Cash Reserves (current)				$22,000
Reserve Deficit (current)				$11,930
Reserve Deficit per unit ($11,930 ÷ 35 units)				$340
Percentage of Funding				65%

This approach, though more complicated, may be more reflective of the true amount of the reserve deficit (assuming the interest and inflation rates are accurate). In most cases, the difference between these approaches is not material; however, with some mixes of common area or common elements major components the difference can be quite noticeable and failure to properly take interest and inflation into account can unfairly lead to unrealistically high calculations of the reserve deficit.

Many associations take the approach of an ***unfunded & special assessment model***. The association does not have reserve balances that will cover expected replacement costs, and the only recourse is to schedule special assessments to cover component replacement costs when they are due. Lack of information about needed special assessments can pose a problem for owners. One-time costs impose an additional financial burden on owners, and can be a considerable hardship on those with limited or fixed incomes who may be unable to pay. This

[4] See Appendix H for more detail on calculating using this formula.

approach is the riskiest, and could jeopardize the financial viability of the association if assessments cannot be raised when needed.

Another approach is a ***mixed model*** in which the cash needs for replacement of components are met through a combination of regular and planned special assessments. The degree to which an association can meet its cash needs through regular as opposed to special assessments may be an indicator of the association's financial viability.

When considering an alternative source of funding, such as a special assessment, the governing board should refer to the community's governing documents and applicable law to ensure the association has the authority to impose assessments to cover component replacement costs that may come due.

The association's choice of the funding goal or strategy will have a direct effect on the cash required of each individual owner. The strategy, and the degree to which the association has funded its reserves, should affect property value as well. (If an association shows a $5,000 unfunded reserve deficit per unit, this amount reasonably should be reflected in the sales price.)

Estimate Association Reserve Fund Income

Ideally, the replacement reserve account should be built through regular (usually monthly) assessments paid by association members. A specific dollar amount of regular association payments should be earmarked for reserves, and deposited into a reserve account as they are collected. Financing of replacement reserves from regular assessments is desirable. First, it spreads the responsibility for replacements over time, rather than allocating costs to owners who happen to be in the association in the year a particular component comes due for repair or replacement. This funding approach provides a more equitable distribution of the costs of aging components. Second, it provides individual owners with more certainty as to the true costs of the property.

Income from regular assessments should be calculated for each year, based on the number of lots or units, and the level assessment per lot/unit. In communities with several rates for different types or sizes of units, the expected income should be calculated for each class of unit and then added. Assessment increases, if any, should be estimated by year. A method for calculating the amount to contribute to the reserve account follows. Under normal economic circumstances this approach should yield a good approximation. However, associations may wish to obtain the assistance of a professional firm to fine tune estimates to take into account inflation and interest rates.

Component	Replacement Cost	Estimated Useful Life (UL) (years)	Annual Contribution
Stormwater management facility	$10,000	5	$2,000
Paving	$14,000	7	$2,000
Roofing	$30,000	15	$2,000
Total Annual Contribution			$6,000
Add 10% for Contingencies			$600
Total Annual Contribution			$6,600
Number of Units in Community			48
Annual Contribution per Unit			$138
Monthly Contribution per Unit			$11.46

State law requires an association's governing board to review reserve study results at least annually to determine if reserves are sufficient – according to the governing board, and to make adjustments necessary to maintain reserves. Changes in interest rates or inflation rates, or unusual changes in the prices of components, may make it advisable to raise or lower the monthly amount assessed to fund reserves. These periodic "course corrections" can promote the stability of the reserve account, and decrease the likelihood of financial shocks when the next reserve study is performed.

Project Expenditures and Reserve Funding Needs

The physical analysis provides the estimates for expected expenditures by year for each component. Adding these component requirements together, by year, gives the estimate of needed funds over time. Association members should be aware of the limitations of expenditure forecasting and of the reality that the overall funding plan is only as good as the initial estimates of replacement costs and the time of replacement needs.

An important policy issue for a governing board is the decision over whether to use replacement costs, or estimated future costs. Use of an inflation rate will generally result in higher estimates of future costs. If the governing board uses replacement costs, it is essential the board revise the plan annually based upon updated current replacement costs, plus currently required or anticipated expenditures. The annual cost for each component would be calculated by dividing the unfunded replacement cost by the remaining useful life. <u>This approach is valid only if repeated each year</u>.

If the board chooses to use an inflation rate, it would apply an average long-term cost inflation rate to all components from the time of the study until the year of replacement (based on recent average component cost data). To keep this plan current, it is important to annually review and update projected expenditures, inflation factors and other assumptions. As with the replacement cost approach, the inflation rate approach is valid only if repeated each year.

There are several ways to select an inflation rate for estimating component costs for future years. These include: (i) Federal Bureau of Labor Statistics; (ii) published information from construction cost estimating companies; and (iii) Marshall & Swift. The interest rate assumption is an important decision for the governing board, and should be explicitly disclosed in the financial analysis. Because of their effect on estimating future costs, replacement cost information and inflation rate assumptions should be reviewed annually, and the projections adjusted as necessary.

Following is a sample chart showing calculations for future replacement costs. In a real situation, it may be necessary to add additional years of inflation in order to account for old pricing information. The sample chart assumes the pricing information on all components is up-to-date.

Component	Quantity & Units	Unit Cost	Replacement Cost (2019)	Year to Replace	Future Cost to Replace
Painting, exterior stucco	15,875 sq. ft.	.63	$10,000	2021	$10,941
Paving, slurry coat	35,000 sq. ft.	.40	$14,000	2022	$16,022
Roofing, wood shingle	10,715 sq. ft.	2.80	$30,000	2023	$35,913
(Future replacement cost was calculated with an annual 4.6% inflation rate.)					

Estimate Interest Earnings of Reserve Account Over Financial Analysis Period

Reserve funds deposited in certificates of deposit or money market accounts will generate interest income to increase the reserves. For forecasting purposes, it is necessary to choose an interest rate. For planning purposes, a lower interest rate is more conservative than a higher one. Interest rates can be pegged to current bank rates or CD rates. Income from the reserve and operating accounts is taxable to an association, even if the association is established as a non-profit organization. A governing board should adjust the interest rate assumption to account for applicable federal and state taxes.

Though it may be difficult to accurately project future component cost increases or future interest earned on reserve cash balances, it is nonetheless important to use these factors for calculations in the financial analysis, and to update them each year. This is particularly true for associations that have chosen to rely in part on special assessments.

As component replacement comes due in future years, it will draw against reserve funds. The initial reserve account, augmented by regular contributions from routine homeowner assessment payments, should provide sufficient funding to pay for replacements as they are needed. In some cases, though, the reserve account will not be enough. The cash flow analysis will identify instances where expenditure projections for a given year exceed projected reserve cash balances. In these cases, additional funds from special assessments (or other sources, if any) would be needed to increase the reserve accounts to desired levels.

Some replacement expenses will be impossible to estimate. This may be due to unexpected breakage or destruction, failure in a "life-of-the-project" system, reduced useful life of a component, or other unexpected component cost. A line item in the cost estimates might be established as a contingency. This amount might be limited to 3% to 5% of the first-year budget in a new community. In a conversion, or established communities with incomplete documentation, larger contingency levels may be necessary. One useful way to establish estimates for contingency funding in established communities is to review prior year spending for contingency-type replacements or continuing repairs. For instance, if there is routine work done annually on underground utilities, then some funds for expected annual levels might be budgeted under the contingency category.

Appendix F contains a sample financial analysis which summarizes these income and cost concepts. The rows of the spreadsheet show individual component costs and association income sources. The columns show the years included in the financial analysis. The sample assumes a funding plan period of 30 years and mixed funding model which uses regular and special assessments to maintain a positive cash balance. Because the model is not fully funded, inflation factors are employed in determining component costs.

Statement of Limitations and Assumptions

The funding analysis should document (i) all limitations to the estimate, (ii) assumptions made in order to conduct the estimates, (iii) the model used to make the estimates.

Disclose Reserve Study Information in the Annual Budget; Updating

An association, once it has successfully completed a reserve study (both physical and financial analysis), can use the resulting information in its annual budget. Indeed, state law requires that to the extent a reserve study indicates the need for an association to budget reserves, the budget must include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;
2. The current amount of accumulated cash reserves set aside, to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund

for the fiscal year (as of the beginning of the fiscal year for which the budget is prepared);
3. A statement describing the procedures used for estimation and accumulation of cash reserves; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

An association governing board is required to review the results of the reserve study at least annually to determine if reserves are sufficient, and make appropriate adjustments to ensure reserves are maintained. How often, though, does the reserve study need to be updated?

Annual updates of the financial analysis can be carried out at the same time as preparation of the operating budget, and can call for required adjustments within the original planning period. The assumptions in the reserve study (e.g. remaining life and cost of components) should be reviewed and updated as necessary. The frequency of updates of component data will depend on the soundness of the original data and estimates, the preparer's recommendations, and the association's ability to adequately maintain its components. Even though the methodology calls for a financial study covering a time frame of twenty years or more, annual planning and periodic reviews of the reserve study can rely on updated estimates.

Hiring a Professional to Perform a Reserve Study

Members of an association governing board must decide whether to conduct a reserve study by themselves, or hire qualified professionals to perform the task. Some associations elect to hire outside consultants to perform certain tasks, but not others. In making this decision, a governing board should consider several factors, to include:

1. The level of expertise within the board or the community for this kind of study;
2. The willingness of board or community members to volunteer their time;
3. The cost of hiring outside consultants to conduct the reserve study;
4. Whether a previous reserve study is available for use as a guideline;
5. The quality of existing documentation of components and replacement costs;
6. The association's previous history regarding special assessments;
7. The current financial state of the association's reserve account; and
8. The degree to which board members can be held personally liable for a defective reserve study.

If the governing board wishes to have all or part of the study performed by professionals, it must still make several important decisions. These include interviewing and hiring the consultants, assisting them in obtaining community data, reviewing the ***work product*** delivered by the consultants, and following up on consultants' recommendations for the reserve funding

account. Should a governing board elect to use consultants, the following should be established by the board:

- Identification of common area or common elements components, exclusive use components, quasi-structural components, and life-of-the-project components (with the assistance of association management);
- The interest rate for estimating income earned on reserve balances; and
- The funding goal of the reserve study, including the degree to which reserves are to be funded by annual assessments, and the need for special assessments.

As the governing board is accountable for quality of the study itself, it should carefully specify the work tasks and carefully review potential consultants with respect to previous experience, price, and recommendations from other communities. Following are some or all of the work tasks that may be performed by professionals.

Physical Analysis Products for Consultants

- Quantification of components;
- Documentation of maintenance assumptions and recommendations;
- Identification of useful life and remaining life of components, and replacement year; and
- Estimation of replacement cost in current and future dollars.

Financial Analysis Products for Consultants

- Spreadsheet modeling of reserve funding, and development of solution(s) meeting the funding goals of the association;
- Calculation of cash balance of reserve account by year;
- Estimation and explanation of reserve deficit;
- Recommendation of needed increases in reserve portion of assessment;
- Preparation of statement of limitations and assumptions of reserve analysis; and
- Preparation of reserve study information for association budget.

After determining the work tasks, the board must select the consultants or contractors, if any, who will perform all or part of the work. Possible outcomes of this decision-making process include:

- Hiring an independent engineering, appraisal, or construction cost-estimating firm to perform the physical analysis, and hiring an independent accountant experienced with community associations to produce the financial analysis and association budget;
- Hiring an organization with staff expertise to perform an integrated component and financial analysis;

The type of assistance that will be needed depends upon the nature of the product desired, the budget, and expertise available to the governing board. The governing board is ultimately responsible for the reserves study disclosures. The board should also consider its potential legal liability if the study does not meet statutory information requirements.

Recommendations from other community associations can often be helpful in determining which company or companies to hire for the reserve study. Organizations of CICs and related professionals can also be a resource to find qualified professionals. It is helpful to talk with people who have worked with any firm or consultant under consideration and to examine samples of related work.

The governing board should interview several companies and obtain samples of their work in order to get a sense of each company's qualifications, experience, and pricing structures. Appendix E contains partial lists of questions a governing board may use to ask a reserve study preparer as part of the interview process. The questions may be used in interviews with potential consultants, or used a written ***request for proposal***, along with a clear specification of the work tasks to be performed. Answers to these questions, as well as price, should help in the selection of any needed professionals.

Information the Governing Board Should Provide

Before it can provide a cost estimate, a consulting firm will need information from the governing board regarding the community and the scope of work. The governing board should provide potential consultants with the following:

- The size of the community – area and number of lots/units;
- Types of improvements in the common area/common elements – pools, clubhouses, etc.;
- Which portions of the reserve study the consulting firm is being asked to perform;
- A list and definition of major components;
- A statement of board policy about major components for which it is not requesting an estimate of replacement costs;
- Maintenance records, warranties, and other information regarding the condition of components;
- Information on planned changes or additions to major components;
- Copy of as-built construction drawings, if they exist;
- A copy of the previous reserve study, if one was conducted;
- Estimated replacement cash balance at beginning of next (nearest) fiscal year;
- A copy of the current or proposed association budget;
- A board estimate of long-term interest rate to be earned on reserve account cash balance; and
- Anticipated reserve expenses for the remaining year.

In some cases, a consulting firm might need further information to make its estimate. It will save time to ascertain a company's information requirements before the actual interview takes place.

Potential Problems

Many associations, especially if conducting a reserve study for the first time, may find they are lacking certain information that is necessary to complete the study. If so, they will need to retrieve and document this information either before the study is begun, or during the study itself. Here is a list of the more common problems that can be addressed during the course of doing a reserve study:

- The association does not have an established master list of major components;
- If a master list of components exists, it does not include all significant common area/common elements components listed in the governing documents or developer's drawings;
- Information on remaining life and current replacement cost has not been prepared for all major components;
- The association does not have a documented maintenance schedule and related assumptions for each major component;
- "Life-of-the-project" components are not mentioned in assumptions, or included in reserve budgeting;
- The association budget does not contain reserve study information or assumptions;
- There is no policy to distinguish reserve expenditures from operating expenses;
- No reserve funding goal has been established;
- There is no separate bank account(s) for reserve funds;
- No previous physical analysis or financial analysis has been conducted;
- The reserve deficit is staying constant or increasing over time;
- Special assessments are required to fund major repairs; and
- Current income from assessments does not equal or exceed dollar value of annual component wear.

Resources Used in Developing the Guidelines

California Department of Real Estate. (August 2010). *Reserve Study Guidelines for Homeowner Association Budgets.* State of California.

Community Associations Institute. (2018). *Reserve Specialist (RS) Designation: National Reserve Study Standards.* Community Associations Institute. https://www.caionline.org/pages/default.aspx.

Foundation for Community Association Research (FCAR). (2014). *Best Practices: Reserve Studies/Management.* Foundation for Community Association Research. Falls Church, Virginia.

Moss, J. R. (2018). *Virginia Common Interest Communities: A Resource for Volunteer Leaders, Members, Managing Agents and Business Partners* (2nd ed.). Jeremy Moss.

Nevada Department of Business and Industry. (2003). *Reserve Study Guidelines.* Prepared by the Lied Institute for Real Estate Studies. UNLV. State of Nevada.

Additional Resources

Community Associations Institute. (1994). *A Guide to Replacement Reserve Funds and Long-Term Reserve Funding.* Community Associations Institute. Falls Church, Virginia.

Community Associations Institute. (2013). *Reserve Funds: How and Why Community Associations Invest Assets.* 2nd Edition. CAI Press. Falls Church, Virginia.

Appendix A – Excerpts from Code of Virginia

Effective Until September 30, 2019	
§ 55-79.41	Condominium Act – Definitions
§ 55-79.93:1	Condominium Act - Annual budget; reserves for capital components
§ 55-426	Virginia Real Estate Cooperative Act – Definitions
§ 55-471.1	Virginia Real Estate Cooperative Act – Annual budget; reserves for capital components
§ 55-509	Property Owners' Association Act – Definitions
§ 55-514.1	Property Owners' Association Act - Annual budget; reserves for capital components

Effective October 1, 2019	
§ 55.1-1800	Property Owners' Association Act – Definitions
§ 55.1-1826	Property Owners' Association Act - Annual budget; reserves for capital components
§ 55.1-1900	Virginia Condominium Act - Definitions
§ 55.1-1965	Virginia Condominium Act - Reserves for capital components
§ 55.1-2100	Virginia Real Estate Cooperative Act – Definitions
§ 55.1-2147	Virginia Real Estate Cooperative Act – Annual budget; reserves for capital components

Code of Virginia
Title 55. Property and Conveyances
Chapter 4.2. Condominium Act

§ 55-79.41. Definitions

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of unit, infra.).

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

"Conversion condominium" means a condominium containing structures which before the recording of the declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of unit, infra.).

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to § 55-79.74:3;(ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55-79.74:3. The term "declarant" shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Executive organ" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

"Financial update" means an update of the financial information referenced in subdivisions C 2 through C 7 of § 55-79.97.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter

of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Meeting" or "meetings" means the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

"Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

"Officer" means any member of the executive organ or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Resale certificate update" means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of § 55-79.97. The update shall include a copy of the original resale certificate.

"Settlement agent" means the same as that term is defined in § 55-525.16.

"Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § 55-79.66.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of condominium unit, supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § 55-79.62.

"Unit owner" means one or more persons who own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person or persons holding an interest in a condominium unit solely as security for a debt.

1974, c. 416; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977;2001, c. 715;2002, c. 459;2003, c. 442;2008, cc. 851, 871;2015, cc. 93, 410.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55. Property and Conveyances [Repealed Effective October 1, 2019]
Chapter 4.2. Condominium Act

§ 55-79.83:1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the condominium instruments, the executive organ shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments, the executive organ shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55-79.41;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive organ deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-79.41;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459;2019, cc. 33, 44.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55. Property and Conveyances
Chapter 24. Virginia Real Estate Cooperative Act

§ 55-426. Definitions

When used in this chapter or in the declaration and bylaws, unless specifically provided otherwise or the context requires a different meaning, the following terms shall have the meanings respectively set forth:

"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55-458.

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

"Common elements" means all portions of a cooperative other than the units.

"Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55-444.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this act, a declarant is treated as the

owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55-444 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ 55-496 et seq.) of this chapter.

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of § 55-439 paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.

"Master association" means an organization described in § 55-456, whether or not it is also an association described in § 55-458.

"Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person who owns a cooperative interest, other than as security for

an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55-444 until that cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, who by means of a voluntary transfer acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures, and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, which secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to: (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 55-478 ;(ii) exercise any development right pursuant to § 55-446;(iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate which may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § 55-456;or (vii) appoint or remove any officer of the association, any master association or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion thereof.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

1982, c. 277; 2005, c. 436.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55. Property and Conveyances [Repealed Effective October 1, 2019]
Chapter 24. Virginia Real Estate Cooperative Act

§ 55-471.1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55-426;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-426;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2005, c. 436;2019, cc. 33, 44.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55. Property and Conveyances
Chapter 26. Property Owners' Association Act

§ 55-509. Definitions

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

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

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

"Common interest community" means the same as that term is defined in § 55-528.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through A 9 of § 55-509.5. The update shall include a copy of the original disclosure packet.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through A 7 of § 55-509.5.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown

on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"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.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 55-525.16.

1989, c. 679; 1991, c. 667; 1996, c. 618;1998, c. 623;2001, c. 715;2002, c. 459;2003, c. 422;2008, cc. 851, 871;2011, c. 334;2015, cc. 93, 410.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55. Property and Conveyances [Repealed Effective October 1, 2019]
Chapter 26. Property Owners' Association Act

§ 55-514.1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55-509;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-509;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459;2019, cc. 33, 44.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55.1. Property and Conveyances [Effective October 1, 2019]
Chapter 18. Property Owners' Association Act

§ 55.1-1800. (Effective October 1, 2019) Definitions

As used in this chapter, unless the context requires a different meaning:

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association or a committee that is exercising the power of the executive body by resolution or bylaw.

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

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

"Common interest community" means the same as that term is defined in § 54.1-2345.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

"Development" means real property located within the Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through 9 of § 55.1-1809. The update shall include a copy of the original disclosure packet.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § 55.1-1809.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"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.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

1989, c. 679, § 55-509; 1991, c. 667; 1996, c. 618;1998, c. 623;2001, c. 715;2002, c. 459;2003, c. 422;2008, cc. 851, 871;2011, c. 334;2015, cc. 93, 410;2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55.1. Property and Conveyances [Effective October 1, 2019]
Chapter 18. Property Owners' Association Act

§ 55.1-1826. (Effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1800 ;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components defined in § 55.1-1800;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-514.1; 2019, cc. 33, 44, 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55.1. Property and Conveyances [Effective October 1, 2019]
Chapter 19. Virginia Condominium Act

§ 55.1-1900. (Effective October 1, 2019) Definitions

As used in this chapter, unless the context requires a different meaning:

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

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents to or interests in such real property, lawfully subject to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" means, collectively, the declaration, bylaws, and plats and plans recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification recorded with a condominium instrument shall be deemed an integral part of that condominium instrument. Once recorded, any amendment or certification of any condominium instrument shall be deemed an integral part of the affected condominium instrument if such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit.

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium.

"Conversion condominium" means a condominium containing structures that before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a portion of the common elements within which additional units or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium that a declarant may convert into one or more units or common elements, including limited common elements, in accordance with the provisions of the declaration and this chapter.

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of its interest in a condominium unit not previously disposed of, including an institutional lender that may not have succeeded to or accepted any special declarant rights pursuant to § 55.1-1947; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), "declarant" does not include an institutional lender that acquires title by foreclosure or deed in lieu of foreclosure unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55.1-1947. "Declarant" does not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but does not include the transfer or release of security for a debt.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act has the meaning set forth in that section.

"Executive board" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and this chapter.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest in such land, within which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser that is in no way binding on the prospective purchaser and that may be canceled without penalty at the sole discretion of the prospective purchaser.

"Offer" means any inducement, solicitation, or attempt to encourage any person to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing that expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered shall be considered an "offer."

"Officer" means any member of the executive board or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value may be considered substantially identical within the meaning of §§ 55.1-1917 and 55.1-1918.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person, other than a declarant, that acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

"Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the plat and plans and rounded to the nearest whole number. Certain spaces within the units, including attic, basement, or garage space, may be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium; (ii) contract a contractable condominium; (iii) convert convertible land or convertible space or both; (iv) appoint or remove any officers of the unit owners' association or the executive board pursuant to subsection A of § 55.1-1943;(v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer, or the executive board; or (vi) maintain sales offices, management offices, model units, and signs pursuant to § 55.1-1929.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection D of § 55.1-1925.

"Unit owner" means one or more persons that own a condominium unit or, in the case of a

leasehold condominium, whose leasehold interest in the condominium extends for the entire balance of the unexpired term. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person holding an interest in a condominium unit solely as security for a debt.

1974, c. 416, § 55-79.41; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977;2001, c. 715;2002, c. 459;2003, c. 442;2008, cc. 851, 871;2015, cc. 93, 410;2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55.1. Property and Conveyances [Effective October 1, 2019]
Chapter 19. Virginia Condominium Act

§ 55.1-1965. (Effective October 1, 2019) Reserves for capital components

A. Except to the extent provided in the condominium instruments, the executive board shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments the executive board shall:

1. Conduct a study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1900;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1900;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-79.83:1; 2019, cc. 33, 44, 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55.1. Property and Conveyances [Effective October 1, 2019]
Chapter 21. Virginia Real Estate Cooperative Act

§ 55.1-2100. (Effective October 1, 2019) Definitions

As used in this chapter or in the declaration and bylaws, unless provided otherwise or unless the context requires a different meaning:

"Affiliate of a declarant" means any person that controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (a) is a general partner, officer, director, or employer of the person; (b) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this definition are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55.1-2132.

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

"Common elements" means all portions of a cooperative other than the units of such cooperative.

"Common expenses" means any expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55.1-2118.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this chapter, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated

interests have been allocated pursuant to § 55.1-2118 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert that (i) as part of a common promotional plan, offers to dispose of its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ 55.1-2173 et seq.).

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of subdivision 2 or 4 of § 55.1-2113 for the exclusive use of at least one unit but fewer than all of the units.

"Master association" means an organization described in § 55.1-2130, whether or not it is also an association described in § 55.1-2132.

"Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person that owns a cooperative interest, other than as security for an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55.1-2118 until that

cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, that, by means of a voluntary transfer, acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes (i) parcels with or without upper or lower boundaries and (ii) spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, that secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 55.1-2155;(ii) exercise any development right pursuant to § 55.1-2120;(iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate that may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § 55.1-2130;or (vii) appoint or remove any officer of the association, any master association, or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion of such estate or interest.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

1982, c. 277, § 55-426; 2005, c. 436;2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 55.1. Property and Conveyances [Effective October 1, 2019]
Chapter 21. Virginia Real Estate Cooperative Act

§ 55.1-2147. (Effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-2100 ;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-2100;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2005, c. 436, § 55-471.1; 2019, cc. 33, 44, 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX B - GLOSSARY

The following definitions are for common terms related to reserve studies.

Accrual Method: A means of saving for an upcoming expense at a constant rate, so that all money will be available when needed.

Accrued Fund Balance (AFB): The total accrued depreciation. It is an indicator against which the actual or projected reserve balance can be compared to identify the direct proportion of the "used up" life of the current repair or replacement cost. This number is calculated for each component, and the summed together for the association total. The following formula can be used to determine AFB: AFB = Current Cost x Effective Age/Useful Life.

As-built Plans: Drawings produced by the developer that show the actual characteristics of a community at the time when construction was completed.

Assessment: Monetary contribution required of each member of common interest community association to meet the association's expenses. Assessments are typically due once a month.

Association: A legal entity that manages a common interest community and enforces its governing documents. These include property owners' associations, condominium unit owners' associations, and proprietary lessees' associations in real estate cooperatives.

Capital Improvements: Additions to the association's common elements that previously did not exist. While these components should be added to the reserve study for future replacement, the cost of construction should not be taken from the reserve fund.

Cash Flow: The amount of money deposited into and withdrawn from a reserve account over a certain period of time.

Cash Flow Method: A method of developing a reserve funding plan where contributions to the reserve fund are designed to offset the variable annual expenditures from the reserve fund. Different reserve funding plans are tested against the anticipated schedule of reserve expenses until the desired funding goal is achieved.

Common Area or Common Elements: The portion of a common interest community that is owned jointly by all members of the association. In a property owners' association this portion is called a common area. In a condominium or real estate cooperative, these are called common elements.

Component: The individual line items in the reserve study developed or updated in the physical analysis. These elements form the building blocks for the reserve study. These components comprise the common elements of the community and typically are: 1. association responsibility,

2. with limited useful life expectancies, 3. predictable remaining useful life expectancies, and 4. above a minimum threshold cost. It should be noted that in certain jurisdictions there may be statutory requirements for including components or groups of components in the reserve study.

Component Full Funding: When the actual or projected cumulative reserve balance for all components is equal to the fully funded balance.

Component Inventory: The task of selecting and quantifying reserve components. This task can be accomplished through on-site visual observations, review of association design and organizational documents, a review of established association precedents, and discussion with appropriate association representatives.

Component Method: A method of developing a reserve funding plan where the total contribution is based on the sum of contributions for individual components.

Condition Assessment: The task of evaluating the current condition of the component based on observed or reported characteristics.

Contingency Fund: The portion of reserves allocated for unanticipated expenses, such as damage to components or unexpected cost increases.

Current Replacement Cost: See "replacement cost."

Deficit: An actual or projected reserve balance less than the fully funded balance.

Developer Drawings: Drawings produced by the developer before or during construction of the community. Such drawings may or may not match the community's actual attributes. (Also see "As-built Plans.")

Effective Age: The difference between useful life and remaining useful life. Not always equivalent to chronological age, since some components age irregularly. Used primarily in comparisons.

Financial Analysis or Funding Analysis: The portion of a reserve study where the current status of the reserves (measured as cash or percent funded) and a recommended reserve contribution rate (reserve funding plan) are derived, and the projected reserve income and expense over time is presented. The financial analysis is one of the two parts of a reserve study.

Fund Status: The status of the reserve fund as compared to an established benchmark such as percent funding.

Funding Goals: Independent of methodology utilized, the following represent the basic categories of funding plan goals:

- *Baseline Funding:* Establishing a reserve funding goal of keeping reserve cash balance above zero.
- *Component Funding:* Setting a reserve funding goal of attaining and maintaining cumulative reserves at or near 100% funded.
- *Statutory Funding:* Establishing a reserve funding goal setting aside the specific minimum amount of reserves of component required by local statutes.
- *Threshold Funding:* Establishing a reserve funding goal of keeping the reserve balance above a specified dollar or percent funded amount. Depending on the threshold, this may be more or less conservative than component full funding.

Funding Plan: An association's plan to provide income to a reserve fund to offset anticipated expenditures from that fund.

Funding Principles:

- *Sufficient Funds When Required*
- *Stable Contribution Rate over the Years*
- *Evenly Distributed Contributions over the Years*
- *Fiscally Responsible*

Governing Documents: Legal documents that organize the common interest community, establish contractual relationships between the parties, and establish the rights and responsibilities of individual owners, the association, authorized occupants, and the governing board. Governing documents typically consist of a declaration for the community, including a legal description of the property, plat(s) of the development, plans for development structures, and bylaws for the operation of the association. Governing documents may also include rules and regulations for the community. In a condominium, the governing documents are called *condominium instruments*.

Inflation: The rate at which the cost of components are expected to rise over time.

Interest: Money earned from reserve funds deposited into an account at a financial institution.

Inventory: A list of community-owned components are their attributes, such as age, quality, manufacturer, degree of wear, and useful life.

Life and Valuation Estimates: The task of estimating useful life, remaining useful life, and repair or replacement costs for the reserve components.

Maintenance Responsibilities Chart: A table or chart often included in association governing documents that details maintenance responsibilities in a common interest community between the association and individual owners.

Management Company or Common Interest Community Manager: An outside company hired by an association to perform some of the association's functions. These can include collection of assessments, and maintenance of the common area or common elements.

On-site Inspection: Physical inspection of one or more components to help determine their current physical state and remaining useful life.

Operating Budget: The portion of an association's budget that is allocated for frequently-occurring or minor expenses.

Percent Funded: The ratio, at a particular point of time (typically the beginning of the fiscal year), of the actual (or projected) reserve balance to the accrued fund balance, expressed as a percentage.

Physical Analysis: The portion of the reserve study where the component inventory, condition assessment, and life and valuation estimate tasks are performed. This represents one of the two parts of the reserve study.

Remaining Useful Life (RUL): The estimated time, in years, that a reserve component can be expected to continue to serve its intended function. Projects anticipated to occur in the initial year have "zero" remaining useful life. RUL is also referred to as remaining life (RL).

Replacement Cost: The cost of replacing, repairing, or restoring a reserve component to its original functional condition. The current replacement cost would be the cost to replace, repair, or restore the component during that particular year.

Reserve Account: An account at a bank or other financial institution containing funds intended solely to pay reserve expenses.

Reserve Balance or Reserve Funds: Actual or projected funds as of a particular point in time that the association has identified for use to defray the future repair or replacement of those major components which the association is obligated to maintain. Also known as reserves, reserve accounts, cash reserves. Based upon information provided and not audited.

Reserve Component: The individual line items in the reserve study developed or updated in the physical analysis. These elements form the building blocks for the reserve study. Components typically are the association responsibility, have limited useful life expectancies, have predictable remaining useful life expectancies, are above a minimum threshold cost, and are as required by local codes.

Reserve Provider: An individual that prepares reserve studies.

Reserve Study: A capital budget planning tool that can be used by an association to determine the physical status and repair/replacement cost of an association's capital components, and an analysis of an association's funding capacity to maintain, repair, and replace capital components.

Special Assessment: An assessment levied on the members of an association in addition to regular assessments. Governing documents or local statutes often regulate special assessments.

Surplus: An actual or projected reserve balance greater than the fully funded balance.

Useful Life (UL): Total useful life or depreciable life is the estimated number of years that a reserve component can be expected to serve its intended function if it is properly constructed in the present application and/or installation.

Work Product: The output from a reserve study, such as reports, tables, and charts.

Appendix C – List of Common Area/Common Elements Components

Note: The following is a list of components typically found in common interest communities. Please be advised this is not an exhaustive list, and does not include every type of component that may be found in a community.

A
Alarm systems, fire and intrusion
Antennas, satellite dish and other
Appliances
Asbestos encapsulation or removal
Awnings and other overhead coverings
B
Balconies (see also decks)
Benches
Boilers
Bulkheads
C
Concrete (walls, patios, sidewalks, curbs, and gutters)
D
Decks, pool and spa
Decks, residential
Display cases
Docks
Doors
Drainage systems
E
Electrical transformers
Electrical wiring and related fixtures in common area
Elevator, cab
Elevator, hydraulic, traction, etc.
Equipment, cleaning and maintenance
Equipment, communication and telephone
Equipment, entertainment, music/video systems
Equipment, exercise, recreational, etc.
Equipment, office
Equipment, pool, pumps, motors and filters
F
Fans, exhaust, garage, and other
Fences, chain link, wood, etc.
Fire escapes
Fire sprinklers and related equipment
Floor covering, carpet, tile, vinyl, etc.
Floor covering, wood replacement and refinishing

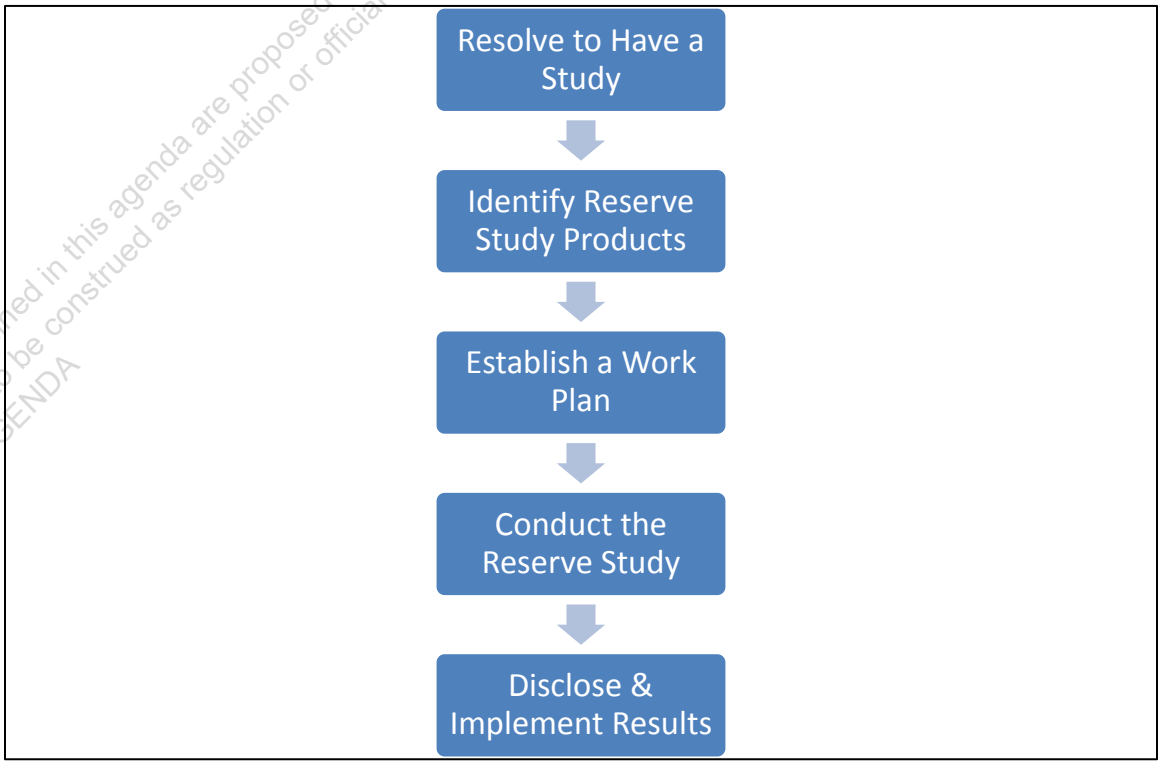
Fountains
Furnishings, lobby, clubhouse, etc.
G
Gates, iron, wood, etc.
Garage doors and hardware
Garbage enclosures
Gazebo
Generator
Gutters and downspouts
H
HVAC, air conditioning
HVAC, heating systems
I
Irrigation system, controllers
Irrigation system, piping, valves and sprinkler heads, pumps
K
Kiosks and message/communication centers
L
Lakes, ponds, and waterways
Landscaping, replacement of major trees and plants
Life safety system (exit signs, emergency lights)
Light fixtures, exterior
Light fixtures, interior
M
Mailboxes and centers
Masonry
Monitoring system, carbon monoxide
P
Paint and stain, exterior
Paint and stain, interior common area
Parking garages
Pavers
Paving
Perimeter walls
Planter boxes
Plumbing fixtures, exterior and interior
Plumbing, piping systems
Pool (plaster, mechanical equipment, deck,

furniture)
Posts, deck, lamp, etc.
Pumps, lakes, ponds, waterways, building systems
R
Racquetball courts
Railings
Retaining wall
Roof
S
Seawalls
Security gates, gate operator and motor, entry system
Septic tanks
Sewage ejector equipment
Siding and trim
Skylights
Slopes
Solar heating system, pool and spa
Solar heating system, residential
Spas
Stables and tack rooms
Stairs
Stormwater systems
Streets and drives, parking areas
Stucco, sandblasting and resurfacing
Subsurface utility piping
Sump pump equipment
Swimming pools
T
Tennis courts, resurfacing, lighting, fencing
Trash compactor
Trellises
V
Valves
Vehicles
Ventilation system, garage
W
Walkways, wood, brick, tile, etc.
Water heaters
Waterproof membranes
Windows

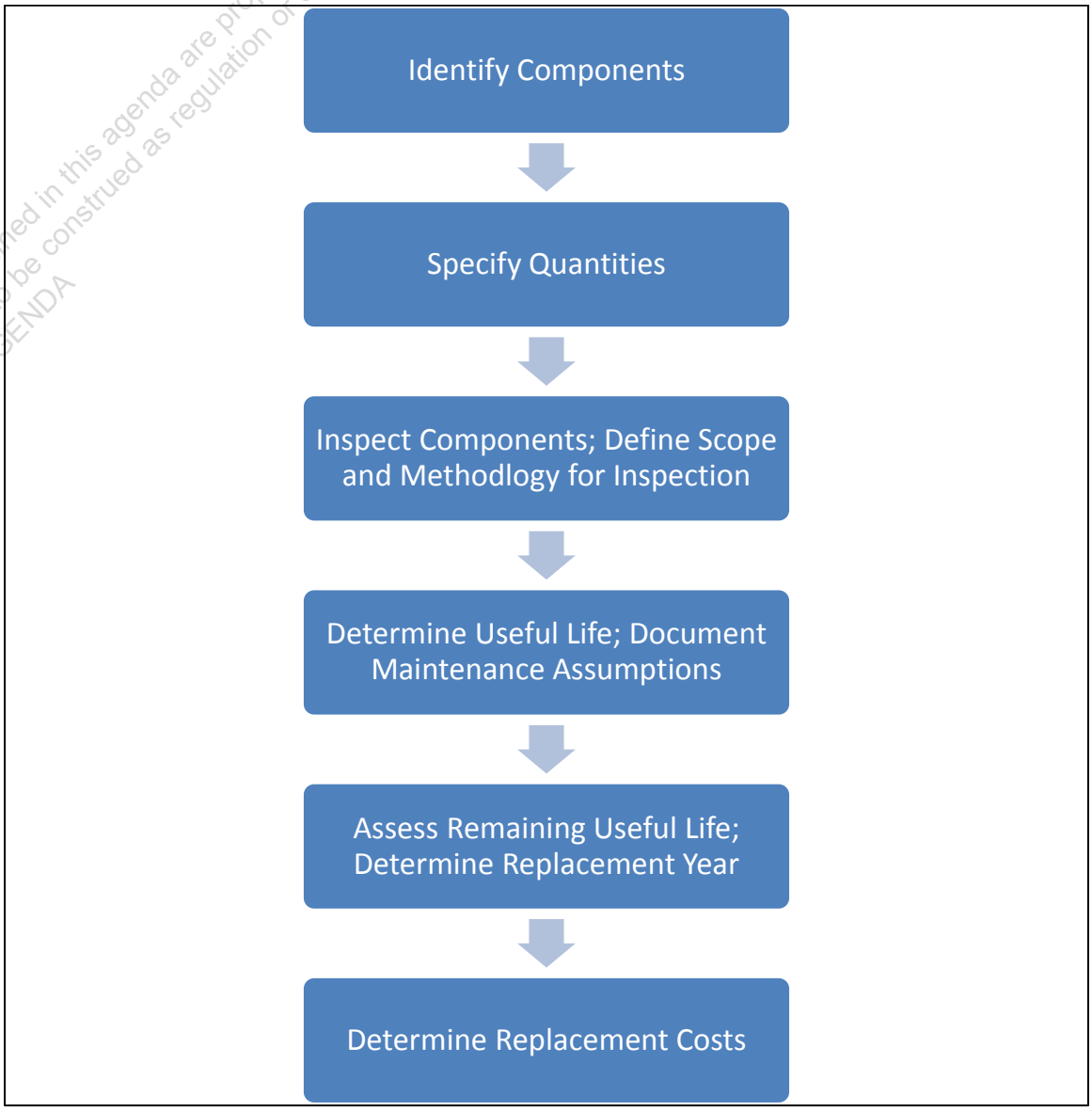
Appendix D – Flowcharts

Steps to Provide for Adequate Reserves
Steps in Physical Analysis
Steps in Financial Analysis

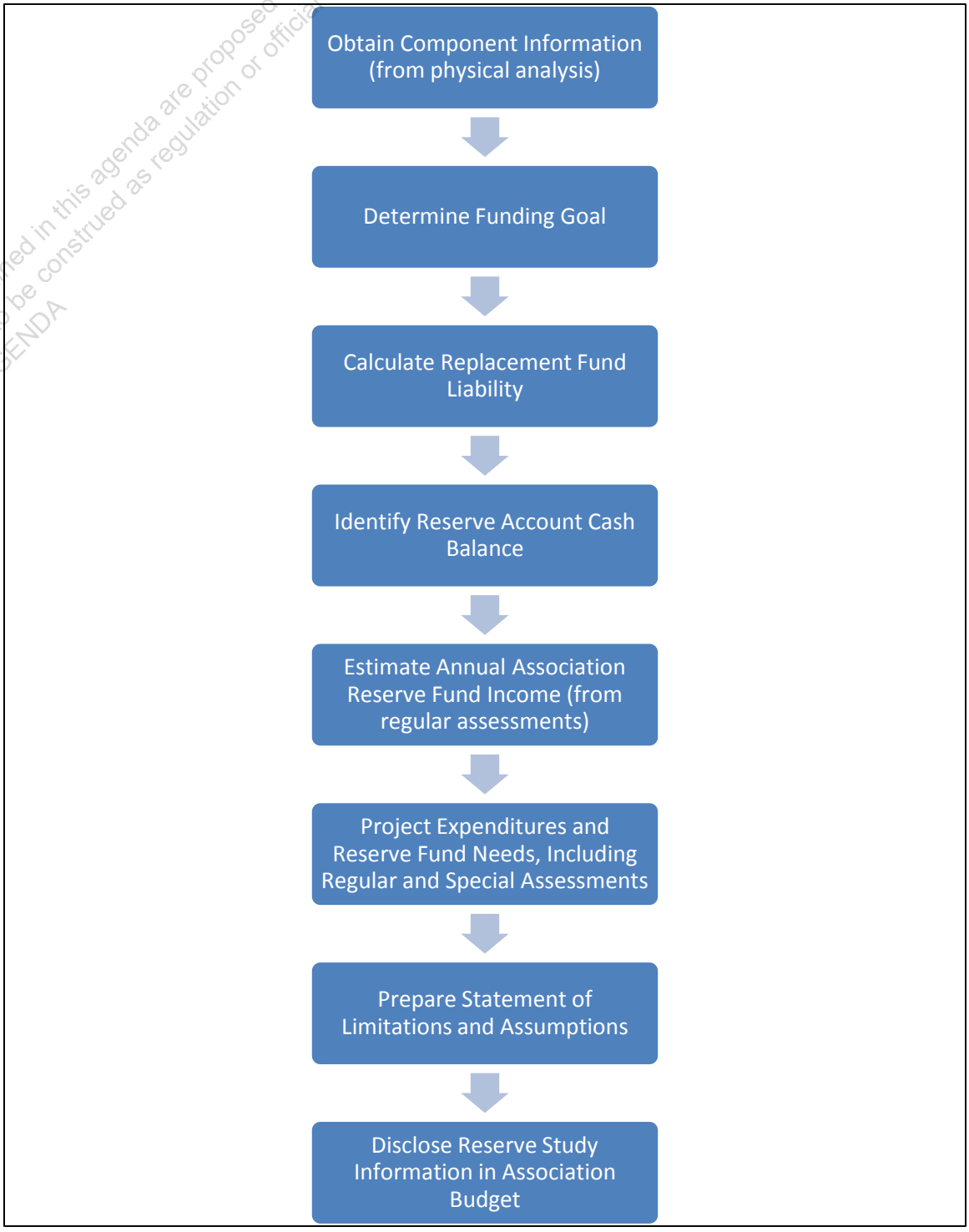
Steps to Provide for Adequate Reserves



Steps in the Physical Analysis Process



Steps in the Financial Analysis Process



Appendix E – Checklists and Interview Questions

Checklist	Physical Analysis
Checklist	Financial Analysis
Interview Questions	Physical Analysis Preparers
Interview Questions	Financial Analysis Preparers

Physical Analysis Checklist

Deciding which components to include:

- ☐ Relevant components mentioned in developer budget have been reviewed.
- ☐ Components mentioned in the governing documents have been reviewed.
- ☐ An on-site inspection for possible additional components has been made.
- ☐ The governing board has had a public discussion and has determined a policy stating its position on life-of-the-building, exclusive use, and quasi-structural components.
- ☐ The governing board has communicated the component list to the preparer of the physical analysis.

Specifying quantities of each component:

- ☐ As-built drawings have been consulted, if possible.
- ☐ An on-site inspection of each component and on-site count of each type of component have been made.
- ☐ The quality of each component has been determined and expressed in terms that identify a specific grade of material.

Determining the useful life (UL) of each component:

- ☐ Manufacturer warranties have been consulted whenever possible.
- ☐ Environmental factors that might affect useful life have been taken into account.
- ☐ Installation and materials have been determined to be consistent with each manufacturer's description; if not, an adjustment has been made to the remaining useful life estimated by the warranty or by the manuals.
- ☐ A standard manual has been consulted.
- ☐ Maintenance assumptions have been documented.

Assessing the remaining useful life (RUL) of each component:

- ☐ An on-site inspection of each component has been made.
- ☐ Past maintenance has been taken into account.
- ☐ Individuals with knowledge of the components have participated in the assessment of remaining life.
- ☐ The governing board has determined what level of maintenance is expected to achieve the remaining life estimated.

Determining the cost of replacement:

- ☐ A standard costing manual has been consulted or more than one tradesperson asked for a price for each component.
- ☐ If a manual is used, the "current" price of each component has been adjusted for the age of the data in the manual.
- ☐ If a manual is used, regional variations in price are taken into account.
- ☐ Cost of replacement includes cost of removing old component, if necessary.
- ☐ Adjustments have been made for grade or quality of materials or levels of maintenance of materials.

Financial Analysis Checklist

Funding goal:

- ☐ The association's funding goal for reserve replacement is clearly specified.

Budget information

- ☐ The budget contains estimated revenue and expenses on an accrual basis.
- ☐ The budget identifies total cash reserves currently set aside.
- ☐ The budget shows funds set aside for reserves in a separate account(s).
- ☐ The estimated remaining life of all major components is shown.
- ☐ The estimated current replacement cost of all major components is shown.
- ☐ The budget includes identification of methods of funding for future repair, replacement, or additions.
- ☐ The budget includes a statement on methods used to develop estimates and funding plan.

Association income and expense estimates:

- ☐ An appropriate component inflation factor has been used to estimate replacement cots in future years.
- ☐ The interest rate applied to association cash reserves is reasonable, and is an after-tax estimate.
- ☐ Needed special assessments are clearly identified.
- ☐ Assumptions about increases in the portion of regular assessments allocated to reserves are clearly specified.
- ☐ Income and expenditures are shown annually for the plan period.

Association cash balances:

- ☐ With reserve assessments, the cash balance (assets-planned reserve expenditures) is greater than zero in every year.
- ☐ The reserve deficit is estimated for the current year.
- ☐ The model shows a stable or decreasing reserve deficit (in constant dollars) over the plan period.

Physical Analysis Preparer Interview Guide

1. Do you have any personal or professional ties to this association? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
2. Do you have any personal or professional ties to the developer? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
3. If hiring an individual or sole practitioner: Do you do all the work yourself, or will you use subcontractors? (The association should approve all subcontractors.) Are you a Professional Reserve Analyst (an Association of Reserve Analysts designation) or a Reserve Specialist (a Community Associations Institute designation) or do you hold other professional designations? What is your training (formal education and workshops)?
4. If hiring a firm: Will work be done by employees of your firm? How do you train your employees?
5. With what professional associations are you actively involved?
6. What experience have you had with performing component studies?
7. What experience have you had in this locale?
8. May we see an example of a similar product done for another association?
9. What information do you require from the association in order to start?
10. When will you begin the study?
11. Will you be measuring the components or using drawings?
12. Will you make a physical inspection of each component? What percentage of components will you inspect for fences, walls, controllers, buildings, etc.?
13. How will you determine the cost of replacement?
14. What written sources will be used?
15. How long will it be before we have the final product?
16. Will the report provide the estimated useful life of each component?
17. Will the report provided the estimated remaining life of each component?
18. Will the report provide the current costs of repair or replacement of each component?
19. Will the report provide the future costs of repair or replacement for each component and/or the inflation rate to be applied to each component?
20. Will the report provide information on proper maintenance to help assure realization of the estimated remaining life of each component? Will the report include visuals such as photographs or video?
21. Do you have liability insurance?
22. Do you have workers' compensation insurance?
23. Please provide three references (name, phone, nature of work).
24. Cost for revisions and/or updates.

Financial Analysis Preparer Interview Guide

1. Do you have any personal or professional ties to this association? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
2. Do you have any personal or professional ties to the developer? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
3. If hiring an individual or sole practitioner: Do you do all the work yourself, or will you use subcontractors? (The association should approve all subcontractors.) Are you a Professional Reserve Analyst (an Association of Reserve Analysts designation) or a Reserve Specialist (a Community Associations Institute designation) or do you hold other professional designations? What is your training (formal education and workshops)?
4. If hiring a firm: Will work be done by employees of your firm? How do you train your employees?
5. With what professional associations are you actively involved?
6. What experience have you had with community association budgeting?
7. May we see an example of a completed financial analysis?
8. What information do you require from the association in order to start?
9. When will you begin the study?
10. How long will it be before we have the final product?
11. Will the report provide current and future estimated liability computations?
12. Will the report provide current and future estimated cash balances by year?
13. Will the report provide current and future repair replacement costs?
14. Will the report present alternative funding plans?
15. Will the report provide a description of assumptions and methodology, a narrative funding plan, and a graphic depiction for easier board and member understanding?
16. Will the report tell how much of a monthly contribution is needed for the reserves?
17. Do you have professional liability insurance?
18. Please provide three references (name, phone, nature of work).

Appendix F – Sample Financial Analysis

Sample Financial Analysis – Estimated Cash Requirements by Year

(30 year plan – 3 components; values shown for years 1-5, 15, and 30 only)

Major Component	Estimated Useful Life	Estimated Remaining Life	Estimated Current Cost to Replace	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Painting	5	2	$10,000			$10,000					
Paving	7	3	$14,000				$14,000				
Roofing	15	4	$30,000					$30,000			
Total Costs			$54,000			$10,000	$14,000	$30,000	$0	$0	$0
Component cost increase factor @ 4.6% per annum					1.00	1.046	1.094	1.144	1.197	1.877	3.685
Estimated replacement cost, in scheduled year (apply cost factor to total replacement costs)					$0	$10,460	$15,318	$34,333	$0	$0	$0

Cash Flow Forecasts	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Assessments, regular		$1,500	$1,800	$2,160	$2,592	$3,110	$10,906	$30,515
Assessments, special		$0	$0	$0	$30,000	$0	$0	$0
After-tax interest reserve account income, @ 5.775%		$1,271	$1,430	$1,013	$312	$229	$1,519	$6,482
Total cash receipts		$2,771	$3,230	$3,173	$32,904	$3,339	$12,426	$36,997
Major component costs (from total above)		$0	$10,460	$15,318	$34,333	$0	$0	$0
Cash receipts – cash disbursements		$2,771	($7,230)	($12,145)	($1,430)	$3,339	$12,426	$36,997
Cash balance, beginning of year		$22,000	$24,771	$17,541	$5,396	$3,967	$26,311	$112,241
Cash balance, end of year	$22,000	$24,771	$17,541	$5,396	$3,967	$7,306	$38,737	$149,238

Summary	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Estimated liablility (total from next page)	$36,000	$43,932	$52,518	$50,461	$43,095	$15,026	$74,602	$154,173
Less cash balance	$22,000	$24,771	$17,541	$5,396	$3,967	$7,306	$38,737	$149,238
Estimated unfunded liability	$14,000	$19,162	$34,977	$45,065	$39,128	$7,720	$35,865	$4,935
Estimated unfunded liability per unt (35 units)	$400	$547	$999	$1,288	$1,118	$221	$1,025	$141

Sample Financial Analysis – Computation of Major Component Liability by Year

Major Component Replacement Liability		End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Painting	Useful life	5	5	5	5	5	5	5	5
	Remaining life	2	1	0	4	3	2	2	2
	Replacement cost	$10,000	$10,460	$10,941	$11,971	$11,971	$12,522	$19,632	$38,543
	Liability	$6,000	$8,368	$10,941	$2,394	$4,788	$7,513	$11,779	$23,126
Paving	Useful life	7	7	7	7	7	7	7	7
	Remaining life	3	2	1	0	6	5	2	1
	Replacement cost	$14,000	$14,644	$15,318	$16,022	$16,759	$17,530	$27,485	$53,961
	Liability	$8,000	$10,460	$13,130	$16,022	$2,394	$5,009	$19,632	$46,252
Roofing	Useful life	15	15	15	15	15	15	15	15
	Remaining life	4	3	2	1	0	14	4	4
	Replacement cost	$30,000	$31,380	$32,823	$34,333	$35,913	$37,564	$58,897	$115,630
	Liability	$22,000	$25,104	$28,447	$32,044	$35,913	$2,504	$43,191	$84,795
Total liability		$36,000	$43,932	$52,518	$50,461	$43,095	$15,026	$74,602	$154,173

Appendix G – Sample Summary Report

Reserve Study Summary for (Name of Association)
(Date)

This reserve study is an assessment of the property and contains projections regarding anticipated future projects and expenses necessary to maintain the property in good condition. Included are the major components of the community's property that are likely to require repair, restoration, or replacement during the next (##) years. Excluded are items covered in the annual operating budget and items that are not community property.

The reserve study and this summary were prepared by (name of individual(s)). The previous reserve study was done by (name of individual(s)) in (date). The property was originally constructed in (date).

This study provides a rational basis for the Board of Directors to make decisions about annual budgets and future funding. The report contains a financial analysis of possible methods of funding the projected future expenses. These are to be understood as examples only, not as mandated solutions. Only the Board has the responsibility and authority to decide funding.

A reserve study is not a spending plan. The Board should assess the condition of the property each year and make spending decisions based on current circumstances. The Board will review the preparer's recommendations and make decisions accordingly. The reserve analyst has no authority to decide assessments or spending.

In calculating funding requirements for reserves, the following factors were considered:

- All common element components, their quantities, and expected service lives
- The current conditions, remaining service lives, and values of the components
- The impact of cost inflation over time

Reserve funding needs were calculated by estimating the cost and timing for repair, restoration, or replacement projects during the next (##) years. After accounting for cost inflation, assumed to be (# percent) annually, the total reserve expenses by year were estimated for the next (##) years.

Funding for these estimated expenses was calculated using the (type of method of used) by taking the current amount in reserves ($dollars) and the current annual assessment for reserves ($dollars), and calculating the future assessments needed to pay for the future expenses.

The following is a summary of the projected reserve expenses and assessments for the next five years.

Year	Expenses	Assessments	Amount in Reserves	Comments
20##	$####	$####	$####	
20##	$####	$####	$####	
20##	$####	$####	$####	
20##	$####	$####	$####	

Details are in the full reserve study report dated (date). The estimates prepared are subject to review and revision by the Board. The (applicable statute) requires that a reserve study must be done at least every five years.

Appendix H – Calculating Reserve Deficit Using Interest and Inflation

For this example, use the following information for replacement of a roofing component.

(Note: The ≈ symbol refers to a rounded figure.)

Component	Age in Years as of 12/31/2018 (Effective Age)	Estimated Useful Life (UL)	Estimated Remaining Useful Life (RUL)	Replacement Cost	Interest Rate	Inflation Rate
Roofing (wood shingle)	11	15	4	$30,000	5% (.05)	3% (.03)

$$Desired\ Balance = \left(\frac{Replacment\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age\right) + \left(\frac{\frac{Replacement\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age}{(1 + Interest\ Rate)^{Remaining\ Life\ (RUL)}}\right) - \left(\frac{\frac{Replacement\ Cost}{Useful\ Life\ (UL)} \times Effective\ Age}{(1 + Inflation\ Rate)^{Remaining\ Life\ (RUL)}}\right)$$

$$Desired\ Balance = \left(\frac{\$30{,}000}{15} \times 11\right) + \left(\frac{\$30{,}000/15 \times 11}{(1 + .05)^4}\right) - \left(\frac{\$30{,}000/15 \times 11}{(1 + .03)^4}\right)$$

$$Desired\ Balance = (\$22{,}000) + \left(\frac{\$22{,}000}{(1.05)^4}\right) - \left(\frac{\$22{,}000}{(1.03)^4}\right)$$

$$Desired\ Balance = (\$22{,}000) + \left(\frac{\$22{,}000}{1.21550625}\right) - \left(\frac{\$22{,}000}{1.12550881}\right)$$

$$Desired\ Balance = (\$22{,}000) + (\approx \$18{,}099.45) - (\approx \$19{,}546.72)$$

$$Desired\ Balance = \$20{,}552.73 \approx \$20{,}553$$

CAI PUBLICATIONS

CONDOMINIUM SAFETY PUBLIC POLICY REPORT

RESERVE STUDIES AND FUNDING, MAINTENANCE, AND STRUCTURAL INTEGRITY

OCTOBER 2021

community
ASSOCIATIONS INSTITUTE

www.caionline.org

Dedicated to

the memory of those who lost their lives,

those who lost loved ones,

and those who lost their homes

in the tragic collapse of Champlain Tower South

in Surfside, Fla., on June 24, 2021.

We also devote this report to the first responders who risked their lives and worked tirelessly to rescue, support, protect, and provide closure in the face of an unimaginable disaster.

In addition, we are beyond grateful for the countless volunteer organizations and individuals offering resources, aid, support, and comfort to the survivors and community in Surfside.

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EXECUTIVE SUMMARY

Following the tragic partial collapse of Champlain Tower South in Surfside, Fla., on June 24, 2021, CAI convened task forces to explore changes to laws and best practices for the community association housing model that may help other communities avoid this type of devastation and to provide solutions for legislators seeking to address building safety in their districts.

Over a three-month period, more than 600 people participated in CAI's process through conversations, surveys, research, interviews, and identifying clear recommendations. Reserve specialists, attorneys, insurance and risk management professionals, developers, engineers, architects, community association managers, and homeowner leaders contributed. The teams also engaged stakeholders across the globe and across a wide range of disciplines, expertise, interests, and organizations.

The task forces met weekly to analyze and discuss findings of the surveys and interviews and began developing the public policy positions. They vetted ideas with experts in their field and local practitioners, including board members, managers, and business partners, to ensure practical, reasonable, and meaningful recommendations. The teams were guided by data, inclusivity, and transparency.

An important consideration in this process was meeting the demands of multiple stakeholders—state legislators seeking to introduce legislation in 2022 sessions, congressional representatives looking for immediate solutions for their constituents, federal housing finance agencies hoping to mitigate their risks, the private insurance market trying to mitigate their risks, and homeowners and residents of condominiums and housing cooperatives expecting to feel safe in their homes.

The task forces submitted their final public policy positions for consideration by the CAI Government & Public Affairs Committee with final approval by the CAI Board of Trustees.

This report provides very specific public policy recommendations on the following major topics: **reserve studies and funding; building maintenance; and structural integrity.**

While the task forces believe it is important to educate legislators and other stakeholders about the purpose and importance of reserve studies and funding plans, it is unknown if updated standards in this arena would've prevented the collapse of Champlain Tower South. Reserve studies are a planning tool to assist with budgeting for replacement or substantial repairs based on life cycle and not intended to evaluate existing building conditions or to specify corrective repairs. Local building inspectors play a key role in the execution of structural integrity public policy. Those with the authority to provide a certificate of occupancy and otherwise condemn a building have the authority and obligation to inspect.

The recommendations in this report include specific public policies CAI believes should be considered for adoption into state law to support the existing statutory framework for the development, governance, and management of community associations, also referred to as common-interest developments, common-interest communities, planned communities, condominiums, townhomes, housing cooperatives, and homeowners associations.

In addition to the data collected from CAI membership through the development process of these public policies, we turned to the 2020 Homeowner Satisfaction Survey (Foundation for Community Association Research , 2020) conducted by Zogby International. Survey respondents were asked about their understanding of reserve studies and whether they support reserve funding in their communities. Here are their responses:

If you live in a condominium or homeowners association, does your community have a reserve study to help plan for repair and replacement of major components owned by the community?
60% Yes
22% Not Sure
18% No

Does your community have a plan to fund the repair and replacement of major components owned by the community?
75% Yes
16% Not Sure
9% No

Do you support annually investing in your community to build a fund for future repair and replacement of major components owned by the community?
71% Yes
13% Not Sure
16% No

Building Maintenance and Structural Integrity

CAI recommends additional requirements by developers during the development process and prior to transition to the homeowners. CAI worked closely with developers on these recommendations. We believe these recommendations are balanced, equitable, and approved by the participating developers and their agents. Structural integrity is addressed through statutory mandated building inspections with a baseline inspection when the building is 10 years old, another inspection at 20 years, and every five years thereafter. Inspections are based on the American Society of Civil Engineers (ASCE) published protocol for building inspections (ANSI).

According to a recent Stanford University report titled "Guidelines for Life Cycle Cost Analysis," as a building ages, the cumulative cost of operating and maintaining facilities significantly impacts the overall budget, not just the maintenance budget. The greater issue with deferred maintenance is that it only grows in scope—and cost—the longer it is deferred, resulting in 30 times the cost to repair versus keeping up with routine maintenance.

According to ***Breaking Point: Examining aging infrastructure in community associations***, (Research, 2019) more than three-quarters (80%) of community managers, board members, and contractors in community associations surveyed across the U.S. felt it was critical that their association have adequate reserves in the event of a major infrastructure failure or construction need.

Nearly half (40%) of those surveyed considered deteriorating infrastructure as a top-ranked concern. More than two-thirds (70%) of survey respondents indicated that maintaining property values was of primary importance.

Finally, the approved policies provide support to community association elected boards and urge them to follow the advice of professionals, especially in circumstances that are related to life, health, and safety.

Note: Model statutory language supported by the policy recommendations outlined in the report will be released in November 2021.

Federal Resources and Policy Priorities

CAI's Federal Legislative Action Committee identified resources to support localities: building up the expertise needed to conduct inspections with qualified engineers or architects; and supporting the increase in resources needed to conduct regular structural inspections. These resources can be found under the federal priorities portion of the report.

CAI's federal team conducted a deep analysis on federal law and regulation that may be used as vehicles to incentivize timely compliance with these recommended positions with an emphasis on building inspection and structural integrity. The federal priorities provide solutions to address financial burdens on municipalities and households resulting from periodic structural analysis inspections of covered community association housing, including:

Solutions to mitigate financial burdens on local governments of increased structural analysis inspections by clarifying—or authorizing, if necessary—that inspection of aging covered community association housing is an eligible use of Community Development Block Grant (CDBG) funds.

Engaging federal housing agencies to develop corrective maintenance loan products that may include government insured or guaranteed blanket condominium rehabilitation loans secured by assessment income.

Securing amendments to the Internal Revenue Code to provide pre-loss access to disaster recovery tax deductions and authorizing a federal income tax deduction for interest paid on community association loans funding corrective maintenance.

Securing pre-disaster access to **federal uninsured loss disaster personal income tax deduction** for community association households following determination of major risk of structural failure for a 10-year period.

These policy recommendations must be supported by strong best practices for community association leaders, particularly condominium and cooperative board members.

The Foundation for Community Association Research's *Best Practices Report: Reserve Studies and Reserve Management* is included in the index and provides excellent procedures for homeowner leaders and professional managers to put into practice immediately. CAI continues to develop additional guidance and best practices for condominium and housing cooperative boards, their managers, building inspectors, developers, accountants, and reserve specialists.

As the September/October 2021 cover of *Common Ground*™ magazine, CAI's flagship publication, promises:

We mourn. We pray. We vow to help.

OVERVIEW & INTRODUCTION

Days after the June 24 tragic and shocking partial collapse of Champlain Tower South, Community Associations Institute (CAI) leadership met to discuss what we could do to make sure a tragedy like this never happens again.

CAI began outreach to other organizations to help inform the policy recommendations. Our contacts included the National League of Cities, National Society of Professional Engineers, National Association of Counties, Building Owners & Managers Association, International Code Council, Building Inspectors Association, American Property & Casualty Association, American Society of Civil Engineers, and National Association of Housing Cooperatives. These conversations are ongoing as we continue our work together to make buildings safer.

Condominium buildings are home to millions of people in the U.S., and government officials at the local, state, and federal levels immediately began exploring changes to prevent a similar building collapse.

As the leading international organization for condominiums, housing cooperatives, and homeowners associations, CAI found itself uniquely positioned to bring together the expertise, experience, knowledge, and perspective of a wide range of stakeholders—condominium and cooperative board members, homeowners, condominium and community association managers, attorneys, bankers, developers, insurance professionals, engineers, reserve study providers, and others—to discuss a response to the Champlain Tower South tragedy.

CAI's member volunteers immediately began analyzing current best practices, standards, and public policies related to condominium structural requirements. Three working groups were appointed with the purpose of identifying recommendations, changes, and updates CAI could consider providing to local, state, and federal legislators as they discuss legislative solutions to prevent this type of disaster in their districts.

Building maintenance and structural integrity. Led by Robert M. Diamond, a fellow in CAI's College of Community Association Lawyers (CCAL) in Virginia; Mitch Frumkin, RS, a professional engineer (PE) licensed by the National Society of Professional Engineers in New Jersey; and Stephen Marcus, a CCAL fellow in Massachusetts.

Reserve study and funding plans. Led by Robert Browning, PCAM, RS, in California; Mitch Frumkin, PE, RS; and Lisa Magill, a CCAL fellow in Florida.

Insurance and risk management. Led by Jennifer Eilert, CIRMS, in Illinois; Phil Masi, CIRMS, in Florida; A.J. Scott, CIRMS, in California; and Cliff Treese, CIRMS, in California. *Currently, there are no specific policy recommendations from this task force.*

Each task force had a similar objective: immediately and quickly engage stakeholders to identify necessary changes to best practices, standards of practice, and public policy positions.

Federal solutions and policy priorities. As the task forces worked diligently, CAI's Federal Legislative Action Committee began talking with members of Congress (especially Florida representatives), Fannie Mae, Freddie Mac, Federal Housing Finance Agency, and the Department of Housing and Urban Development about potential policy changes. CAI identified several federal policy solutions to support financial stability, maintenance, building inspection, and structural integrity.

Process

Once the task force leadership was appointed, an open call to join the groups was released. The teams met weekly with members from across the U.S., and included attorneys, community association managers, reserve specialists, engineers, insurance experts, homeowner leaders, and others. Nearly 400 people served on the task forces. All meetings were open, and all perspectives were invited and welcomed.

The task forces conducted research, held interviews with experts from around the world, studied statutes, met with legislators, surveyed CAI members, and participated in town hall meetings. The groups evaluated building inspection requirements in Australia, Canada, Spain, Singapore, and localities throughout the U.S.

In addition to the weekly group meetings, the task force leaders connected weekly to debrief, ensure their work was not overlapping, and to share progress. Since so many people were involved in the activities, we used surveys to capture support of positions. The recommendations moved forward only if an overwhelming majority of survey participants supported the position.

The task forces continually revisited survey data and feedback to adjust the recommendations. The final policy positions were vetted through two more surveys that collected responses from:

1. CAI legislative action committees, Member Representation Groups, and CCAL Board of Governors—161 respondents
2. Community Conversation Surfside, Fla. (webinar), attendees—68 respondents

The survey results indicated overwhelming support (at least 75%) for most policy positions. None of the positions garnered less than 60% support. For additional details, find the full survey results in the appendix.

In the end, there was a tremendous amount of conversation and different perspectives, which we believe contribute to the quality of these recommendations.

2021 Timeline

July 1	Task force leaders appointed.
July 12	Task forces begin work.
Aug. 16	Task forces provide status report to CAI Board of Trustees.
Aug. 18	Task forces present policy recommendations to CAI Government & Public Affairs Committee and state legislative action committee members during open forum (in person and virtual).
Aug. 20	CAI hosts townhall to discuss policy recommendations (in person and virtual).
Aug. 23	The vetting process continues through conversations, meetings, surveys, emails, and blog posts with CAI state legislative action committees, College of Community Association Lawyers, Homeowner Leaders Council, Business Partners Council, and Community Association Managers Council.
Sept. 1	CAI holds a Community Conversation (virtual) with membership to discuss public policy recommendations.

Sept. 14	CAI Government & Public Affairs Committee approves task force public policy recommendations for reserve studies and funding and building inspections and structural integrity.
Oct. 12	Recommendations discussed with all state legislative action committee members.
Oct. 28	CAI Board of Trustees approves final public policy recommendations.
Oct. 29	CAI releases Condominium Safety Public Policy Report: Reserve Studies and Funding, Maintenance, and Structural Integrity.

BACKGROUND

About Community Associations Institute

CAI is an international membership organization dedicated to building better communities. With over 42,000 members, CAI has 63 chapters within the U.S., Canada, South Africa, and the United Arab Emirates as well as relationships with housing leaders in several other countries, including Australia, Spain, and the United Kingdom. CAI provides information, education, and resources to the homeowner volunteers who govern communities and the professionals who support them. CAI members include community association board members and other homeowner leaders, community association managers, association management firms, and other professionals who provide products and services to communities. CAI serves community associations and homeowners by:

- Advancing excellence through seminars, workshops, conferences, and education programs, most of which lead to professional designations for community association managers and other industry professionals.
- Publishing the largest collection of resources available on community association management and governance, including website content, books, guides, *Common Ground* ™ magazine, and specialized newsletters.
- Advocating on behalf of common-interest communities and industry professionals before legislatures, regulatory bodies, and the courts.
- Conducting research and serving as an international clearinghouse for information, innovations, and best practices in community association development, governance, and management.

We believe homeowners associations and condominium associations should strive to exceed the expectations of their residents. We work toward this goal by identifying and meeting the evolving needs of the professionals and volunteers who serve associations, by being a trusted forum for the collaborative exchange of knowledge and information, and by helping our members learn, achieve, and excel. Our mission is to inspire professionalism, effective leadership, and responsible citizenship—ideals reflected in associations that are preferred places to call home.

About the Community Association Housing Model in the U.S.

According to the Foundation for Community Association Research, there are 74.1 million Americans living in approximately 355,000 community associations in the U.S. A community association is commonly known as a condominium, homeowners associations, or housing cooperative. It is estimated between 25–27% of the U.S. population lives within a community association.

The Foundation for Community Association Research estimates there are between 131,450–156,000 condominium associations and cooperatives in the U.S. housing between 27–32 million Americans. While there are numerous high-rise buildings, especially in California, Florida, Hawaii, Illinois, New Jersey, New York, and Massachusetts, the Foundation estimates the average number of units in a condominium is 60.

$9.2 trillion is the value of homes in community associations.

$103.2 billion is the total amount of assessments paid each year by homeowners. Assessments fund many essential association obligations, including professional management services, utilities, security, insurance, common area maintenance, landscaping, capital improvement projects, and amenities like pools and clubhouses.

$25.8 billion is the total assessment dollars contributed to community association reserve funds for the repair, replacement, and enhancement of common property, e.g., replacing roofs, resurfacing streets, repairing swimming pools and elevators, meeting new environmental standards, and implementing new energy-saving features.

2.4 million volunteers are elected by their neighbors to their community association boards of directors and committees. Community association boards guide provide governance and other critical services for the community usually funded by property taxes.

While community associations come in many forms and sizes, all associations share three basic characteristics: (1) membership in the association is mandatory and automatic for all property owners; (2) certain legal documents bind all owners to defined land-use requirements administered by the community association; and (3) all property owners pay mandatory lien-based assessments that fund association operations.

The community association housing model is actively supported by local government as it permits the transfer of many municipal costs to the association and homeowners. Today, many community associations deliver services that once were the exclusive province of local government.

Financial Model of Community Associations

- Community associations are usually organized as nonprofit corporations in the state. (Note: They usually do **not** have a nonprofit tax determination by the IRS, i.e., 501c). However, they file taxes as a nonprofit corporation.
- The nonprofit corporation has shareholders (every owner in the community). The owners each pay their fair share of the nonprofit corporation expenses by paying assessments. Further, the owners select, by election, the board of directors to make decisions on their behalf.
- Assessments can be thought of like property taxes. The assessments pay for the services delivered by the community, including trash and snow removal, street maintenance, lighting, insurance, recreation facilities, stormwater management, landscaping, and more.
- Assessments are usually the only form of income for an association.
- Association expense are usually fixed expenses that are spent on contracts like trash removal, elevator maintenance, roof maintenance, landscaping, street maintenance, insurance, and payment for maintenance and repair of other amenities.
- Community association boards of directors have an obligation, by statute, to act in the best interests of the corporation, and one of these actions is to work to ensure the financial health of the

community. One way to do this is to continue to manage the financial affairs by collecting assessments from the owners.

- The collection of community association assessments is a very serious and important responsibility of the governing board. Failing to collect assessments may impair a community association's ability to pays its bills, provide essential services, obtain financing for continued operations, and may impact the ability of a potential purchaser to obtain a mortgage.

RESERVE STUDY AND FUNDING POLICY POSITION

(Adopted and Approved October 2021)

CAI SUPPORTS STATE LAW THAT:

1. Require reserve studies to be prepared in compliance with National Reserve Study Standards.

2. Mandate reserve studies (Level IV Preliminary, Community Not Yet Constructed) pre/during construction and (Level I Full) at the time of transition/turnover from developer control to homeowner control. Reserve study with disclosures to be included with Purchase and Sale agreements.

3. Mandate reserve studies (Level I Full; Level II Update with Site Visit Review) that support community associations; including condominiums, housing cooperatives, and planned communities with major shared components for the member's unit or dwelling or significant infrastructure/site improvements (i.e., roads, street lighting, accessory buildings, etc.)
    - Significant infrastructure or major shared components are to be defined as associations whose aggregate replacement costs exceed $10,000.

4. Mandate reserve studies (Level II Updates with Site Visit Review) on a periodic basis.

5. Mandate reserve funding for community associations; including condominiums, housing cooperatives, and planned communities with major shared components in buildings containing dwellings. Include practical legislative process for community associations to comply with funding requirements. Note: funding is based on the reserve study funding plan. Communities should be allowed an opportunity to slowly catch up to reserve funding upon passage of legislation.
    - Significant infrastructure or major shared components are to be defined as associations whose aggregate replacement costs exceed $10,000.

6. Mandate disclosure; including summary of reserve fund financial condition, and funding plan, during annual budgeting (standardized disclosure).

7. Mandate disclosure to new buyers of reserve study, including reserve study funding plan (standardized disclosure).

8. Require reserve studies to be conducted by a reserve specialist, reserve professional, or other qualified professional, i.e., an engineer, an architect.

9. Address funding for emergent life safety issue repairs by authorizing the association governing board to special assess or borrow funds without a vote of the membership.

CAI OPPOSES STATE LAW THAT:

- Allows owners to waive/opt-out of reserve funding requirements.
- Prohibits including structural and/or engineering inspections by appropriate professionals and the financial impact of said inspections in the reserve study and funding plan.
- Restrict the borrowing from reserves for other purposes.

BEST PRACTICE RECOMMENDATIONS

These are not statutory recommendations, rather best practice recommendations.

1. Planning and funding for preventative maintenance schedule, repairs, and replacement for aging buildings and other structural components **that are not** currently addressed in standard reserve studies.
2. Level I Full or Level II Update with Site Visit Review should be completed no less than every five years (legislative) and three-years (best practices).
3. Reserve funding for communities without significant or major common improvements recommended in amounts based on anticipated cost to repair or replace as determined by governing board.

CAI resources that may be helpful for understanding reserves and reserve studies, include the following:

- CAI National Reserve Study Standards
- Explanation of Reserve Study Standards
- Best Practices: Reserve Studies/Management

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Summary of State Reserve Fund Laws

(As of October 2021)

Many states have enacted legislation dealing with community association reserve and operating funds to protect owners from fiscal problems and financial hardship. More states may enact similar legislation as community associations continue to gain popularity. The following is a summary of each state reserve fund law.

Reserve studies for condominium associations are required in the following **9 states: California, Colorado, Delaware, Hawaii, Nevada, Oregon, Utah, Virginia, and Washington State**. Washington statutorily encourages associations to have a reserve study performed every three years unless doing so would impose an unreasonable hardship. Florida statute does not require a reserve study but requires a reserve schedule for repair and replacement of major components.

Reserve studies for developers are required in the following **5 states: California, Delaware, Florida, Nevada, and Oregon.** In Oregon, the declarant, on behalf of a homeowners association, shall conduct an initial reserve study, prepare an initial maintenance plan, and establish a reserve account.

Reserve funding for condominium associations is required in the following **11 states: Connecticut, Delaware, Florida, Hawaii, Illinois, Massachusetts, Michigan, Minnesota, Nevada, Ohio, and Oregon**.

Reserve funding for developers is required in the following **6 states: Arizona, Delaware, Florida, Nevada, Oregon, and Wisconsin.** In Wisconsin, the developer of a condominium that is created on or after November 1, 2004, shall establish a statutory reserve account when the condominium is created and shall execute a statutory reserve account statement. The declarant shall determine the annual amount to be assessed unit owners for reserve funds.

Annual budget disclosure of reserve funding for condominium associations is required in 33 states and disclosure at the time of resale of reserve study and/or funding requirement for condominium associations is required in 30 states.

Please remember that community associations are governed by state law, which can vary widely from state to state. This information is intended for general educational and informational purposes only; it may not reflect the most recent developments, and it may contain errors or omissions. The publisher does not warrant or guarantee that the information contained here complies with applicable law of any given state. It is not intended to be a substitute for advice from a lawyer, community manager, accountant, insurance agent, reserve professional, lender, or any other professional.

ALABAMA

The unit owners' associations may adopt and amend budgets for revenues, expenditures and reserves and impose and collect assessments for common expenses from unit owners. Section 35-8A-302(2). Sellers must present buyers with an offering statement of the amount, or a statement that there is no amount, included in

the budget as a reserve for repairs and replacement, and a statement of any other reserves. Section 35-8A-403(5).

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

ALASKA

The unit owners' associations may adopt and amend budgets for revenues, expenditures, and reserves and impose and collect assessments for common expenses from unit owners. Section 34.08.320 (2). A public offering statement must include assumptions concerning the calculation of the amount of reserves certified by a certified architect or engineer; the amount included in the budget as a reserve for repairs and replacement including the estimated cost of repair or replacement cost and the estimated useful life of the asset to be repaired or replaced; and a statement of any other reserves. Section 34.08.530(5).

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

ARIZONA

For condominiums, unit owners' associations may adopt and amend budgets for revenues, expenditures, and reserves and impose and collect assessments for common expenses from unit owners. Section 33-1242(2). The resale disclosure statement must include the total amount of money held by the association as reserves. The purchaser must also receive a copy of the most recent reserve study of the association, if any. Section 33-1260.

For planned communities, resale disclosure statement must include the total amount of money held by the association as reserves. The purchaser must also receive a copy of the most recent reserve study of the community, if any. Section 33-1806.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

Section 10-3830 requires directors of nonprofit corporations to discharged duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation.

ARKANSAS

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

CALIFORNIA

On a quarterly basis common interest development board of directors must review reserve accounts and compare reserves to the previous year. At least once every three years, boards must conduct a competent and diligent visual inspection of the property that the association is obligated to repair, replace restore or maintain as part of a study of the reserve account requirements. The board is to annually review this study to consider and implement necessary adjustments to the board's analysis of the reserve account requirements. The required reserve study shall at minimum include identification of the major components that the association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years, identification of the probable remaining useful life of the components identified in the study as of the date of the study, an estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in the study, an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in the study during and at the end of

their useful life, after subtracting total reserve funds as of the date of the study, and a reserve funding plan that indicates how the association plans to fund the contribution identified in the study. See more detailed information in California Civil Code Section 5550-5520.

There is no statutory requirement to fund reserves.

COLORADO

The unit owners' associations may adopt and amend budgets for revenues, expenditures, and reserves and impose and collect assessments for common expenses from unit owners. Section 38-33.3-302.

When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. An internally conducted reserve study shall be sufficient. Section 38-33.3-209.5

There is no statutory requirement to fund reserves.

CONNECTICUT

Condominium associations shall provide in the proposed budget for the condominium adequate reserves for capital expenditures. Section 47-88e. Common interest community executive boards, at least annually, shall adopt a proposed budget for the common interest community for consideration by the unit owners. Not later than thirty days after the adoption of a proposed budget, the executive board shall provide to all unit owners a summary of the budget, including a statement of the amount of any reserves, and a statement of the basis on which such reserves are calculated and funded. Section 47-261e. Resale disclosure statement must include the total amount of money held by the association as reserves. Section 47-264(5).

There is no statutory requirement to conduct a reserve study.

DELAWARE

Condominiums must contain within their declaration provisions that mandate that the association create and maintain, in addition to any reserve for contingencies, a fully funded repair and replacement reserve based upon a current reserve study. Section 81-205(14). Minimum contributions to reserves vary based on the Reserve Study or a statutory formula based on number of common area components. Section 81-315. Condominium disclosure statement must include the current balance in reserves and the most recent reserve study. Section 81-409.

DISTRICT OF COLUMBIA

The unit owners' associations may adopt and amend budgets for revenues, expenditures, and reserves and impose and collect assessments for common expenses from unit owners. Section 42-1903.08. Disclosure statement shall include the amount, or a statement that there is no amount, included in the projected budget as a reserve for repairs and replacement. Section 42-1904.04.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

FLORIDA

Condominium financial reporting rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. Section 718-111(13). Annual budgets shall include reserve accounts for items such as, but not limited to, roof replacement, pavement, painting and other items with a replacement cost exceeding $10,000. Funding for the accounts can be waived by a majority vote at a duly called meeting. Section 718.112(f)(2).

Homeowner associations may adopt a budget that includes reserve accounts for capital expenditures and deferred maintenance for which the association is responsible. If reserve accounts are not established, funding of such reserves is limited to the extent that the governing documents limit increases in assessments, including reserves. Associations may waive reserves with proper notification in their financial statement. Section 720.303(6).

Florida statute does not require a reserve study but requires a reserve schedule for repair and replacement of major components.

GEORGIA

Condominium resale disclosure statement must include the estimated or actual operating budget for the condominium for the current year's reserves. Section 44-3-111.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

HAWAII

Condominium budgets shall include the amount of money in reserve, future reserve estimates based on a reserve study performed by the association, an explanation of how reserves are computed and the amount to be collected for reserves in the year ahead. The association shall compute the estimated replacement reserves by a formula that is based on the estimated life and the estimated capital expenditure or major maintenance required for each part of the property. The estimated replacement reserves shall include adjustments for revenues which will be received and expenditures which will be made before the beginning of the fiscal year to which the budget relates; and separate, designated reserves for each part of the property for which capital expenditures or major maintenance will exceed $10,000. Parts of the property for which capital expenditures or major maintenance will not exceed $10,000 may be aggregated in a single designated reserve. Section 514B-148.

IDAHO

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

ILLINOIS

The Common Interest Community Act requires the board to give each owner a copy of the proposed annual budget which shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the common elements. 765 ILCS 160/1-45.

The Condominium Act requires the board of managers to adopt a budget that provides for reasonable reserves for capital expenditures and differed maintenance for repair or replacement of the common elements. To determine the amount of reserves appropriate, the board shall take into consideration the any independent professional reserve study which the association may obtain. Any association without a reserve requirement in its condominium instruments may elect to waive in whole or in part the reserve requirements by a vote of 2/3 of the total votes of the association. 760 ILCS 605/9.

Disclosure statement shall include a statement of the status and amount of any reserve or replacement fund and any other fund specifically designated for association projects.

There is no statutory requirement to conduct a reserve study.

INDIANA

All sums assessed by the association of co-owners shall be established by using generally accepted accounting principles applied on a consistent basis and shall include the establishment and maintenance of a replacement reserve fund. The replacement reserve fund may be used for capital expenditures and replacement and repair of the common areas and facilities and may not be used for usual and ordinary repair expenses of the common areas and facilities. Section 32-25-4-4.

There is no statutory requirement to conduct a reserve study.

IOWA

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

KANSAS

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

KENTUCKY

The Horizontal Property Law requires all co-owners to contribute toward the expense of maintaining a replacement reserve fund for repairs and maintenance of the general common elements. Section 381.870.

Condominium unit owners' associations may adopt and amend budgets for revenues, expenditures, and reserves and impose and collect assessments for common expenses from unit owners. Section 381.9167. The resale disclosure statement must include the total amount of any reserves for capital expenditures, if any, and of any portions of those reserves designated by the association for any specified projects. Section 381.9203.

There is no statutory requirement to conduct a reserve study.

LOUISIANA

Associations may adopt and amend budgets for revenues, expenditures, and reserves and make and collect assessments for common expenses from unit owners. Section 9:1123.102. Public offering statements shall include an indication of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement. Section 9:1124.102.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

MAINE

Unit owners associations may adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners. Section 1603-102. Public offering statements must contain a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement and a statement of the amount and purpose of any other reserves. Section 1604-103.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

MARYLAND

Councils of unit owners have the power to adopt and amend budgets for revenue, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 11-109. The level of reserves is required to be included in the annual budget; however, there is not a required level of reserve funding. Section 11-109.2. Resale certificate must contain the current operating budget of the condominium including details concerning the reserve fund for repair and replacement and its intended use, or a statement that there is no reserve fund. Section 11-135.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

MASSACHUSETTS

All condominiums shall be required to maintain an adequate replacement reserve fund, collected as part of the common expenses, and deposited in an account or accounts separate and segregated from operating funds. Section 183A-10(i). Managing agents shall be responsible for rendering, in no case less frequently than quarterly, a written report to the trustees or the managing board of the organization of unit owners detailing all receipts and expenditures on behalf of the organization, including beginning and ending balances and copies of all relevant bank statements and reconciliations for the replacement reserve fund, and maintain a separate and distinct account for the replacement reserve fund. Section 183A-10(f).

There is no statutory requirement to conduct a reserve study.

MICHIGAN

Condominiums must have a reserve fund for major repairs and replacement of common elements shall be maintained by the associations of co-owners. The administrator may by rule establish minimum standards for reserve funds. Section 559.205.

The state administrative code requires the co-owners' association to maintain a reserve fund which, at a minimum, shall be equal to 10% of the association's current annual budget on a noncumulative basis. The funds shall only be used for major repairs and replacement of common elements. Additionally, the following statement shall be contained in the bylaws: "The minimum standard required by this section may prove to be inadequate for a particular project. The association of co-owners should carefully analyze their condominium project to determine if a greater amount should be set aside, or if additional reserve funds should be established for other purposes." Rule 559.511.

There is no statutory requirement to conduct a reserve study.

MINNESOTA

The common interest ownership act requires an association to include in its annual budget's replacement reserves projected by the board to be adequate, together with past and future contributions to replacement reserves, to fund the replacement of common elements. The act also requires the association to reevaluate the adequacy of its budgeted replacement reserves at least every third year after the recording of the declaration creating the common interest community. Section 515B.3-1441. Unit owners associations have the power to adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners. Section 515B.3-101. Communities must distribute an annual report with a statement of the association's total replacement reserves, the components of the common interest community for which the reserves are set aside, and the amounts of the reserves, if any, that the board has allocated for the replacement of each of those components. Section 515B.3-106. Disclosure statements must include the amount in the budget as replacement reserves and a statement of any other reserves.

There is no statutory requirement to conduct a formal reserve study.

MISSISSIPPI

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

MISSOURI

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 448.3-102.1. Resale certificates must provide the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects. Section 448.4-109.1.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

MONTANA

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

NEBRASKA

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 76-860.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

NEVADA

The common interest ownership act requires an association to establish adequate reserves, funded on a reasonable basis, for the repair, replacement, and restoration of the major components of the common elements. Section 116.3115. Additionally, the executive board of an association is required to conduct a study of reserves at least every five years, review the study to determine if reserves are sufficient, and adjust reserves, if necessary. The statute specifies how the study is to be conducted. Section 116.31152. A public offering statement must include a budget which has a statement of the amount included in the budget as reserves. Section 116.4103.

NEW HAMPSHIRE

Public offering statement must include the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the board of directors. Section 356-B:58.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

NEW JERSEY

The association may levy and collect assessments duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon, late fees and reasonable attorneys' fees, if authorized by the master deed or bylaws. All funds collected by an association shall be maintained separately in the association's name. For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately, and a commingled account shall not, at any time, be less than the amount identified as reserve funds. Section 46:8B-15.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

NEW MEXICO

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 47-7C-2. Disclosure statements must statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement and a statement of any other reserves. Section 47-7D-3.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

NEW YORK

Condominium bylaws may contain provisions governing the payment, collection, and disbursement of funds, including reserves, to provide for major and minor maintenance, repairs, additions, improvements, replacements, working capital, bad debts and unpaid common expenses, depreciation, obsolescence, and similar purposes. RRP Section 339-V. Co-operative corporation directors must periodically set aside reasonable sums for reserves. CCO Section 72.

There is no statutory requirement to conduct a reserve study.

NORTH CAROLINA

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 47C-3-102 and 47F-3-102. Public offering statements must include the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement and a statement of any other reserves. Section 47C-4-103.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

NORTH DAKOTA

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

OHIO

Unless otherwise provided in the declaration or bylaws, the condominium unit owners association, through the board of directors, shall adopt and amend budgets for revenues, expenditures, and reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, provided that the amount set aside annually for reserves shall not be less than 10% of the budget for that year unless the reserve requirement is waived annually by the unit owners exercising not less than a majority of the voting power of the unit owners association. Section 5311.081.

Planned community owners associations, unless otherwise provided in the declaration or bylaws, through its board of directors, shall annually adopt and amend an estimated budget for revenues and expenditures. Any budget shall include reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, unless the owners, exercising not less than a majority of the voting power of the owners association, waive the reserve requirement annually. Section 5312.06.

There is no statutory requirement to conduct a reserve study.

OKLAHOMA

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

OREGON

The declarant, on behalf of a homeowners association, shall conduct an initial reserve study, prepare an initial maintenance plan, and establish a reserve account. A reserve account shall be established to fund major maintenance, repair, or replacement of all items of common property which will normally require major maintenance, repair, or replacement, in whole or in part, in more than one and less than 30 years. The board of directors of the association annually shall conduct a reserve study or review and update an existing study to determine the reserve account requirements. After review of the reserve study or reserve study update, the board of directors may, without any action by owners adjust the amount of payments as indicated by the study or update and provide for other reserve items that the board of directors, in its discretion, may deem appropriate. Section 94.595 and 100.175. Following a turnover of power from the declarant to the association, the board of directors at least annually shall adopt a budget for the planned community and include moneys to be allocated to the reserve account. Section 94.645 and 100.483. However, the board of directors, with the approval of all owners, may elect not to fund the reserve account for the following year. Section 94.595 and 100.175.

PENNSYLVANIA

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Chapter 33 Section 3302 and Chapter 53 Section 5302. Disclosure statements must statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement and a statement of any other reserves. Chapter 33 Section 3402 and Chapter 53 Section 5402.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

RHODE ISLAND

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 34-36.1-3.02. Public offering statements for condominiums must disclose a budget detailing the amount of reserves sufficient for painting exterior surfaces, replacing roofing, resurfacing roadways or other items subject to declaration. Must also disclose itemized life spans for common elements and expected impact on assessments. Section 34-36.1-4.03.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

SOUTH CAROLINA

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

SOUTH DAKOTA

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

TENNESSEE

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 66-27-402. Disclosure statements must include the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacements, and whether any study has been done to determine their adequacy, if a study has been done, where the study will be made available for review and inspection, and a statement of any other reserves. Section 66-27-503.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

TEXAS

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 82.102. Resale statements must include the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the association for a specified project. Section 82.157.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

UTAH

Condominium management committees must cause a reserve analysis to be conducted no less frequently than every six years and review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years. Section 57-8-7.5. The management committee may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the management committee, to conduct the reserve analysis. An association of unit owners shall annually provide unit owners a summary of the most recent reserve analysis or update. Section 57-8a-211. In formulating the association's budget each year, an association shall include a reserve fund line item in: (a) an amount the board determines, based on the reserve analysis, to be prudent; or (b) an amount required by the governing documents, if the governing documents require an amount higher than the amount determined under Subsection (6)(a).

There is no statutory requirement to fund reserves.

VERMONT

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 27A-3-102. Public offering statement must include the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement and statement of any other reserves. Section 27A-4-103.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

VIRGINIA

Associations must conduct a reserve study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the common elements or capital components. The board of directors must review the study at least annually and adjust as the board determines to keep the funding of reserves sufficient. The statutory provisions on reserves also include requirements for the contents of the association budget if reserves are determined to be a necessity. Section 55.1-1965. Resale certificates must include the current reserve study report or a summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the association. Section 55.1-1991.

WASHINGTON

Unit owners associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners and establish and administer a reserve account and prepare a reserve study. Section 64.34.304 and 64.38.020. The decisions relating to the preparation and updating of a reserve study must be made by the board of directors of the association in the exercise of the reasonable discretion of the board. Such decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized. Section 64.34.388. Associations are encouraged to establish a reserve account to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within 30 years. Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study. The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional. Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional. Section 64.34.380 and 64.38.065. The public offering statement shall include copies of the association's current reserve study, if any. If the association does not have a reserve study, the public offering statement shall contain the following disclosure: “This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element.” Section 64.34.410. Any association created after 2018, must prepare and update a reserve study in accordance with this chapter. An initial reserve study must be prepared by a reserve study professional and based upon either a reserve study professional's visual site inspection of completed improvements or a review of plans and specifications of or for unbuilt improvements, or both when construction of some but not all the improvements is complete. An updated reserve study must be prepared annually. An updated reserve study must be prepared at least every third year by a reserve study professional and based upon a visual site inspection conducted by the reserve study

professional. Section 64.90.545. An association required to obtain a reserve study pursuant to RCW 64.90.545 must establish one or more accounts for the deposit of funds, if any, for the replacement costs of reserve components. Any reserve account must be an income-earning account maintained under the direct control of the board, and the board is responsible for administering the reserve account. Section 64.90.535.

There is no statutory requirement to fund reserves.

WEST VIRGINIA

Unit owners' associations may adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners. Section 36B-3-102. Public offering statement must include the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement and statement of any other reserves. Section 36B-4-103.

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

WISCONSIN

The declarant of a condominium that is created on or after November 1, 2004, shall establish a statutory reserve account when the condominium is created and shall execute a statutory reserve account statement. The declarant shall determine the annual amount to be assessed unit owners for reserve funds. The declarant may elect not to establish a statutory reserve account at the time the condominium is created or, at any time, thereafter, may elect to terminate a statutory reserve account during the period of declarant control. If a declarant has elected not to establish a statutory reserve account or to terminate an account, establishment of a statutory reserve account shall be addressed at the first annual meeting of the association held after, or at a special meeting of the association held within one year after, the expiration of any period of declarant control under. An association may, with the written consent of most of the unit votes, create or terminate a statutory reserve account. Section 703.163.

There is no statutory requirement to conduct a reserve study.

WYOMING

There is no statutory requirement to conduct a reserve study and no statutory requirement to fund reserves.

Note: This information is for informational purposes and is not intended to provide legal advice.

BUILDING MAINTENANCE & STRUCTURAL INTEGRITY POLICY POSITION

(Adopted and Approved October 2021)

CAI SUPPORTS LAWS THAT:

Provide for ongoing review of the major structural elements, owned, or maintained by the community association, of a multi-family residential building(s) of concrete, load bearing masonry, steel, or hybrid structural systems such as heavy timber including podium decks.

Developer Requirements at Turnover or Before

1. Provide a complete set of the final approved architectural and engineering design drawings used for construction and to obtain building permits as well as certificates of occupancy. In the event of changes in the structural components of the building, provide as-built drawings prepared by the initial design engineer, or where the initial design engineer is no longer available to provide the as-built drawings, then the drawings will be provided by a different design engineer, confirming structural adequacy. The drawings must reflect any subsequent changes to the structural components of the building.

   Perform ongoing inspections during construction to confirm general conformance to the plans and specifications. Inspections shall be conducted by a building official with sufficient expertise or a licensed third-party architect or engineer. A certificate of occupancy shall not be issued until the building inspector or third-party inspector confirms that the building was constructed in general conformance with the structural portions of the drawings, plans, and specifications.

2. Provide a preventative maintenance manual to the association to be undertaken by the association over the life of the common area components including structural components. The developer shall deliver the maintenance manual to the association. The maintenance manual shall provide the maintenance schedule and timing for such maintenance, including periodic inspections of the structural components of the building. The developer shall include in the association budget or reserve study, as appropriate, the funds necessary to perform the scheduled maintenance.

3. Provide to prospective purchasers a summary of the future Building Inspection Requirements outlined below, together with the projected cost of same over time.

Building Inspection Requirements for New Construction & Existing Buildings

Mandatory building inspections of the major structural elements owned or maintained by the community association for all multi-family buildings of concrete, load bearing masonry, steel, or hybrid structural systems such as heavy timber including podium decks.

4. For new construction, the first inspection shall be conducted no later than five years after occupancy of the building.
5. For existing buildings more than 10 years old, the first inspection shall take place within 2 years of passage of new statutory requirements.

   The purpose of the first inspection is to act as a baseline for future inspections as well as to identify issues of immediate concern. Each periodic inspector's report shall recommend when the next inspection shall be conducted, which, shall not exceed every 10 years during the first 20 years after construction and every 5 years thereafter.

6. Periodic inspections after the first inspection shall take place every 10-years for the first 20 years since construction and 5 years thereafter unless the prior inspection recommends sooner.

   The purpose of the reinspection(s) will be to monitor progressive deterioration based on a comparison to the prior inspections and to identify issues of immediate concern as well as to establish a recommendation for the next inspection which, in any case shall not exceed 10 years for the first 20 years after construction and 5 years thereafter.

7. At any time, there is concern about the safety or stability of the building structure, an inspection should be conducted immediately.

8. Scope: The protocol for inspection can be found in the ASCE Standard SEI/ASCE 11-99 (latest edition) Guideline for Structural Condition Assessment of Existing Buildings or other industry standards. The initial Baseline inspection is identified as the Preliminary Assessment within this guide. If necessary, a Detailed Assessment as defined within this guide may be required.
   The requirement for these inspections is:
   - Primary (required)
     - Structure
     - Inspection report protocols to follow.
   - Secondary (optional based on individual requirements)
     - Affiliated structures and mechanical systems.

9. The inspections must be conducted by the following assuming they meet the minimum requirement of being a licensed engineer with appropriate qualifications.
   - Local municipal building inspector if a licensed professional engineer, in good standing; or a
   - Licensed engineer hired by the building inspector, the community association, or the building owner

10. Communication Requirements to Governmental Authorities
    If a safety concern is identified in the inspection reports the inspector must notify the local governmental authorities in writing and record the date and receipt of notice.

11. Funding of emergent life safety issue repairs
    a. The governing board of a community association must have the power to impose a special assessment or borrow funds necessary to make immediate repairs without a vote of the membership. Notwithstanding the provisions of the community association governing documents, empower the association governing board to impose a special assessment or borrow funds without a vote of the membership to fund emergent life safety repairs.

Best Practice Recommendations

Best practice recommendations are not statutory recommendations, but best practices. These Policies are not intended to be a part of the Transition Process from the developer and are intended solely to establish a basis for monitoring ongoing deterioration of the building structure due to aging. If the developer is still in control of the building at the time of a recommended periodic inspection, this inspection should be performed by a qualified third-party consultant with the cost of this inspection included within the operating budget or within the Preliminary Reserve Study.

Include in the Initial Budget

a. Preliminary Reserve Study.
b. Cost for periodic inspections as defined below with initial inspection taking place within 2 years of turnover. (This is not intended to be a Transition Study).
c. Cost to update the Reserve Study to reflect as built construction.
d. Cost to update of Reserve Study and Preventive Maintenance Schedule on a three-year cycle.
e. Copies of all manufacturer/contractor warranties on all components.

Communication Requirements to Residents

- All reports to be saved for reference and to be used to monitor progressive conditions.
- Provide to resident's a summary report of the condition of the building(s) and a plan to address pending corrective maintenance issues and funding within 120 days after the building inspection.
- Provide notice that the full building inspection report is available for review.
- Resale disclosure statements should include anticipated special assessments and the summary building condition report.

Other Factors

- Planning for preventive and corrective maintenance as well as replacement/repair of aging buildings and other structural components that are not currently addressed in the community's current reserve study.
- Addressing natural disaster risks.
- Funding mechanism for preventive and corrective maintenance and replacement/repair of aging buildings and other structural components that are not currently addressed in communities current Reserve Study.

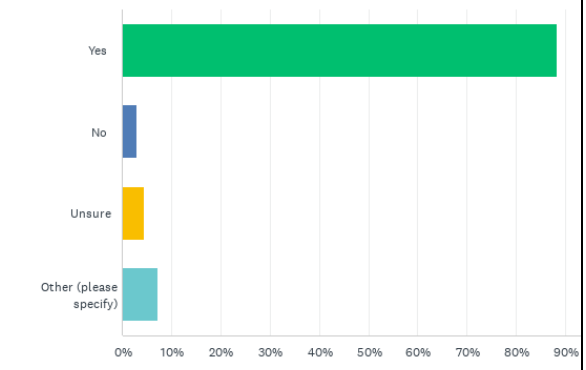
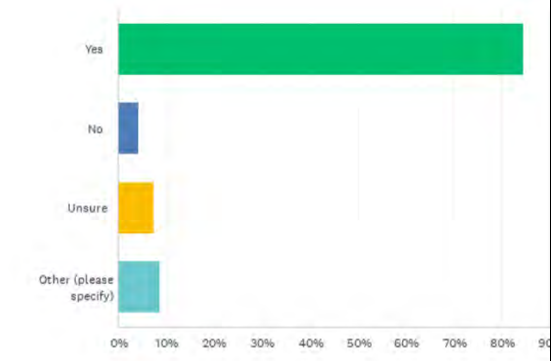
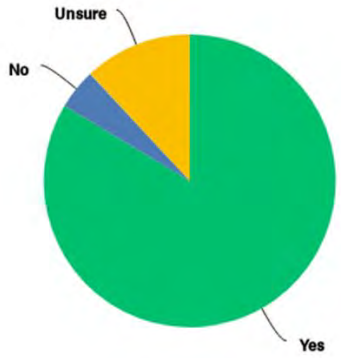
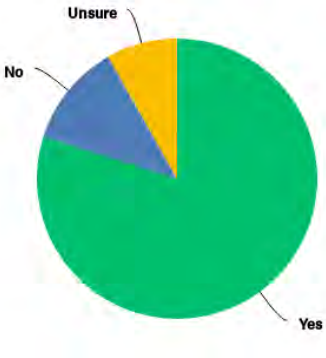
- Anticipating procedures for disposition of the project when the buildings and systems are economically obsolete (i.e., when the cost of repair or renovation exceeds the value of the project).

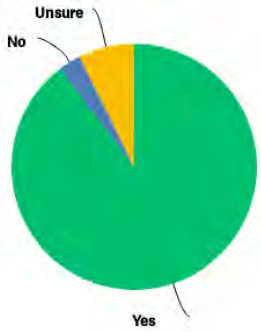
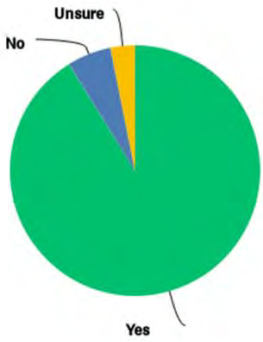
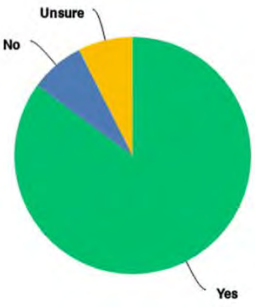
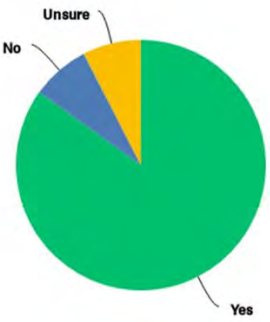
Public Policy Development Survey Data Summary

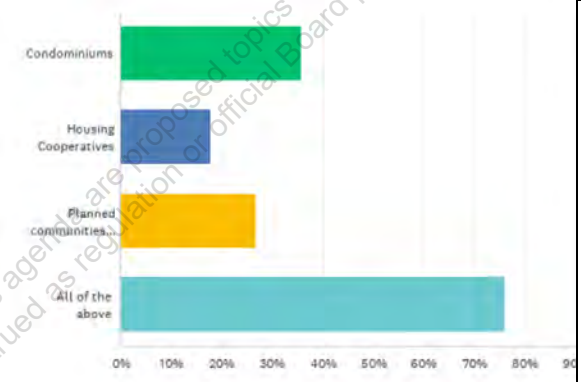
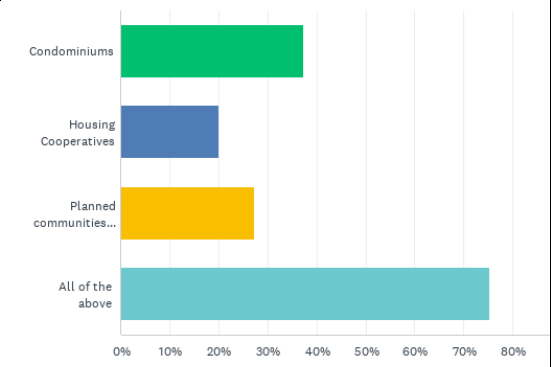
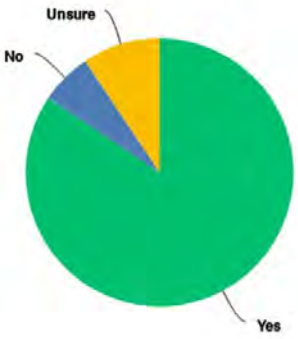
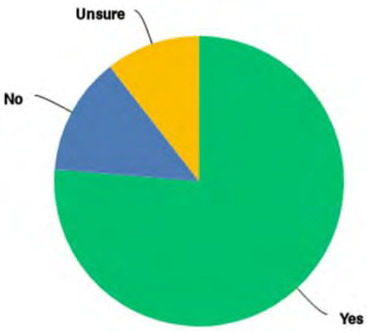
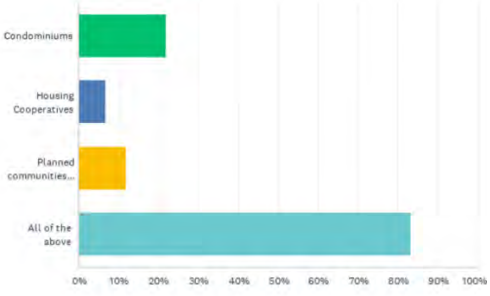
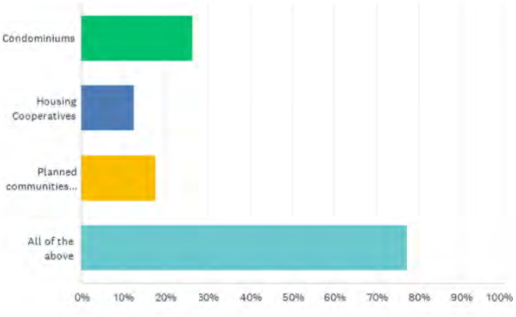
CAI fielded two surveys to capture the organization's membership feedback on the policy recommendations.

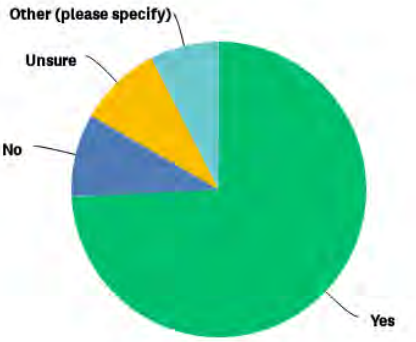
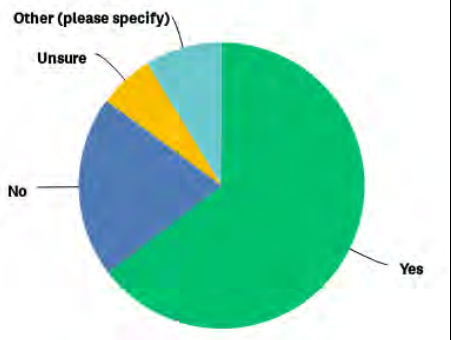
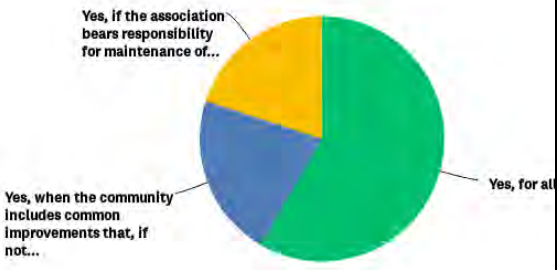
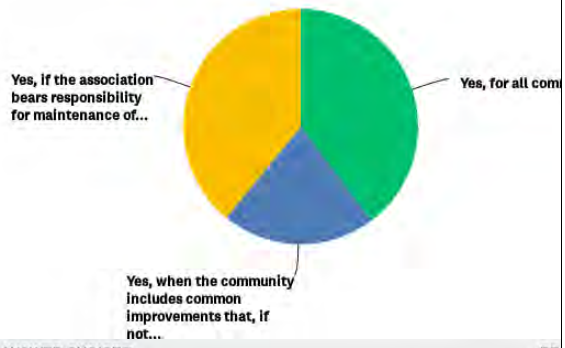
1. CAI legislative action committees, Member Representation Groups (MRGS), and CAI's College of Community Association Lawyers Board of Governors - (161 respondents)
2. Community Conversation Surfside, Fla. (webinar), attendees - (68 respondents)

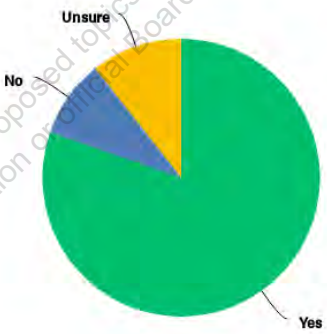
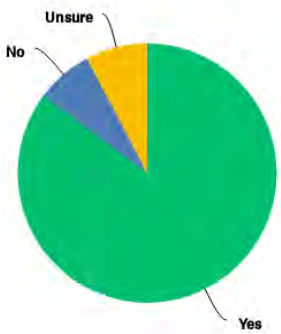
Reserve Study & Funding Public Policy Recommendation Survey Results

Survey Question	CAI General Membership Response Rate	CAI Stakeholder Group Response Rate (CAI LACs/MRGS/CCAL BOG)
Do you support state law that requires reserve studies to be prepared in compliance with National Reserve Study Standards?	 ANSWER CHOICES / RESPONSES Yes 88.24% No 2.94% Unsure 4.41% Other (please specify) 7.35% Total Respondents: 68	 ANSWER CHOICES / RESPONSES Yes 84.47% No 4.35% Unsure 7.45% Other (please specify) 8.70% Total Respondents: 161
Do you support state law that mandates the developer provide a "Level IV Preliminary, Community Not Yet Constructed" reserve study to a prospective purchaser and members? Note: Level IV is defined as Preliminary, Community Not Yet Constructed. A reserve study prepared before construction that		

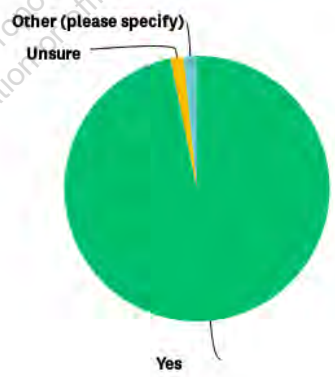
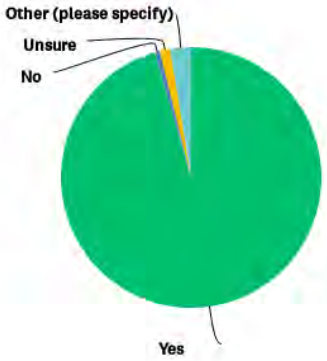
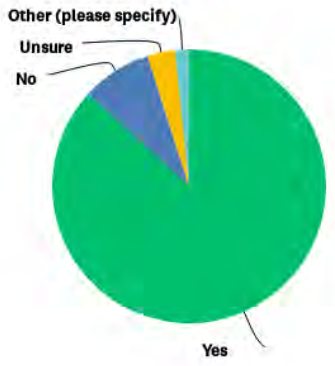
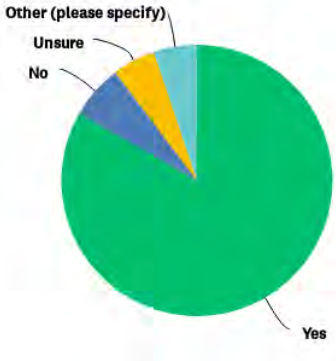
Survey Question	CAI General Membership Response Rate	CAI Stakeholder Group Response Rate (CAI LACs/MRGS/CCAL BOG)
is generally used for budget estimates. It is based on design documents such as the architectural and engineering plans. The following three tasks are performed to prepare this type of study. Component inventory, Life and valuation estimates, and Funding plan	ANSWER CHOICES / RESPONSES Yes 83.58% No 4.48% Unsure 11.94% TOTAL	ANSWER CHOICES / RESPONSES Yes 79.87% No 11.95% Unsure 8.18% TOTAL
Do you support state law that mandates the developer provide a "Level 1 Full Reserve Study" at transition/turnover from declarant control to homeowner control?	 ANSWER CHOICES / RESPONSES Yes 89.71% No 2.94% Unsure 7.35% TOTAL	 ANSWER CHOICES / RESPONSES Yes 91.14% No 5.70% Unsure 3.16% TOTAL
Do you support state law that mandates the developer fund the reserve study prior to transition/turnover to homeowner control?	 ANSWER CHOICES / RESPONSES Yes 85.07% No 7.46% Unsure 7.46% TOTAL	 ANSWER CHOICES / RESPONSES Yes 84.91% No 7.55% Unsure 7.55% TOTAL

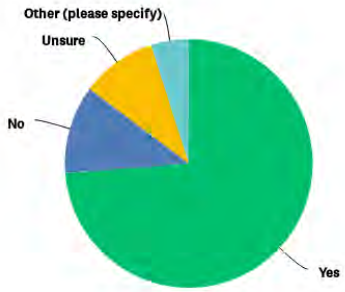
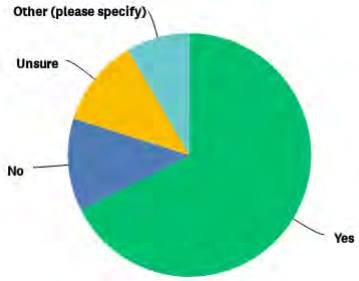
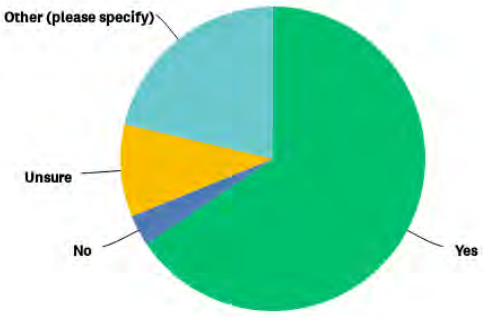
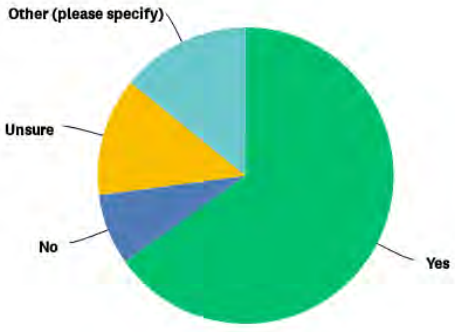
Survey Question	CAI General Membership Response Rate	CAI Stakeholder Group Response Rate (CAI LACs/MRGS/CCAL BOG)
Do you support state law that provides for mandatory full reserve study; including site inspection and funding plan for: (Check all that apply)	 ANSWER CHOICES Condominiums Housing Cooperatives Planned communities with major shared components for the member's unit or dwelling or significant infrastructure (i.e. roads, street lighting, amenities, etc.) Significant infrastructure or major shared components is defined as components whose cumulative replacement costs exceed $10,000. All of the above Total Respondents: 67	 ANSWER CHOICES Condominiums Housing Cooperatives Planned communities with major shared components for the member's unit or dwelling or significant infrastructure (i.e. roads, street lighting, amenities, etc.) Significant infrastructure or major shared components is defined as components whose cumulative replacement costs exceed $10,000. All of the above Total Respondents: 150
Do you support law that requires full reserve studies be conducted on a regular basis?	 ANSWER CHOICES / RESPONSES Yes 84.38% No 6.25% Unsure 9.38% TOTAL	 ANSWER CHOICES / RESPONSES Yes 76.32% No 13.16% Unsure 10.53% TOTAL
Do you support state law that provides for mandatory reserve funding for: (check all that apply)		

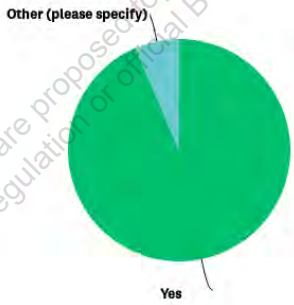
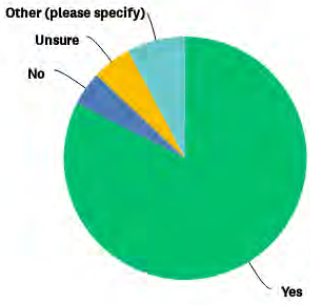
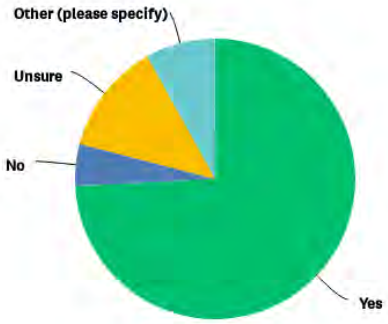
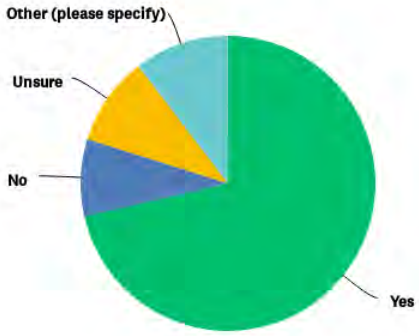
Survey Question	CAI General Membership Response Rate	CAI Stakeholder Group Response Rate (CAI LACs/MRGS/CCAL BOG)
	ANSWER CHOICES Condominiums Housing Cooperatives Planned communities with major shared components for the member's unit or dwelling or significant infrastructure (i.e. roads, street lighting, amenities, etc.) Significant infrastructure or major shared components is defined as components whose cumulative replacement costs exceed $10,000. All of the above Total Respondents: 59	ANSWER CHOICES Condominiums Housing Cooperatives Planned communities with major shared components for the member's unit or dwelling or significant infrastructure (i.e. roads, street lighting, amenities, etc.) Significant infrastructure or major shared components is defined as components whose cumulative replacement costs exceed $10,000. All of the above Total Respondents: 136
Do you OPPOSE state law that allows community association owners to opt-out of funding mandatory reserves?	 ANSWER CHOICES / RESPONSES Yes 74.24% No 9.09% Unsure 9.09% Other (please specify) 7.58% TOTAL	 ANSWER CHOICES / RESPONSES Yes 64.60% No 20.50% Unsure 6.21% Other (please specify) 8.70% TOTAL
Do you support inclusion of funding for building/structural inspections for planned unit developments in reserve funding plans?	 ANSWER CHOICES Yes, for all communities Yes, when the community includes common improvements that, if not adequately maintained, could present dangerous conditions and lead to injuri Yes, if the association bears responsibility for maintenance of common roofs, party walls, or structural aspects of the dwellings TOTAL	 ANSWER CHOICES / RE Yes, for all communities 39. Yes, when the community includes common improvements that, if not adequately maintained, could present dangerous conditions and lead to injuries 21. Yes, if the association bears responsibility for maintenance of common roofs, party walls, or structural aspects of the dwellings 39. TOTAL

Survey Question	CAI General Membership Response Rate	CAI Stakeholder Group Response Rate (CAI LACs/MRGS/CCAL BOG)
Do you support state law that allows community association governing boards the authority to special assess without a vote of the membership to address life safety issue maintenance, repairs, or replacement?		
	ANSWER CHOICES / RESPONSES Yes 80.30% No 9.09% Unsure 10.61% TOTAL	ANSWER CHOICES / RESPONSES Yes 85.26% No 7.05% Unsure 7.69% TOTAL

Building Maintenance & Structural Integrity Public Policy Recommendation Survey Results

Survey Question	CAI General Membership Response Rate	CAI Stakeholder Group Response Rate (CAI LACs/MRGs/CCAL BOG)
Do you support state laws that require the developer to provide, at or before turnover, a complete set of final approved architectural and engineering design drawings used for construction and for obtaining certificates of occupancy and any field changes affecting the structure components?	 ANSWER CHOICES / RESPONSES Yes 96.77% No 0.00% Unsure 1.61% Other (please specify) 1.61% TOTAL	 ANSWER CHOICES / RESPONSES Yes 95.48% No 0.65% Unsure 1.29% Other (please specify) 2.58% TOTAL
Do you support state law that requires the developer, at turnover or before, to provide a preventive maintenance schedule including		

Survey Question	CAI General Membership Response Rate	CAI Stakeholder Group Response Rate (CAI LACs/MRGs/CCAL BOG)
all components that are the responsibility of the association?	ANSWER CHOICES / RESPONSES Yes 86.89% No 8.20% Unsure 3.28% Other (please specify) 1.64% TOTAL	ANSWER CHOICES / RESPONSES Yes 83.23% No 6.45% Unsure 5.16% Other (please specify) 5.16% TOTAL
Do you support state laws that require the developer to provide prospective purchasers a summary of the future building inspection requirements, together with the projected cost of time?	 ANSWER CHOICES / RESPONSES Yes 73.77% No 11.48% Unsure 9.84% Other (please specify) 4.92% TOTAL	 ANSWER CHOICES / RESPONSES Yes 67.53% No 12.34% Unsure 11.69% Other (please specify) 8.44% TOTAL
Do you support laws that requires buildings to be inspected every 10 years until the building is 20 years old, then every 5 years thereafter unless otherwise recommended by the prior inspection?	 ANSWER CHOICES / RESPONSES Yes 65.57% No 3.28% Unsure 9.84% Other (please specify) 21.31% TOTAL	 ANSWER CHOICES / RESPONSES Yes 65.16% No 7.74% Unsure 12.90% Other (please specify) 14.19% TOTAL

Survey Question	CAI General Membership Response Rate	CAI Stakeholder Group Response Rate (CAI LACs/MRGs/CCAL BOG)
Do you support laws that require a building inspection be conducted by a licensed engineer or architect?	 ANSWER CHOICES / RESPONSES Yes 93.55% No 0.00% Unsure 0.00% Other (please specify) 6.45% TOTAL	 ANSWER CHOICES / RESPONSES Yes 82.47% No 4.55% Unsure 5.19% Other (please specify) 7.79% TOTAL
Do you support laws that require, for buildings older than 10 years old, the first inspection shall take place within 2 years after the law is passed?	 ANSWER CHOICES / RESPONSES Yes 74.19% No 4.84% Unsure 12.90% Other (please specify) 8.06% TOTAL	 ANSWER CHOICES / RESPONSES Yes 71.43% No 8.44% Unsure 9.74% Other (please specify) 10.39% TOTAL

FEDERAL SOLUTIONS AND POLICY PRIORITIES

Federal Policy Priorities to Mitigate Financial Burdens of Structural Analysis & Corrective Maintenance at the Municipal and Household Levels

Executive Summary

Following the tragic Champlain Towers South condominium collapse on June 24, 2021, Community Associations Institute (CAI) has been engaging in conversations, researching, surveying, thinking, and strategizing about what meaningful changes can be made to support structural integrity and safety of condominium buildings.

This segment of the report recommends changes in Federal law and regulation to incentivize timely compliance with CAI adopted public policies with an emphasis on disaster mitigation through building inspection and structural integrity. The recommendations address financial burdens on municipalities and households resulting from periodic structural analysis inspections of covered community association housing.

Priority 1 eases financial burdens on local governments of increased structural analysis inspections by clarifying—or authorizing, if necessary—that inspection of aging covered community association housing is an eligible use of Community Development Block Grant (CDBG) funds. CAI seeks clarification/waiver from U.S. Department of Housing & Urban Development (HUD) that municipalities may use CDBG funds for covered community association structural inspections

Priority 2 engages federal housing agencies to develop government insured or guaranteed corrective maintenance loan products. CAI seeks federal housing agency insurance and/or guarantee of blanket condominium rehabilitation loans secured by assessment income.

Priority 3 and 4 ease financial impacts of corrective maintenance on households through amendments to the Internal Revenue Code to provide pre-loss access to disaster recovery tax deductions and authorizing a federal income tax deduction for interest paid on community association loans funding corrective maintenance.

- **Priority 3**—CAI seeks pre-disaster access to federal uninsured loss disaster personal income tax deduction for community association households following determination of major risk of structural failure for a 10-year period
- **Priority 4**—CAI seeks federal income tax deduction for owner pro rata interest paid on loans funding community association corrective maintenance secured by assessment income

FEDERAL POLICY PRIORITIES

In Depth Description of Federal Policy Priorities

Priority 1. Waiver of CDBG Rules to Facilitate Municipal Government Funded Structural Analyses of Covered Community Association Structures

National Purpose Objectives of CDBG Program

Grantees must use CDBG funds in a manner consistent with at least one of the program's three national objectives: (1) low-and moderate-income area benefit; (2) prevention or elimination of slum/blight; and (3) meeting urgent community needs arising from a serious and immediate threat to public health and welfare.[1] Structural inspections of aging covered community association housing may be eligible CDBG funded costs pursuant to national objective 3, which is often the basis for CDBG funding of code enforcement following a major declared disaster.

Overview of CDBG Code Enforcement Program

Section 105(a)(3) of the Housing and Community Development Act of 1974 (88 Stat. 641) authorizes CDBG grantees to use program funds for "*code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area.*" HUD regulations at 24 CFR 570.202(c) provide that CDBG grantees may use funds to supplement costs associated with code enforcement, including "*salaries and related expenses of code enforcement inspectors and legal proceedings…*" HUD guidance further interprets CDBG code enforcement activities through Notice CPD-14-016.[2]

HUD Notice CPD-14-016 links code enforcement to protecting public health and safety.[3] The notice acknowledges general categories of local government approaches to code enforcement. Code enforcement activities prevent, detect, and investigate violations of local statutes to protect public health, safety, and welfare. Code enforcement supports property values through enforcement of minimum aesthetic standards. Additionally, code enforcement may be directed at structures or non-structural elements (e.g., community cleanliness, etc.).[4] CDBG recipients may use CDBG funds to offset costs of providing code enforcement inspections by staff or by contractors.[5]

Recommendation for CDBG Code Enforcement Funding for Structural Analysis of Aging Covered Community Association Housing

1. CAI seek clarification from HUD that municipalities may use CDBG grants to fund municipal staff and/or contractors to conduct structural inspections of aging covered community association housing structures pursuant to the program's national objective of responding to imminent threats to public health and safety.
2. CAI seek a waiver from HUD determining the imminent threat national objective applies to aging covered community association housing structures irrespective of household income.

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[1] U.S. Department of Housing and Urban Development, "Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities," February 2001, p. 3-1. Available at https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-3.pdf.
[2] HUD Notice CPD-14-016, Use of CDBG Funds for Code Enforcement Activities.
[3] Ibid., p. 3.
[4] Ibid., p. 2.
[5] Ibid., p. 4.

Priority 2. Federal Housing Agency Support for Corrective Maintenance Financing

The intent of modifying federal agency loan programs to permit support for covered community association corrective maintenance loans is to reduce the cost of credit and extend loan terms. It is hypothesized that lower lending costs combined with longer terms will reduce annual financial outlays by households, increasing the likelihood association households will support collective management actions. The following recommendation discusses loan programs of the Federal Housing Administration (FHA), Fannie Mae, and Freddie Mac.

Overview of Federal Housing Administration (FHA) Rehabilitation Loan Programs

Section 234(d) of the National Housing Act authorizes FHA to insure blanket mortgages for the construction or rehabilitation of multifamily structures where housing units will be sold as individual condominium units upon project completion.[6] While the 234(d) program remains statutorily authorized, the program is inactive due to lack of market demand and availability of market rate construction and rehabilitation financing.[7]

Other FHA multifamily rehabilitation mortgage insurance programs are directed to multifamily rental properties. The Section 223(e) FHA program[8] supports rehabilitation of rental housing in declining and distressed areas but is inactive due to low participation.[9] The FHA Section 223(f) and Section 220 programs insure mortgages used for substantial rehabilitation of multifamily rental properties and are active.

The Section 223(f) program has maximum loan-to-value (LTV) rates based on the income characteristics of residents. Pertinent to CAI is an 85% LTV for projects that meet the definition of affordable housing and 83.3% LTV for market rate properties. The 223(f) program requires that the remaining life of the project permit at least a 10-year loan term. The maximum loan term is 35 years or 75% of the estimated life of the project.[10]

The Section 220 program[11] focuses on rehabilitation of single family and multifamily rental properties in areas where local governments have *concentrated code enforcement activity* (e.g., urban renewal area, natural disaster area). Rehabilitation loans may not exceed 90 percent of the estimated cost of repair and rehabilitation work and the estimated value of the property prior to the repair/rehabilitation project. The maximum loan amortization is 40 years or 75 percent of the remaining economic life of the project, whichever is less.[12]

Overview of Fannie Mae and Freddie Mac Multifamily Loan Programs

Fannie Mae and Freddie Mac each have multifamily loan purchase programs that support the rehabilitation of multifamily properties. Due to the similarities in loan purchase programs only Fannie Mae programs will be discussed.

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[6] 12 U.S.C. § 1715y(d)
[7] U.S. Department of Housing and Urban Development, Mortgage Insurance for Construction or Substantial Rehabilitation of Condominium Projects: Section 234(d).
[8] 12 U.S.C. § 1715n(e)
[9] U.S. Department of Housing and Urban Development, Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing: Sections 207/223(f).
[10] U.S. Department of Housing and Urban Development, Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing: Sections 207/223(f)
[11] 12 U.S.C § 1715k
[12] U.S. Department of Housing and Urban Development, Programs HUD, p. 51; (*emphasis added).*

Under the Housing Cooperative Mortgage Purchase Program, Fannie Mae will purchase a mortgage secured by an eligible housing cooperative project. Mortgage terms range between 5 to 30 years with fixed rates, provided the project meets Fannie Mae eligibility requirements.[13]

The Fannie Mae Moderate Rehab Loan Program (MRLP) targets multifamily project owners that seek to improve the property at a minimum cost of $8,000 per unit.[14] The program is not currently designed to serve condominium associations. An example of this (other than property eligibility) is a requirement that 60% of budgeted improvements must be used for unit interior upgrades.[15]

Modifying FHA, Fannie Mae, and Freddie Mac Multifamily Rental Programs

No active programs at the federal housing agencies are suitable to support access to long-term, low-cost credit to fund corrective maintenance of common elements of covered community associations. The FHA Section 234(d) program is inactive, and more information should be sought to understand its prior operations and applicability to current needs.

Aspects of other FHA multifamily rental property rehabilitation loans may serve as pathways to amending and restarting the Section 234(d) program. Discussions with a broad number of stakeholders, including FHA, lenders, and community associations would be required to determine if the Section 234(d) program is a viable program in the current market and what statutory and administrative changes would be required to for the program to be repurposed.

Fannie Mae and Freddie Mac have greater flexibility in designing loan programs but are constrained by the Federal Housing Finance Agency (FHFA), which is conservator for both companies. FHFA has authority over Fannie Mae and Freddie Mac programs and activities and would be a mandatory stakeholder in any discussions.

While Fannie Mae and Freddie Mac have more flexibility, there is a concern over layers of risk. If the companies own or guarantee unit mortgages in the association, guaranteeing a blanket mortgage or other rehabilitation loan significantly increases risk.

Recommendation to Engage Lenders, Federal Agencies in Discussions on Corrective Maintenance Loan Programs

1. Engage with stakeholders in FHA, FHFA, Fannie Mae, Freddie Mac, and private lending community to determine how existing federal agency rehabilitation loan programs may be modified—statutorily or administratively—to permit the insurance or guarantee of loans used by covered community associations for corrective maintenance.

Priority 3. Extension of Federal Uninsured Disaster Loss Income Tax Deduction for Corrective Maintenance to Prevent Structural Failure

Overview of Uninsured Disaster Loss Federal Income Tax Deduction

Individuals and households in areas covered by a presidential disaster declaration may deduct

[13] Fannie Mae Seller Guide, Part III, Chapter 8, Section 801

[14] Fannie Mae Seller Guide, Part III, Chapter 3, Section 301.

[15] Ibid.

uninsured casualty losses (subject to certain conditions and limitations) on federal income tax returns.[16] The uninsured casualty loss deduction has been made available to homeowners to defray costs of replacing corrosive drywall and defective concrete foundations for a filer's primary residence, a use that is consistent with corrective maintenance.[17] In 2017, Congress amended the uninsured casualty loss income tax deduction to provide enhanced benefits to individuals and households in presidentially designated disaster areas in 2016 and financed the enhanced benefits by limiting non-disaster casualty loss deductions from 2018 to 2025 (131 Stat. 2079). Allowing covered community association owner access to the uninsured disaster loss deduction will provide resources for corrective maintenance and reduce potential Federal government disaster response outlays.

Applicability of Uninsured Disaster Loss Federal Income Tax Deduction

President Biden issued a federal emergency declaration following the collapse of Champlain Tower South on June 25, 2021. As of September 16, 2021, $890,537 in Individuals and Households Assistance and $35,550495 in Public Assistance have been disbursed from the Disaster Relief Fund maintained by the Federal Emergency Management Agency (FEMA).[18]

In 2018, Congress amended disaster recovery statutes to make available additional resources for pre-disaster mitigation programs that seek to limit disaster damages through preventative measures (132 Stat. 3461).[19] These provisions marked a shift in disaster response, with Congress emphasizing cost savings of pre-disaster mitigation.

Amending 42 USC § 125 to authorize a pre-disaster income tax deduction for a portion of a homeowner's pro rata share of corrective maintenance costs will decease financial burdens. It is hypothesized that reducing per household corrective maintenance costs will increase household willingness to participate in collective risk management actions and limit future federal disaster expenditures.[20] Limiting the deduction to a 10-year period incentivizes covered community associations to promptly investigate structural integrity of common elements, take appropriate corrective action, and budget appropriately for future corrective maintenance costs.

Recommendation for Amendment to Internal Revenue Code to Allow for a Pre-Disaster Casualty Loss Deduction for Covered Community Association Homeowners to Expire 10-years after Enactment

1. Amend 42 USC § 125 to allow a 10-year time limited personal income tax deduction for pro rata share of association expenses to undertake corrective maintenance on association common elements based on a finding of substantial structural degradation that threatens health and safety of residents.

Priority 4. Pro Rata Interest Income Tax Deduction for Community Association Corrective Maintenance Loan

IV.1. Overview of Cooperative Mortgage Interest Deduction

26 USC § 163(h)(3) allows homeowners to deduct interest paid on a mortgage secured by residential real property. This provision is the basis for a personal federal income tax deduction for housing cooperative

[16] 26 U.S.C. § 165(i) and IRS Publication No. 547 (2020): Casualties, Disasters, and Thefts.
[17] IRS Revenue Procedure 2018-09: Casualty Loss Deduction for Damage to Personal Residence Related to Corrosive Drywall.
[18] Federal Emergency Management Agency, Florida Surfside Building Collapse, Emergency Declaration 3560-EM-FL.
[19] 42 U.S.C § 5133
[20] Arkcoll, Kaylene, Chris Guilding, Dawne Lamminamki, Lisa McManus, and Jan Warnken, "Funding common property expenditure in multi-owned housing schemes," Property Management, Vol. 31, No. 4 (2013), p. 282-296; Scheller, Daniel S., "The Effects of Neighborhood Democracy on Cooperation: A Laboratory Study," Journal of Urban Affairs, Vol. 37, No. 5 (2015), p. 568-583; Yau, Young, "Willingness to Participate in Collective Action: The Case of Multiowned Housing Management," Journal of Urban Affairs, Vol. 35, No. 2 (2013), p. 153-171.

shareholders for interest paid by a cooperative corporation on debt used to "*buy, build, change, improve, or maintain the cooperative's housing, or on a debt to buy land.*"[21]
The permissible individual deduction is calculated by dividing the total shares of stock in the housing cooperative by the number of an owner's shares of stock and then dividing the total amount of interest paid by the quotient of the prior calculation. This calculation is typically managed by a housing cooperative corporation and eligible mortgage interest deductions reported to shareholders via IRS Form 1098.[22]

Qualifying Association Loans Used for Corrective Maintenance for Interest Deduction
It is common for community associations to pledge assessments as collateral to secure a loan rather than real property. For mortgage interest to qualify as a deductible expense, the mortgage must (1) be secured by filer's home (i.e., real property); (2) allow the real property to be used to satisfy the filer's debt for non-payment; and (3) be recorded or perfected under applicable state law.[23]

As community association loans do not typically meet these qualifications, owners are not permitted to deduct pro rata shares of interest paid on association debts incurred to finance corrective maintenance. Modifying 26 USC § 163(h)(3) to permit community association homeowners to deduct a pro rata share of interest paid on debts secured by association assessments or other similar arrangements to finance corrective maintenance is hypothesized to reduce individual and household costs and increase willingness to engage in collective management activities.[24]

Recommendation to Amend 26 USC § 163(h)(3) to Allow Deduction of Interest Paid on Loans Financing Corrective Maintenance

1. Amend 26 USC § 163(h)(3) to allow community association homeowners to deduct the pro rata share of interest payments on loans financing corrective maintenance pursuant to a structural analysis of association common elements to achieve parity with standards applicable to housing cooperative shareholders.

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[21] IRS Publication 936 (2020), Home Mortgage Interest Deduction.
[22] Ibid., p. 9.
[23] Ibid., p. 3.
[24] See footnote 10.

Appendix A: Summary of Federal Disaster Assistance Programs Applicable to Structural Analysis and Corrective Maintenance Funding Sources

	Priority 1: Program Analysis	
Program Name	**Program Details**	**Program Authorization, Regulation, & Guidance**
Community Development Block Grant Program	**Summary** The Community Development Block Grant (CDBG) program has three national purposes: (1) low-and moderate-income area benefit; (2) prevention or elimination of slum/blight; and (3) meeting urgent community needs arising from a serious and immediate threat to public health and welfare. Within these national purposes, grantees may rehabilitate residential and non-residential properties and provide public services, among other permissible activities. **CDBG Funds Authorized for Code Enforcement** Section 105(a)(3) of the Housing and Community Development Act of 1974 (88 Stat. 641) authorizes CDBG grantees to use program funds for code enforcement. "*code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area.*" HUD regulations at 24 CFR 570.202(c) provide that CDBG grantees may use funds to supplement costs associated with code enforcement. HUD provides guidance on code enforcement activities through Notice CPD-14-016, which provides that CDBG recipients may use grant funds to offset costs of providing code enforcement inspections by staff or by contractors. **Applicability to Disaster Response** One of the authorized code enforcement purposes of CDBG grants is inspection of structures following a major disaster or where there are threats to public health. Determining structural integrity of aging covered community association structures is within the spirit, if not letter, of this purpose.	**Statutory Authorization** • Housing and Community Development Act of 1974 (88 STAT 633) • HCDA Section 105 (88 STAT 641; 42 U.S.C. § 5305) **Administration** • 24 CFR 570.202 • HUD Notice CPD-14-016

	Priority 2: Program Analysis	
Program Name	**Program Details**	**Program Authorization, Regulation, & Guidance**
FHA Section 234(d)—Insurance of Blanket Mortgage for Condominium Project	**Summary** Section 234(d) of the National Housing Act authorizes FHA to insure blanket mortgages for the construction or rehabilitation of multifamily structures where housing units will be sold as individual condominium units upon project completion. HUD publishes annual loan limits for projects based on a formula that varies by number of bedrooms in each unit and based on the presence of elevators in the project. While the Section 234(d) program remains authorized in federal statute, developers have not sought FHA insurance for construction or rehabilitation loans through the program for several years. **Applicability to Disaster Response** Exploration of the Section 234(d) program may be useful to lower financing costs of substantial rehabilitation projects at aging condominiums. Key considerations include the availability of conventional credit at competitive terms and the willingness of HUD to amend and reactivate a dormant program. A demonstration program may be an acceptable outcome.	**Statutory Authorization** • Section 234(d) of the National Housing Act, 12 USC 1715y(d) • HUD Handbook 4580.1 **Administration** • U.S. Department of Housing and Urban Development, Office of Housing **Additional Information** Section 234(d) Program

Priority 2: Program Analysis		
Program Name	**Program Details**	**Program Authorization, Regulation, & Guidance**
FHA Section 223(e)—Multifamily Rental Mortgage Insurance Program for Older, Declining Areas	**Summary** Section 223(e) of the National Housing Act authorizes FHA to insure mortgages used to purchase or rehabilitate multifamily rental projects in declining and distressed areas. Similar to the Section 234(d) program, the Section 223(e) program retains its statutory authorization, but the program is considered inactive by FHA due to low participation.	**Statutory Authorization** • 12 USC 1715n(e) **Administration** • U.S. Department of Housing and Urban Development, Office of Housing
FHA Section 223(f)—Multifamily Mortgage Insurance Programs	**Summary** The Section 223(f) program allows FHA to insure a mortgage for a multifamily rental project. Minor repairs may be financed through the 223(f) program provided the repairs are completed within 12 months of loan closing. The Section 223(f) program may provide a model for amendments to the Section 234(d) program or similar loan guarantee or mortgage insurance option to lower costs of structural restoration projects. **Loan Terms & Limitations** The 223(f) program has maximum loan-to-value (LTV) rates based on the income characteristics of residents. Pertinent to CAI is an 85% LTV for projects that meet the definition of affordable housing and 83.3% LTV for market rate properties. The 223(f) program requires that the remaining life of the project permit at least a 10-year loan term. The maximum loan term is 35 years or 75% of the estimated life of the project. FHA recently rescinded a requirement that projects have been completed or not undergone a rehabilitation in the 3 years immediately prior to applying for Section 223(f) mortgage insurance. **Applicability to Disaster Response** Allowing aging condominiums access to the 223(f) program will require a statutory change. However, FHA insurance may allow a condominium to refinance debt incurred due to a rehabilitation project at more favorable terms. Importantly, FHA has expanded a pilot program that coordinated Section 223(f) mortgage insurance with projects qualifying for LIHTCs.	**Statutory Authorization** • 12 USC 1713 • 12 USC 1715n(f) **Administration** • U.S. Department of Housing and Urban Development, Office of Housing **Additional Information** • HUD Notice H 20-03: Revision of the Section 223(f) Policy Requiring Three Years of Post-Construction Sustained Occupancy • Mortgage Insurance for Purchase or Refinancing of Existing Multifamily Rental Housing: Sections 207/223(f)
FHA Section 220—Mortgage Insurance for	**Summary** The Section 220 focuses on rehabilitation of single family and multifamily rental properties in areas where	**Statutory Authorization** • 12 USC 1715k • 24 CFR 200

Priority 2: Program Analysis		
Program Name	**Program Details**	**Program Authorization, Regulation, & Guidance**
Rental Housing for Urban Renewal and Concentrated Development Areas	local governments have concentrated code enforcement activity (e.g., urban renewal area, natural disaster area). **Loan Terms & Limitations** Rehabilitation loans may not exceed 90 percent of the estimated cost of repair and rehabilitation work and the estimated value of the property prior to the repair/rehabilitation project. The maximum loan amortization is 40 years or 75 percent of the remaining economic life of the project, whichever is less. **Similar FHA Multifamily Rehabilitation Mortgage Insurance Programs** FHA additionally maintains the agency's Section 221(d)(3) and (4) programs that insure mortgages for multifamily rental projects that are designated for the elderly or housing cooperatives serving moderate income families (see also 24 CFR 221). The 221 programs offer mortgage insurance for loans financing construction or substantial rehabilitation of the property with 221(d)(3) typically used by nonprofit housing providers and 221(d)(4) used by for profit housing providers. **Applicability to Disaster Response** Allowing aging condominiums access to the 220 and 221(d)(4) programs will require a statutory change. However, FHA insurance may allow a condominium to refinance debt incurred due to a rehabilitation project at more favorable terms.	**Administration** • U.S. Department of Housing and Urban Development, Office of Housing
Fannie Mae and Freddie Mac Multifamily Rehabilitation Loan Programs **Fannie Mae, Freddie Mac, cont.**	**Summary** Fannie Mae and Freddie Mac each have multifamily loan purchase programs that support the rehabilitation of multifamily properties. Due to the similarities in loan purchase programs only Fannie Mae programs are discussed below. **Fannie Mae Multifamily Loan Programs** • *Housing Cooperative Mortgage Purchase Program*—Fannie Mae will purchase a mortgage secured by an eligible housing cooperative project. Mortgage terms range between 5 to 30 years with fixed rates. provided the project meets delivery requirements of Section 800 of the Multifamily Seller Guide. Mortgage terms range between 5 to 30 years with fixed rates. • *Moderate Rehab Loan Program (MRLP)*—The Fannie Mae MRLP is targeted at multifamily project	**Statutory Authorization** • Federal National Mortgage Association Charter Act, 12 USC 1716 et seq. • Federal Home Loan Mortgage Corporation Act, 12 USE 1451 et seq. **Administration** • Fannie Mae and Freddie Mac, subject to supervision of the Federal Housing Finance Agency

	Priority 2: Program Analysis	
Program Name	**Program Details**	**Program Authorization, Regulation, & Guidance**
	owners that seek to improve the property at a minimum cost of $8,000 per unit. The program is not currently designed to serve condominium associations. An example of this (other than property eligibility) is a requirement that 60% of budgeted improvements must be used for unit interior upgrades. **Applicability to Disaster Response** Similar to FHA mortgage insurance, adjustments to Fannie Mae and Freddie Mac multifamily rehabilitation loan products to include distressed condominiums will increase the supply of credit for rehabilitation projects and provide more favorable terms.	
SBA Disaster Loan Program	**Summary** The Small Business Administration (SBA) makes available long-term, low interest loans to offset homeowner uninsured disaster losses. Under the SBA home and personal property loan program, homeowners may apply for loans up to $200,000. Under the current program interest rates may not exceed 4% with amortizations of up to 30 years. **Applicability to Disaster Response** Access to SBA disaster loans may allow homeowners to access low-cost, long-term financing to fund special assessment costs.	**Statutory Authorization** • Small Business Act, 15 USC 636(b) • 13 CFR 123—Disaster Loan Program • SBA Disaster Assistance Program: SOP 50 30 9 **Administration** • Small Business Administration

Priority 3 & 4: Program Analysis		
Program Name	**Program Details**	**Program Authorization, Regulation, & Guidance**
Uninsured Disaster Loss Deduction **Uninsured Disaster Loss Deduction, cont.**	**Summary** Individuals and households located within areas covered by a presidential disaster declaration may deduct uninsured losses (subject to certain conditions and limitations) on federal income tax returns. The casualty loss deduction has been used to defray costs of replacing corrosive drywall and defective concrete foundations for a filer's personal residence. **Tax Cuts and Jobs Act Disaster Casualty Loss** The Tax Cuts and Jobs Act of 2017 (TCJA) eliminated casualty loss deductions other than those resulting from a presidentially declared disaster. The TCJA limitations on non-disaster casualty losses are effective from 2018 to 2025. During this period, households incurring uninsured "qualified damages" resulting from a declared disaster are eligible to deduct uninsured losses in the tax year in which the loss occurred. **Deduction Formula** 1. Determine the adjusted loss basis of the property (fair market value – present value). 2. Determine the amount of insurance and other reimbursements applied to the loss. 3. Determine the uninsured loss (fair market value – (insurance + reimbursements)). 4. Reduce the qualified uninsured loss by $500 *NOTE: qualified disaster losses are not subject to the non-qualified disaster loss deduction of 10% of the filer's adjusted gross income*. **Casualty Loss Deduction for Defective Drywall and Concrete** In 2010 (updated as recently as 2018), the Internal Revenue Service released guidance classifying amounts paid to repair damage to a filer's personal residence caused by corrosive drywall and defective concrete as a permissible casualty loss. The IRS guidance excludes community association common elements from the definition of personal residence, notwithstanding a filer's ownership of a defined percentage of common property. **Applicability to Disaster Response** The federal tax code can be a powerful tool to direct monetary relief to households and has been used to	**Statutory Authorization** • P.L. 115-97, Tax Cuts and Jobs Act of 2017, Sec. 11028 Relief for 2016 Disaster Areas (131 STAT. 2078-2081) **Administration** • IRS Publication No. 547 (2020): Casualties, Disasters, and Thefts • IRS News Release 2010-102, IRS Provides Relief for Homeowners with Corrosive Drywall • IRS Revenue Procedure 2018-09 (Casualty Loss Deduction for Damage to Personal Residence Related to Corrosive Drywall) **Additional Information** • Congressional Research Service In Focus Issue Brief IF10730: Tax Policy and Disaster Recovery • Congressional Research Service Report R45864: Tax Policy and Disaster Recovery

	Priority 3 & 4: Program Analysis	
Program Name	**Program Details**	**Program Authorization, Regulation, & Guidance**
	provide resources to support disaster recovery. A targeted tax deduction for clearly defined and qualified expenditures (i.e., to protect structural integrity) can provide household level financial relief to offset significant special assessment amounts. Making such a deduction temporary will incentivize qualifying associations to take necessary action to avoid structural failure in common elements in the near term.	
Home Mortgage Interest Deduction **Home Mortgage Interest Deduction, cont.**	**Summary** 26 USC 163(h)(3) allows homeowners a federal income tax deduction for interest paid on a mortgage secured by residential property. Owners of shares in a housing cooperative are eligible for a federal income tax deduction for interest paid by the cooperative corporation on debt used to "buy, build, change, improve, or maintain the cooperative's housing, or on a debt to buy land." (IRS Publication 936 (2020), Home Mortgage Interest Deduction). **Cooperative Mortgage Interest Deductibility** IRS rules allow housing cooperative shareholders a personal income tax deduction for interest paid by the housing cooperative corporation on qualified mortgage debt. The permissible deduction is calculated by dividing the number of an owner's share of stock by the total shares of stock in the housing corporation. The corporation reports the pro rata mortgage interest paid via IRS Form 1098. **Applicability to Disaster Response** Condominium association loans that fund repair and rehabilitation of common elements are typically secured by association assessment income and do not meet the requirement of mortgage debt. Homeowners are not allowed a personal income tax deduction for interest paid on loans funding improvements and maintenance of condominium common elements. Deductibility of interest for loans used to repair critical community association components may reduce the financial impact of such loans on association households and positively influence owner willingness to pay on repair and maintenance financing decisions.	**Statutory Authorization** • 26 USC 163(h)(3) **Additional Information** • IRS Publication 936 (2020), Home Mortgage Interest Deduction • IRS Form 1098

Other Federal Policy Alternatives

- **Income Tax Deduction for Reserves Contribution—**CAI should consider policy supporting a federal income tax deduction for the portion of a community association homeowner's annual assessments that fund association reserves, provided the association meets defined reserve requirement thresholds. The deduction should be subject to limitations and parameters that target relief for low to moderate income households.
- **Income Tax Deduction for Assessments**—CAI should consider seeking out new sponsors for H.R. 4696, the "Helping Our Middle-Income Earners (HOME) Act." Introduced in the 114th Congress by U.S. Rep. Anna Eshoo (D-CA), the HOME Act allowed a federal income tax deduction of up to $5,000 for community association assessments, subject to certain limitations.

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In addition to the above-mentioned individuals, hundreds of others contributed to the conversation and effort. Thank you to the hundreds of volunteers who contributed to the efforts of these public policy recommendations.

ADDITIONAL RESOURCES

September/October 2021 Common Ground™ magazine, CAI's flagship publication. *(Champlain Towers South specific content).*

2020-2021 Statistical Review published by the Foundation for Community Association Research.

Reserve Studies and Management Best Practices Report published by the Foundation for Community Association Research.

Breaking Point: An assessment of aging infrastructure in community associations published by the Foundation for Community Association Research

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CONDO SAFETY

A RESOURCE FOR HOMEOWNERS AND BOARD MEMBERS

In the wake of the tragedy at Champlain Tower South Condominium Association in Surfside, Fla., homeowners and volunteer boards of directors from around the world are watching the devastation, asking questions about their own communities, and wondering how to protect their buildings.

QUESTIONS HOMEOWNERS SHOULD ASK

- Does our building need an inspection by a professional engineer to evaluate the structural integrity of the building?
- Does our community have a reserve study to plan for the repair and replacement of major components owned by the community? When was this reserve study last updated?
- Does our community have a plan to fund the repair and replacement of major components owned by the community?
- Are critical components in the building such as structure, balconies, stairwells, etc., included in the reserve study? If not, is there a maintenance plan for them?
- Will a special assessment be required to fund the repair or maintenance of components that are not included in the reserve study?

STEPS HOMEOWNERS SHOULD TAKE

- Know your **rights and responsibilities** as a homeowner.
- Attend board meetings.
- Read communication from your community.
- Ask questions and participate in your community meetings and events.
- Regularly pay community association assessments.
- Agree to fund reserves for repair and replacement of major components and necessary maintenance.

STEPS BOARD OF DIRECTORS SHOULD TAKE

- Seek advice from professionals regarding building maintenance and inspections.
- Determine if there are any signs of structural concerns that may need to be inspected by a professional engineer.
- Conduct and review your reserve plan using **best practices.**
- Review your reserve funding plan and fund accordingly.
- Have a conversation with your community homeowners about reserve study/maintenance plans and funding.
- Take actions required in the maintenance and reserve plan.
- Maintain frequent communication with residents/homeowners about these important issues.
- Be transparent with homeowners about how much repairs might cost and whether a special assessment may be necessary.

community ASSOCIATIONS INSTITUTE

» View more resources regarding structural integrity, maintenance, and reserves at www.caionline.org/CondoSafety.

www.caionline.org
(888) 224-4321

Virginia Condominium Data and Statistics

Per the 2017 estimate of the American Housing Survey, there are an estimated 214,400 condo units in Virginia, out of an estimated housing stock of 3,151,400 units in total. The American Housing Survey divides Virginia's housing stock based on proximity to a Central or Non-Central City. The Virginia Beach-Norfolk-Newport News and Richmond Metropolitan Areas are counted separately from the rest of the Commonwealth, while those jurisdictions considered part of the Washington, DC Metropolitan Area are tracked alongside the District.

Note: Please note that due to data sources, different methodologies, and data limitations from the American Housing Survey, the information in this report does not exactly match published Foundation for Community Association Research (FCAR) data. FCAR's data is more comprehensive using many data sources to estimate community association data and statistics. FCAR's data, including full statistics for each state, please visit- https://foundation.caionline.org/publications/factbook/.

Data from the American Housing Survey:

- Per 2011 estimates, approximately 21,100 condo units, or 46,67% of condo units, in the Virginia Beach-Norfolk-Newport News Metropolitan Area were built before 1990.
- Available Data shows that in the Richmond Metropolitan Area, 3,300 condo units, or 16.92% of condo units, were built between 1980 and 1989.

Total Condo Units in State (2017 Estimate) (Excluding DC Metro Area, Virginia Beach, and Richmond)	**214,400**
Owner-Occupied	131,300
Metro: Central City (2017 Estimate)	**52,500**
Owner-Occupied	52,500
Metro: Non-Central City (2017 Estimate)	**78,700**
Owner-Occupied	78,700
Member of Condo Association	**47,000**

Member of Condo Association and HOA	160,700
Virginia Beach-Norfolk-Newport News Metro Area Condo Units (2011 Estimate)	**45,600**
Owner-Occupied	26,800
Richmond Metro Area Condo Units (2017 Estimate)	**19,500**
Owner-Occupied	10,200

2017 Virginia - Housing Costs - All Occupied Units

[Estimates and Margins of Error in thousands of housing units, except as indicated. Medians are rounded to four significant digits as part of disclosure avoidance protocol. Margin of Error is calculated at the 90% confidence interval. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards or withheld to avoid disclosure]

Subject Definitions

Characteristics	Estimate
Monthly Homeowner or Condominium Association Fee Amount	
Fee paid by owners	671.3
Less than $50	210.2
$50 to $99	164.7
$100 to $149	86.3
$150 to $199	39.4
$200 to $299	47.1
$300 to $499	49.6
$500 or more	24.2
Not reported	49.8
Median (dollars)	77.0

2011 Virginia Beach-Norfolk - Housing Costs - All Occupied Units
Virginia Beach-Norfolk-Newport News, VA-NC MSA (2003 OMB definition)

[Estimates in thousands of housing units, except as indicated. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards]

Subject Definitions

Characteristics	Estimate
Condominium and Cooperative Fee	
Fee paid by owners	27.5
Less than $50 per month	3.1
$50 to $99	1.1
$100 to $149	3.2
$150 to $199	7.4
$200 to $299	5.8
$300 to $499	1.5
$500 or more per month	0.6
Not reported	4.8
Median (dollars per month)	180.0

2017 Richmond - Housing Costs - All Occupied Units
Richmond, VA MSA (2013 OMB definition)

[Estimates and Margins of Error in thousands of housing units, except as indicated. Medians are rounded to four significant digits as part of disclosure avoidance protocol. Margin of Error is calculated at the 90% confidence interval. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards or withheld to avoid disclosure]

Subject Definitions

Characteristics	Estimate
Monthly Homeowner or Condominium Association Fee Amount	
Fee paid by owners	91.8
Less than $50	41.8
$50 to $99	17.7
$100 to $149	5.5
$150 to $199	6.1
$200 to $299	6.8
$300 to $499	3.9
$500 or more	S

Not reported	9.5
Median (dollars)	46.0

Reserve Study/Funding Laws for Condominium Associations

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
Alabama*	Alabama Uniform Condominium Act of 1991 (applies to condominiums established after 1/1/1991)	Yes	No	No	No	Yes	Yes	No
Alaska*	Alaska Uniform Common Interest Ownership Act (applies to all CICs – condos, planned communities or coops established after 1/1/1986)	Yes	No	No	No	Yes	No	No
Arizona	Arizona Condominium Act (applies to all condominiums)	No	No	Yes	No	Yes	Yes	No
Arkansas	Arkansas Horizontal Property Act	No	No	No	No	No	No	No

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
California	Davis-Stirling Common Interest Development Act	No	Yes	No	Yes, once every three years	Yes	Yes	No
Colorado*	Colorado Common Interest Ownership Act (CCIOA – applies to condominiums established after 7/1/1992)	Yes	No	no	Yes, adoption of a policy regarding reserves is required	No	No	No
Connecticut *	Connecticut Common Interest Ownership Act (applies to condominiums established after 1/1/1984)	Yes	No	No	No	Yes	Yes	Yes
Delaware	Delaware Uniform Common Interest Ownership Act (applies to condominiums established after 9/30/2009)	Yes	Yes	Yes	Yes, every five years	Yes	Yes	Yes, annual budget must include Reserve contributions "sufficient" to achieve the level of funding in the reserve study
District of Columbia	District of Columbia Condominium Act (applies to condominiums established after 3/29/1977)	Yes	No	No	No	Yes	Yes	No

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
Florida	Florida Condominium Act	Yes	Yes	Yes	Yes, requires all condominium and cooperative associations with any building three or more stories in height to obtain "structural integrity reserve studies" every ten years to determine remaining useful life and funds necessary for repair of future major repairs and replacement.	Yes	Yes	Yes, , requires full funding reserves for the reserve study components.
Georgia	Georgia Condominium Act (applies to condominiums established after 10/1/1975)	No	No	No	No	Yes	Yes	No
Hawaii	Hawaii Condominium Property Act	No	No	No	Yes, required annually	Yes	Yes	Yes, baseline funding, or a threshold minimum 50% funded. Full funding is encouraged, but not required.
Idaho	Idaho Condominium Property Act	No	No	No	No	No	No	No

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
Illinois	Illinois Condominium Property Act	No	No	No	No	Yes	Yes	Yes, law requires establish and maintain a reasonable reserve account however, association may waive if not in instruments
Indiana	Indiana Condominium Act	No	No	No	No	No	No	No
Iowa	Iowa Horizontal Property Act	No	No	No	No	No	No	No
Kansas	Kansas Uniform Common Interest Owners' Bill of Rights Act	No	No	No	No	No	No	No
Kentucky	Kentucky Condominium Act (applies to condominiums established after 1/1/2011)	No	No	No	No	Yes	No	No
Louisiana	Louisiana Condominium Act	Yes	No	No	No	Yes	Yes	No
Maine	Maine Condominium Act (applies to condominiums established after 1/1/1983)	Yes	No	No	No	Yes	Yes	No

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
Maryland	Maryland Condominium Act	Yes	No	No	Yes, replacement reserve studies must be updated at least once every five years for all associations. * *the requirement to obtain and fund replacement reserve studies applicable to condominiums, cooperatives and homeowners associations statewide, effective October 1, 2022. Community associations who have not obtained a replacement reserve study (or update) since October 1, 2016, will be required to do so within one year of the effective date of the statute.*	Yes	Yes	Yes, any increased funding recommendations made in the updated reserve studies must be fully funded in the first budget cycle following receipt of the updated study.
Massachusetts	Massachusetts Condominium Statute	No	No	No	No	No	No	Yes, annual budget requires associations to provide an adequate portion toward reserves funds, but 2/3 vote of

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
								owners can opt out of this requirement at annual meetings
Michigan	Michigan Condominium Act	No	No	No	No	Yes	No	Yes, must be at least 10% of total budget
Minnesota	Minnesota Uniform Condominium Act (applies to condominiums established after 8/1/1980)	No	No	No	No	Yes	yes	Yes, annual budget required to provide for 'adequate' reserves
Mississippi	Mississippi Condominium Law	No	No	No	No	No	No	No
Missouri*	Missouri Uniform Condominium Act (applies to condominiums established before 9/28/1983)	Yes	No	No	No	Yes	Yes	No
Montana	Montana Unit Ownership Act	No	No	No	No	No	No	No
Nebraska	Nebraska Condominium Act (applies to condominiums established 1/1/1984)	Yes	No	No	No	Yes	Yes	No

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
Nevada*	Nevada Uniform Common-Interest Ownership Act	Yes	Yes	Yes	Yes, at least every five years	Yes	Yes	Yes, must establish adequate reserves, funded on a "reasonable basis"
New Hampshire	New Hampshire Condominium Act (applies to condominiums established after 9/10/1977)	Yes	No	No	No	Yes	Yes	No
New Jersey	New Jersey Condominium Act (applies to condominiums established after 1/7/1970)	No	No	No	No	No	No	No
New Mexico	New Mexico Condominium Act (applies to condominiums established after 5/19/1982)	Yes	No	No	No	Yes	Yes	No
New York	New York Condominium Act	No	No	No	No	No	No	No, but board must disclose reserve components
North Carolina	North Carolina Condominium Act (applies to condominiums	Yes	No	No	No	Yes	Yes	No

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
	established after 10/1/1986)							
North Dakota	North Dakota Condominium Ownership of Real Property	No	No	No	No	No	No	No
Ohio	Ohio Condominium Property Act	No	No	No	No	No	No	Yes, board shall adopt and amend reserves in the amount adequate to repair and replace major capital items in the normal course of operations without necessity of special assessments, provided that the amount set aside annually for reserves shall not be less than 10% of the budget for that year unless the reserve requirement is waived annually by the unit

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
								owners exercising not less than a majority of the voting power of the unit owners association.
Oklahoma	Oklahoma Unit Ownership Estate Act	No	No	No	No	No	No	No
Oregon	Oregon Condominium Act	Yes	Yes, the declarant, on behalf of a homeowners association, shall conduct an initial reserve study, prepare an initial maintenance plan and establish a reserve account.	Yes	Yes, annually conduct a study or review the current one	Yes	No	Yes, however, the board of directors, with the approval of all owners, may elect not to fund the reserve account for the following year.
Pennsylvania	Pennsylvania Uniform Condominium Act (applies to condominiums established after 7/2/1980)	Yes	No	No	No	Yes	Yes	No

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
Rhode Island	Rhode Island Condominium Act (applies to all condominiums established after 7/1/1982)	Yes	No	No	No	Yes	Yes	No
South Carolina	South Carolina Horizontal Property Act	No	No	No	No	No	Yes	No
South Dakota	South Dakota Condominium Law	No	No	No	No	No	No	No
Tennessee	Tennessee Condominium Act of 2008 (applies to condos established after 1/1/2009)	No	No	No	No	No	No	No
Texas	Texas Uniform Condominium Act (applies to condos established after 1/1/1994)	Yes	No	No	No	Yes	Yes	No
Utah	Utah Condominium Ownership Act	No	No	No	Yes, no less than every two years	Yes	Yes	No
Vermont	Vermont Condominium Ownership Act	Yes	No	No	No	Yes	Yes	No
Virginia	Virginia Condominium Act (applies to condominiums	Yes	No	No	Yes, every five years	Yes	Yes	No, board should review funds annually to determine if sufficient

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
	established after 7/1/1974)							
Washington	Washington Condominium Act (applies to condominiums established after 7/1/1990)	Yes	No	No	Yes, unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.	Yes	Yes	No
West Virginia	West Virginia Uniform Common Interest Ownership Act (applies to condos established after 7/1/1986)	Yes	No	No	No	Yes	Yes	No
Wisconsin	Wisconsin Condominium Ownership Act	No	No	Yes, the declarant of a condominium that is created on or after November 1, 2004, shall establish a statutory reserve account when the condominium is	No	Yes	Yes	No, but reserve accounts must be established

State	Relevant State Condominium Statute	Public Offering statement requirement	Reserve "study" requirement for declarant	Reserve funding requirement for declarant	Reserve "study" requirement for condominium association under homeowner control	Budget disclosure requirement for condominium association	Resale disclosure requirement for condominium association	Funding requirement for condominium association
				created and shall execute a statutory reserve account statement. The declarant shall determine the annual amount to be assessed unit owners for reserve funds				
Wyoming	Wyoming Condominium Ownership Act	No	No	No	No	No	No	No

Disclaimer: Please remember that community associations are governed by state law, which can vary widely from state to state. This information is intended for general educational and informational purposes only; it may not reflect the most recent developments, and it may contain errors or omissions. The publisher does not warrant or guarantee that the information contained here complies with applicable law of any given state. It is not intended to be a substitute for advice from a lawyer, community manager, accountant, insurance agent, reserve professional, lender, or any other professional.

community
ASSOCIATIONS INSTITUTE

Reserve Specialist® (RS®) Designation

NATIONAL RESERVE STUDY STANDARDS

General Information About Reserve Studies

One of the primary responsibilities of the board of directors of a community association is to protect, maintain, and enhance the assets of the association. To accomplish this objective, associations must develop multi-year plans to help them anticipate and responsibly prepare for the timely repair and replacement of common area components such as roofs, roads, mechanical equipment, and other portions of the community's common elements.

Originally published in 1998, the National Reserve Study Standards provide a consistent set of terminology, calculations, and expectations so reserve study providers and those they serve together can build a successful future for millions of community association homeowners across the country.

A reserve study is made up of two parts, the **physical analysis** and the **financial analysis.** The physical analysis includes the component inventory, condition assessment, and life and valuation estimates. The component inventory should be relatively stable from year to year, while the condition assessment and life and valuation estimate change from year to year.

The financial analysis is made up of an analysis of the client's current reserve fund status (measured in cash or as percent funded) and a recommendation for an appropriate reserve contribution rate (a funding plan).

Physical analysis
- Component inventory
- Condition assessment
- Life and valuation estimates

Financial analysis
- Fund status
- Funding plan

Levels of Service

The following three categories describe the various types of reserve studies, from exhaustive to minimal.

I. **Full.** A reserve study in which the following five reserve study tasks are performed:
   - Component inventory
   - Condition assessment (based upon on-site visual observations)
   - Life and valuation estimates
   - Fund status
   - Funding plan

II. **Update, With Site Visit/On-Site Review.** A reserve study update in which the following five reserve study tasks are performed:
   - Component inventory (verification only, not quantification)
   - Condition assessment (based on on-site visual observations)
   - Life and valuation estimates
   - Fund status
   - Funding plan

III. **Update, No-Site-Visit/Off Site Review.** A reserve study update with no on-site visual observations in which the following three reserve study tasks are performed:
   - Life and valuation estimates
   - Fund status
   - Funding plan

IV. **Preliminary, Community Not Yet Constructed.** A reserve study prepared before construction that is generally used for budget estimates. It is based on design documents such as the architectural and engineering plans. The following three tasks are performed to prepare this type of study.
   - Component inventory
   - Life and valuation estimates
   - Funding plan

Terms and Definitions

CAPITAL IMPROVEMENTS: Additions to the association's common elements that previously did not exist. While these components should be added to the reserve study for future replacement, the cost of construction should not be taken from the reserve fund.

CASH FLOW METHOD: A method of developing a reserve funding plan where contributions to the reserve fund are designed to offset the variable annual expenditures from the reserve fund. Different reserve funding plans are tested against the anticipated schedule of reserve expenses until the desired funding goal is achieved.

COMPONENT: The individual line items in the reserve study developed or updated in the physical analysis. These elements form the building blocks for the reserve study. These components comprise the common elements of the community and typically are: 1. association responsibility, 2. with limited useful life expectancies, 3. predictable remaining useful life expectancies, and 4. above a minimum threshold cost. It should be noted that in certain jurisdictions there may be statutory requirements for including components or groups of components in the reserve study.

COMPONENT INVENTORY: The task of selecting and quantifying reserve components. This task can be accomplished through on-site visual observations, review of association design and organizational documents, review of association precedents, and discussion with appropriate representative(s) of the association.

COMPONENT METHOD: A method of developing a reserve funding plan where the total contribution is based on the sum of contributions for the individual components.

CONDITION ASSESSMENT: The task of evaluating the current condition of the component based on observed or reported characteristics.

EFFECTIVE AGE: The difference between useful life and remaining useful life. Not always equivalent to chronological age, since some components age irregularly. Used primarily in computations.

FINANCIAL ANALYSIS: The portion of a reserve study where the current status of the reserves (measured as cash or percent funded) and a recommended reserve contribution rate (funding plan) are derived, and the projected reserve income and expense over a period of time are presented. The financial analysis is one of the two parts of a reserve study.

FULLY FUNDED: 100 percent funded. When the actual (or projected) reserve balance is equal to the fully funded balance.

FULLY FUNDED BALANCE (FFB): An indicator against which the actual (or projected) reserve balance can be compared. The reserve balance that is in direct proportion to the fraction of life "used up" of the current repair or replacement cost. This number is calculated for each component, and then summed for an association total.

FFB = Current Cost X Effective Age/Useful Life

Example: For a component with a $10,000 current replacement cost, a 10-year useful life and effective age of 4 years the fully funded balance would be $4,000.

FUND STATUS: The status of the reserve fund reported in terms of cash or percent funded.

FUNDING GOALS: Independent of methodology used, the following represent the basic categories of funding plan goals. They are presented in order of greatest risk to least risk. Risk includes, but is not limited to, cash problems, special assessments, and deferred maintenance.

Baseline Funding: Establishing a reserve funding goal of allowing the reserve cash balance to never be below zero during the cash flow projection. This is the funding goal with the greatest risk due to the variabilities encountered in the timing of component replacements and repair and replacement costs.

Threshold Funding: Establishing a reserve funding goal of keeping the reserve balance above a specified dollar or percent funded amount. Depending on the threshold selected, this funding goal may be weaker or stronger than "Fully Funded" with respective higher risk or less risk of cash problems.

Full Funding: Setting a reserve funding goal to attain and maintain reserves at or near 100 percent funded. This is the most conservative funding goal.

It should be noted that in certain jurisdictions there may be statutory funding requirements that would dictate the minimum requirements for funding.

FUNDING PLAN: An association's plan to provide income to a reserve fund to offset anticipated expenditures from that fund. The plan must be a minimum of twenty (20) years.

Terms and Definitions (cont'd.)

FUNDING PRINCIPLES: The reserve provider must provide a funding plan addressing these principles.

- Sufficient funds when required
- Stable contribution rate over the years
- Equitable contribution rate over the years
- Fiscally responsible

LIFE AND VALUATION ESTIMATES: The task of estimating useful life, remaining useful life, and current repair or replacement costs for the reserve components.

PERCENT FUNDED: The ratio, at a particular point in time related to the fiscal year end, of the actual (or projected) reserve balance to the fully funded balance, expressed as a percentage. While percent funded is an indicator of an association's reserve fund size, it should be viewed in the context of how it is changing due to the association's reserve funding plan in light of the association's risk tolerance.

PHYSICAL ANALYSIS: The portion of the reserve study where the component inventory, condition assessment, and life and valuation estimate tasks are performed. This represents one of the two parts of the reserve study.

REMAINING USEFUL LIFE (RUL): Also referred to as "remaining life" (RL). The estimated time, in years, that a reserve component can be expected to serve its intended function. Projects expected to occur in the initial year have zero remaining useful life.

REPLACEMENT COST: The cost to replace, repair, or restore the component to its original functional condition during that particular year, including all related expenses (including but not limited to shipping, engineering and design, permits, installation, disposal, etc.).

RESERVE BALANCE: Actual or projected funds, as of a particular point in time that the association has identified, to defray the future repair or replacement cost of those major components that the association is obligated to maintain or replace. Also known as reserves, reserve accounts, cash reserves. Based on information provided and not audited.

RESERVE PROVIDER: An individual who prepares reserve studies. In many instances the reserve provider will possess a specialized designation such as the Reserve Specialist (RS) designation provided by Community Associations Institute (CAI). This designation indicates that the provider has shown the necessary skills to perform a reserve study that conforms to these standards.

RESERVE PROVIDER FIRM: A company that prepares reserve studies as one of its primary business activities.

RESERVE STUDY: A budget planning tool which identifies the components that the association is responsible to maintain or replace, the current status of the reserve fund, and a stable and equitable funding plan to offset the anticipated future major common area expenditures. The reserve study consists of two parts: the physical analysis and the financial analysis.

RESPONSIBLE CHARGE: A Reserve Specialist (RS) in responsible charge of a reserve study shall render regular and effective supervision to those individuals performing services that directly and materially affect the quality and competence of services rendered by the Reserve Specialist. A Reserve Specialist shall maintain such records as are reasonably necessary to establish that the Reserve Specialist exercised regular and effective supervision of a reserve study of which he or she was in responsible charge. A Reserve Specialist engaged in any of the following acts or practices shall be deemed not to have rendered the regular and effective supervision required herein:

1. The regular and continuous absence from principal office premises from which professional services are rendered; except for performance of field work or presence in a field office maintained exclusively for a specific project;

2. The failure to personally inspect or review the work of subordinates where necessary and appropriate;

3. The rendering of a limited, cursory or perfunctory review of plans or projects in lieu of an appropriate detailed review; and

4. The failure to personally be available on a reasonable basis or with adequate advance notice for consultation and inspection where circumstances require personal availability.

SPECIAL ASSESSMENT: A temporary assessment levied on the members of an association in addition to regular assessments. Note that special assessments are often regulated by governing documents or local statutes.

USEFUL LIFE (UL): The estimated time, in years, that a reserve component can be expected to serve its intended function if properly constructed in its present application or installation.

Reserve Study Contents

The following is a list of the minimum contents to be included in the Reserve Study.

1. A summary of the association's number of units, physical description and reserve fund financial condition.
2. A projection of reserve starting balance, recommended reserve contributions, projected reserve expenses, and projected ending reserve fund balance for a minimum of 20 years.
3. A tabular listing of the component inventory, component quantity or identifying descriptions, useful life, remaining useful life and current replacement cost.
4. A description of methods and objectives utilized in computing the Fund Status and development of the Funding Plan.
5. Source(s) utilized to obtain component repair or replacement cost estimates.
6. A description of the level of service by which the Reserve Study was prepared.
7. Fiscal year for which the Reserve Study is prepared.

Disclosures

The following are the minimum disclosures to be included in the Reserve Study:

1. **General:** Description of the other involvement(s) with the association, which could result in actual or perceived conflicts of interest.
2. **Physical Analysis:** Description of how thorough the on-site observations were performed: representative samplings vs, all common areas, destructive testing or not, field measurements vs. drawing take-offs, etc.
3. **Financial Analysis:** Description of assumptions utilized for interest and inflation, tax and other outside factors.
4. **Personnel Credentials:** State or organizational licenses or credentials carried by the individual responsible for Reserve Study preparation or oversight.
5. **Update Reports:** Disclosure of how the current work is reliant on the validity of prior Reserve Studies.
6. **Completeness:** Material issues which, if not disclosed, would cause a distortion of the association's situation.
7. **Reliance on Client Data:** Information provided by the official representative of the association regarding financial, physical, quantity, or historical issues will be deemed reliable by the consultant and assembled for the association's use, not for the purpose of performing an audit, quality/forensic analysis, or background checks of historical records.
8. **Reserve Balance:** The actual or projected total presented in the Reserve Study is based upon information provided and was not audited.
9. **Component Quantities:** For update with site visit and update no site visit levels of service, the client is considered to have deemed previously developed component quantities as accurate and reliable.
10. **Reserve Projects:** Information provided about reserve projects will be considered reliable. Any on-site inspection should not be considered a project audit or quality inspection.

Breaking Point:

EXAMINING AGING INFRASTRUCTURE IN COMMUNITY ASSOCIATIONS

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FACING THE TRUTH ABOUT AGING INFRASTRUCTURES

As buildings and their internal systems and physical components age, how can the community associations that own them best prepare to meet the unexpected—but necessary—financial demands.

Over many conversations in recent years, members of the Foundation for Community Association Research (FCAR) have identified aging infrastructures—the physical structures and the components within them that community associations rely on for residents' safety and well-being—as a critical concern for association managers, boards, homeowners, and residents.

Too often, according to Foundation members—and despite occasional inspections and regularly scheduled reserve studies—associations fail to recognize serious structural and system failures. When damage becomes so obvious that it cannot be ignored, the tendency is to make superficial or temporary repairs and postpone comprehensive, in-depth restoration.

To address this growing problem, the Foundation convened a task force in 2018, comprising attorneys, reserve specialists, engineers, insurance providers, managers, and bankers, to determine what issues are the most prevalent in failing physical components, and—especially—how associations can prepare themselves to address and resolve these issues when they inevitably arise.

Community Associations Institute managers, board members, and contractors in community associations across the U.S. responded in a survey to share their recent major capital projects with the task force. More than three-quarters (81%) of survey respondents reported encountering unanticipated and unplanned-for infrastructure issues over a recent three-year period.

The aggregated information and observations of these respondents revealed empirical data that can enlighten thoughtful association boards and committees, community managers, business partners and contractors, homeowners—anyone who is responsible for the investment of community assets.

This project represents several years of discussion and countless hours contributed from our volunteer leadership. We are grateful to the Foundation Think Tank, which identified the need for this research and provided funding for this project, and to the members of the Aging Infrastructures Task Force for their steadfast volunteer leadership. These industry leaders ensured that we gathered the right data and completed this research project. Thank you.

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NO REAL SURPRISES

The overwhelming majority of issues reported by survey respondents—water intrusion in windows and siding, deteriorating balconies or fences, or failing pipes or roofing, among a variety of other problems—were not surprises to those who had to address them. Most of the participating communities encountered ongoing situations that initially were addressed with minimal work because they did not fully understand how long the problem existed and the extent of deterioration. In many cases, the underlying cause of the problem was known, however the community delayed correcting the actual cause because association decision-makers wanted to attempt a minor repair to control the damage or they needed time to develop a financial plan for the repairs. Either action deferred the maintenance and turned costly for the community.

Major repairs often were initiated when liability and life and safety of the residents became concerning and intolerable. Negligence on the part of the board to allow ongoing issues, cleanups, and restorations to be done can also lead to additional unknown and hidden costs.

More than one-third (36%) of respondents experienced plumbing or electrical system issues in the most recent three-year period that were not identified in their most recent reserve study. Thirty percent relayed other initially unidentified problems with components like roofs and roof sheathings, building envelope and structure, and recreational facilities.

BIGGEST CONCERNS

More than three-quarters (80%) of those surveyed felt it was critical that their association have adequate reserves in the event of a major infrastructure failure or construction need. Nearly half (40%) of those surveyed considered deteriorating infrastructure as a top-ranked concern. More than two-thirds (70%) of survey respondents indicated that maintaining property values was of primary importance.

And while about half of respondents felt their associations have adequate reserve funds on hand, just as many respondents considered their communities' reserve funds inadequate to address any major unplanned component repair or replacement.

Other challenges that communities faced when addressing major infrastructure renovations include:

- Convincing homeowners to accept and contribute to costs
- Recruiting volunteers for the association board
- Prevalent owner/resident apathy

The task force observed that association homeowners and boards often are focused on keeping regular assessments low and only investing in visible, immediate outcomes. While homeowners will tolerate a modest special assessment in an emergency, evidence in this study suggests that it's often hard to convince them to contribute to long-term maintenance, i.e., higher regular assessments. Substantial special assessments are particularly unwelcome.

Case Study – Listen to Residents

COMMUNICATION, FINANCING, AND PHASED CONSTRUCTION

After years of residents' complaints about ambient noise and poor energy efficiency, in 2010, management at the University Towers Condominiums in New Haven, Conn., investigated the feasibility of replacing the 1,850 windows in the 238-unit building. Originally installed in 1958, the sliding window frames were difficult to repair because of the building's steel and concrete construction.

Management issued a request for proposals and selected a firm to proceed with the window replacement. After five years of EPA testing and investigation, which revealed asbestos inside the walls and caulking around the windows, work began in 2015 on the $10 million, multi-phased project. With 80% approval from homeowners, the board was able to secure a bank loan to pay for the first phase of the project, which was estimated at $4.5 million. The association realized a savings of more than $1 million on this first phase, but the original lender said the association needed to find another lender for phase 2.

Again, 80% of the association's diverse membership voted to secure a second loan of $8 million. Both phases of the project were completed $500,000 under budget and with a high homeowner approval rating. Increasing monthly assessments enabled the association to pay off both loans.

Communication with homeowners was essential during this project, according to Kate Bowman, CMCA, the on-site manager. Because they had been informed and understood the need for the project's high cost—$10 million—homeowners were willing to approve the necessary funds for it. Residents also appreciated advance notifications of disruptions. The project, which was more disruptive and costlier than originally anticipated, indicated to owners that the association's reserves funds were inadequate and regular assessments needed to be increased. Association members also realized they needed to fund reserves at a much higher level. The board established a finance committee, which convenes quarterly. In anticipation of other potential large projects, University Towers' reserves are now funded at nearly three times the level prior to the window replacement project.

Lessons learned: "Make sure board members are educated on reserve studies and why funding reserves sufficiently is necessary. … Be vigilant with inspections and keep up with code issues. … Don't shirk preventive maintenance. … Take the time to identify a qualified engineer and project manager."

"Getting old is expensive and cannot be avoided. It's an issue facing every association with common area. Older associations need to get ready for higher expenses, which will likely mean higher reserve contributions, special assessments, or loan repayments."—Robert Nordlund, PE, RS

AWARENESS AND EDUCATION

Infrastructure damage was discovered often during repairs or regular inspections, and water intrusion was the most frequent indicator of serious underlying damage. Associations tend to schedule major repairs based on the level of emergency or the cost. Usually, issues affecting elevators, termite infestation, and plumbing or electrical systems are attended to immediately. When possible, associations are inclined to postpone remediating problems in common areas or those related to original construction.

Survey respondents indicated that it would be prudent for association leaders, including homeowners and board members, to learn more about:

- How to plan and execute reserve studies
- How to evaluate and hire qualified engineers, architects, and contractors
- How to implement comprehensive inspection and maintenance programs

More than 80% of survey respondents encountered unanticipated and unplanned-for infrastructure issues over a recent three-year period.

Ongoing Communication Is Essential

Survey respondents found that homeowners and residents were more receptive and supportive of major infrastructure repairs when they were given the opportunity to learn—in advance—about the scope and costs of the project from experts, like the engineers and contractors who had specific knowledge of the damage and how to fix it. They were more willing to authorize assessment increases and to agreeing that a larger portion of the association's budget should go to reserves.

Homeowners, and even renters, also appreciated regular updates on a project's progress and alerts about upcoming but necessary disruptions, such as when to expect water or electricity to be turned off for short periods, when an elevator or other building access would be temporarily unavailable, or where to park and for how long during a paving project.

REMEDIES AND LESSONS LEARNED

After encountering and facing aging infrastructure issues, more than 40% of reporting communities increased their regular assessments. They also designated more money to their reserve funds and proceeded with the required work, even if that work had to be completed in planned stages. About one-third of responding associations hired a reserve specialist.

Bringing in an engineer, architect, or other construction expert also was beneficial to making satisfactory repairs, according to 40% of the responding communities. More than three-quarters (77%) of survey respondents hired independent construction experts to assess and/or repair damage from poor original construction. At least one-third (34%) reported hiring an expert consultant to remediate damage caused by termites or other pests.

Respondents also stressed that thoroughly vetting contractor candidates is a critical and vital step in a successful project outcome. They also recommend inviting multiple bids for the work. Factors to look for when considering a contractor include:

- What is the workforce composition, i.e., are all of the workers company employees, or are some subcontractors?
- Is there an on-site manager or supervisor who will communicate changes?
- Can the contractor provide references to both board members and community association managers?
- Are the contractors familiar with working at inhabited communities?
- Is the contractor's company financially sound?
- Are there any improper or prohibited connections between the contractor and board members?

Financing Major Infrastructure Improvements

Survey respondents used a variety of methods to pay for their major infrastructure repairs and improvements, including:

- Accessing available reserves
- Approving special assessments
- Taking out a bank loan secured by regular assessments

Insurance was rarely a factor when paying for major infrastructure repairs, according to survey respondents. The few exceptions to this include acts of nature and original construction defects or prior repair construction defects that were revealed within an insurance policy's coverage time limits. Sometimes, individual homeowners' policies covered at least a portion of the damage to their units, depending on deductibles and other factors.

Boards and their Attitudes

Arguably the biggest factors affecting how and when infrastructure damage is addressed are the association board's attitude and perspective, and this survey revealed a wide disparity in board philosophies. While some boards are proactive and highly transparent with homeowners, the majority are reticent to increase assessments or often fail to plan long term for infrastructure maintenance. In postponing inspections, reserve studies, and—ultimately—complete repairs or renovations, boards often end up facing an exponentially more comprehensive and expensive project in the long run.
In one case study (see "Gaining Homeowners' Trust," p. 7),

THE RESERVE STUDY—A CRITICAL FACTOR IN PROTECTING AGING INFRASTRUCTURES

Reserve studies are at the core of planning for the long-term maintenance of building structures and the systems within them. In states where reserve studies are not required, many associations reached this conclusion on their own because of unaddressed and costly repairs. Unexpected but necessary remediation of an unplanned capital project often requires either assessing homeowners a high special assessment or obligating the association to a long-term bank loan. Either way, homeowners eventually foot the bill.

To prevent such costly events, regardless of state requirements, associations need to plan for and conduct regular and comprehensive reserve studies.

To be of value, a reserve study should be conducted and managed by an experienced engineer or infrastructure specialist who will inspect and determine the useful life expectancy of each building system and structure within an association. A comprehensive reserve study is well worth the cost; it is, after all, an investment in the future health of the association's physical components. Reserve studies should be conducted on newer structures—even those built in the last decade—to assess for any possible construction defects as well as to provide a baseline evaluation and to determine the useful life of all components.

One of the takeaways from this investigation is the need for an engineering or architectural inspection that would reveal common area integrity concerns. Such an inspection, performed less frequently than periodic site-visit reserve study updates, would help the association anticipate and prepare for major issues outside the scope of cyclical reserve projects. Similar to major medical issues, early detection is key to minimizing and managing major aging infrastructure-type deterioration.

70% **of survey respondents indicated that maintaining property values was most important.**

the construction delays aggravated the damage, compromising residents' safety. When homeowners wouldn't approve the needed funds, the project manager petitioned the court for a special assessment.

Positive Outcomes

A large portion of survey respondents indicated that their associations made positive changes because of their experience with an aging infrastructure issue, including:

- Designating more money to reserves
- Conducting more frequent and thorough reserve studies, including hiring an engineer, pest control, or other construction specialist to review and assess components
- Creating more formal project plans before commencing work
- Planning necessary work in phases rather than delaying it altogether
- Listening to and communicating with homeowners and residents more frequently and regularly
- Educating homeowners and residents on their communities' financial and maintenance needs

Homeowners in most of the survey's case studies rated the outcome of their association's completed projects very highly. In many cases, homeowners who resisted their association's project and—particularly its cost—at the outset, ultimately recognized the improvement and benefits to the community once the project was completed.

INDUSTRY DATA

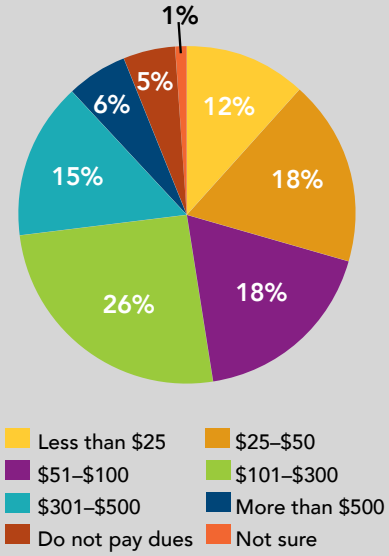
COMMUNITY ASSOCIATION ASSESSMENTS

Community associations rely largely—many exclusively—on homeowner assessments to pay their bills, which can include services like landscaping, security or professional management; maintenance for sidewalks, streets and building exteriors; utilities like street lighting, water or gas; and mandatory expenses like insurance and taxes. Assessments also fund amenities like pools, fitness centers, tennis courts, playgrounds, and social activities.

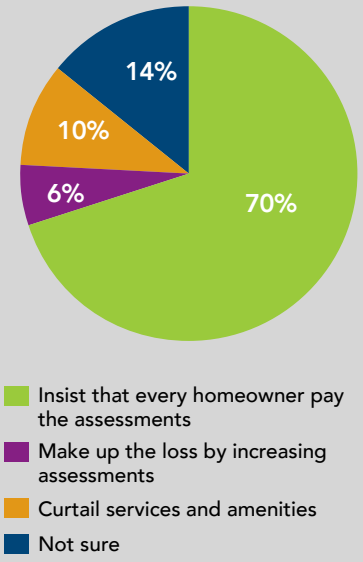
Prudent fiscal policy is essential—not only to the association at large, but also to individual homeowners whose assessments fund essential services and promised amenities.

The 2020 Homeowner Satisfaction Survey examines how community associations residents feel about their fiscal responsibility.

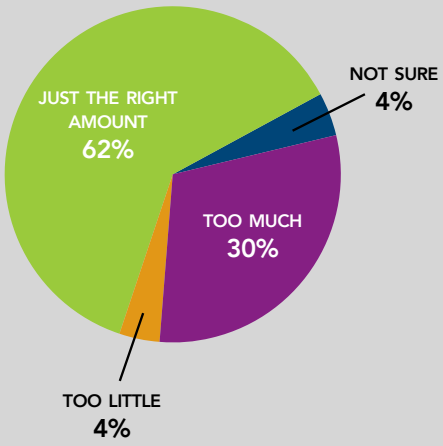
Which of the following best describes the amount of assessments you currently pay per month?



What do you think your community should do when residents neglect to pay their assessments?



Thinking about the amount of your overall assessments that you pay for the services provided by your association, do you feel the amount of your assessments is too much, too little, or just the right amount?



The 2020 Homeowner Satisfaction Survey was conducted by Zogby International for the Foundation for Community Association Research.

For additional information on the 2020 Homeowner Satisfaction Survey, visit ***www.foundation.caionline.org/research/survey_homeowner/***

Case Study – Funding Challenges

GAINING HOMEOWNERS' TRUST

When a major stair-and-balcony-replacement project at the nearly 40-year-old Island J Condominiums in Foster City, Calif., ran out of money, irate homeowners fired the original contractor.

At that point, the architect needed advice on the scope and cost of the next steps, so he called in the president of a small but well-qualified construction project management firm to assess the unfinished work. The new construction project manager found serious problems remained, including decayed wood beams and unsafe stairs, and felt the project should continue. He estimated $7 million to complete it and emphasized that the stairs throughout the community's 29 six-unit buildings were unsafe and at least half of the estimated costs were required to make them usable.

The association's management and attorney convened several town hall meetings and information sessions to explain the project's scope and need for funding to homeowners. In a contentious meeting that required security personnel, homeowners learned that a $40,000-per-door special assessment was required to fund the $7 million. The majority of homeowners voted against the special assessment.

Because the incomplete project was a threat to residents' safety, the association's attorney petitioned the court—and was granted—an emergency assessment of about half the needed $7 million, or the equivalent of about $20,000 per unit.

Despite this rough court-ordered approval process and the forced special assessment, the completed work has been highly rated by residents. Besides making the community safer, other benefits to the improved infrastructure include a dramatic increase in property values and better home sales.

Construction went so well that residents threw a party for the construction team. Since then, and with the approval of two-thirds of homeowners, the association board has authorized money for a second year of work that includes painting the entire 178-unit complex and remodeling the clubhouse. The board raised the regular assessments for two consecutive years to avoid further special assessments.

Lessons learned: Get to know and understand your audience so you can educate them on the realities of their situation. Homeowners need a lot of data and information before trusting an outsider.

An association board's attitude and perspective arguably are the most significant factors affecting how and when infrastructure damage is addressed.

FOUNDATION FOR COMMUNITY ASSOCIATION research

ABOUT THE FOUNDATION FOR COMMUNITY ASSOCIATION RESEARCH

Our mission—with your support—is to provide research-based information for homeowners, association board members, community managers, developers, and other stakeholders. Since the Foundation's inception in 1975, we've built a solid reputation for producing accurate, insightful, and timely information, and we continue to build on that legacy.
Visit foundation.caionline.org

community ASSOCIATIONS INSTITUTE

ABOUT CAI

Since 1973, Community Associations Institute (CAI) has been the leading provider of resources and information for homeowners, volunteer board leaders, professional managers, and business professionals in 350,000 homeowner associations, condominiums, and co-ops in the United States and millions of communities worldwide. With nearly 44,000 members, CAI works in partnership with 36 legislative action committees and 64 affiliated chapters within the U.S., Canada, United Arab Emirates, and South Africa, as well as with housing leaders in several other countries including Australia, Spain, Saudi Arabia, and the United Kingdom.

A global nonprofit 501(c)(6) organization, CAI is the foremost authority in community association management, governance, education, and advocacy. Our mission is to inspire professionalism, effective leadership, and responsible citizenship—ideals reflected in community associations that are preferred places to call home. Visit us at www.caionline.org and follow us on Twitter and Facebook @CAISocial.

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STATE	STATUTE	SCOPE: WHO IS COVERED?*	EXCEPTIONS	ADDITIONAL STATE REQUIREMENTS TO THE VPA	ORGANIZATIONAL IMMUNITY
Volunteer Protection Act	42 U.S.C. §§14501–14505	General	1.Harm caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer. 2. Misconduct that constitutes: a crime of violence; an act of terrorism; a hate crime; a sexual offense; a violation of state or federal civil rights law; or if the volunteer was under the influence of alcohol or drugs. 3. Noneconomic loss in direct proportion to the percentage of responsibility for the harm to the claimant. 4.Harm caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to (A) possess an operator's license; or (B) maintain insurance. 5.Punitive damages if plaintiff establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.	N/A See New Hampshire, below, as the only state that has opted out of this Act.	No
Alabama	ALA. CODE § 6-5-336(d) ALA. CODE § 10A-20-16.03	Director	Damage or injury caused by willful or wanton misconduct.	None	Yes, limited to claims by beneficiaries.
Alaska	ALASKA STAT. § 09.65.170	General	The act or omission constituted gross negligence.	None	No. An organization can protect its directors and officers by providing for immunity in the articles of incorporation.
Arizona	ARIZ. REV. STAT. ANN. § 12-982	General	Damage or injury caused by willful, wanton or grossly negligent misconduct.	None	No
Arkansas	ARK. CODE ANN. § 16-6-105	General	1. If the volunteer is covered by insurance policy, in which case liability for ordinary negligence is limited to the amount coverage provides. 2. If the volunteers acts in bad faith or with gross negligence. 3. If the volunteer operates a motor vehicle, aircraft, boat, or other powered mode of conveyance. 4. Where the volunteer negligently performs professional services for an individual which the volunteer is licensed to perform, including legal, engineering, and accounting services. Because the immunity requires an association to be organized pursuant to § 501(c)(3) of the Internal Revenue Code, it is likely that the immunity would not apply to a community association or its volunteers; volunteers may still be covered under the VPA.	None	Yes. Courts may grant immunity in limited situations.
California	CAL. CORP. CODE § 5239	Director	Reckless, wanton, gross or intentional negligence.	Additional requirement that directors must be covered under the community association's GL or D&O policy.	No
Colorado	COLO. REV. STAT. ANN. § 13-21-115.5	Director	Willful or wanton misconduct by the volunteer. Also, a plaintiff may sue a volunteer based on a negligent act or omission involving a motor vehicle. The amount recovered may not exceed the amount of insurance held by the volunteer with respect to the negligent operation of a motor vehicle in such circumstances.	None	Yes. Damages limited to the extent nonprofit would be reimbursed by proceeds of liability insurance policies it carries. An organization can protect its directors and officers by providing for immunity in the

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STATE	STATUTE	SCOPE: WHO IS COVERED?*	EXCEPTIONS	ADDITIONAL STATE REQUIREMENTS TO THE VPA	ORGANIZATIONAL IMMUNITY
					articles of incorporation.
Connecticut	CONN. GEN. STAT. § 52-557m	Director	The damage or injury was caused by reckless, willful or wanton misconduct of the person.	None	No
Delaware	DEL. CODE ANN. tit. 10, § 8133	General	Acts or omissions constituting willful, wanton or grossly negligent conduct. A plaintiff may sue due to negligent act or omission relating to the operation of a motor vehicle. The amount recovered from the volunteer may not exceed the insurance coverage held for negligent operation of a motor vehicle under the circumstances. Proof of an act or omission by a volunteer that establishes a basis for the volunteer's immunity shall be sufficient to establish the liability of the organization under the doctrine of respondeat superior.	None	No
D.C.	D.C. CODE ANN. § 29-599.15	General	Willful misconduct, criminal conduct, or a transaction that resulted in an improper benefit to the volunteer.	Additional requirement that the community association maintains liability insurance with a limit of coverage not less than $200,000 per individual claim and $500,000 per total claim that arise from the same transaction.	No
Florida	FLA. STAT. ANN. § 768.1355	General	Injury or damage caused by wanton or willful misconduct on the part of the person performing the duties.	None	No
Georgia	GA. CODE ANN. § 51-1-20	General	Damage or injury was caused by willful or wanton misconduct.	None	Yes. Charitable institutions not liable for negligence of officers unless it fails to exercised ordinary care in the selection or retention of competent officers.
Hawaii	HAW. REV. STAT. § 662D-1-662D-3	General	Immunity applies if the volunteer acted in good faith and within the scope of duty for a non-profit organization or corporation, a hospital or a government entity; and if organization has a general liability policy during the time of injury and at the time the claim is made of not less than $200,000 per occurrence and $500,000 aggregate; or the organization has total assets of less than $50,000.	Additional requirement that the nonprofit organization or corporation must have a general liability policy in force, both at the time of injury and at the time the claim is made against the entity, and the minimum coverage is in an amount of not less than $200,000 per occurrence and $500,000 aggregate; or the nonprofit has total assets of less than $50,000.	No
Idaho	IDAHO CODE § 6-1605	General	No immunity attaches to the following categories of conduct: conduct which was willful, wanton, or involves fraud or knowing violation of the law; conduct for which liability insurance was purchased to the extent that it was purchased; intentional breach of fiduciary duty owed to the organization, corporation or members; acts or omissions not in good faith and involving intentional misconduct, fraud or knowing violation of the law; a transaction from which the officer, director or volunteer received an improper, personal benefit; damages that result from operation of a motor vehicle; and violations of Idaho Nonprofit Corporation Act.	None	No
Illinois	805 ILL. COMP. STAT. 105/108.70	Director	The director or officer earns in excess of $5,000 per year, other than reimbursement for actual expenses, or the act or omission involves willful or wanton conduct.	None	No
Indiana	IND. CODE § 34-30-4-2	Director	Must act with reasonable care in the performance of their duties.	None	No
Iowa	IOWA CODE § 613.19	General	Intentional misconduct or knowing violation of the law, or a transaction from which the person derives an improper personal benefit.	None	No

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STATE	STATUTE	SCOPE: WHO IS COVERED?*	EXCEPTIONS	ADDITIONAL STATE REQUIREMENTS TO THE VPA	ORGANIZATIONAL IMMUNITY
Kansas	KAN. STAT. ANN. § 60-3601	General	The conduct constitutes willful or wanton misconduct or intentionally tortious conduct, or the volunteer is required by law to be insured or is insured for those acts or omissions.	Additional requirement that if the volunteer has insurance, they are liable only to the extent of the coverage. If the non-profit organization has general liability insurance, a volunteer is not liable for damages in a civil action for the acts or omissions of officers, directors, trustees, employees or other volunteers.	No
Kentucky	KY. REV. STAT. ANN. § 411.200	General	The damage was caused by willful or wanton misconduct.	None	No
Louisiana	LA. REV. STAT. ANN. § 9:2792.3	Director	Damage or injury caused by willful or wanton misconduct.	None	No
Maine	ME. REV. STAT. ANN. tit. 14, § 158-A	General	A director, officer or volunteer is considered to have waived immunity if the cause of action arises out of operation of a motor vehicle, vessel, aircraft or any vehicle that requires a license and insurance. The extent of damages will not exceed the extent of insurance coverage. Because the immunity requires an association to be organized pursuant to § 501(c)(3) of the Internal Revenue Code, it is likely that the immunity would not apply to a community association or its volunteers; volunteers may still be covered under the VPA.	None	Yes. Common law immunity applies only if an organization derives its funds mainly from public and private charity. Recovery is limited to extent of insurance coverage.
Maryland	MD. CODE ANN., CTS. & JUD. PROC. § 5-407	General	1) The volunteer knew or should have known of the act or omission or actively participated in it; or with full knowledge of the situation the volunteer ratified an act or omission of an officer, director, employee, trustee or other volunteer. A volunteer is not liable in damages beyond the limits of any personal insurance held by the volunteer that arises from the volunteer's act or omission in connection with services performed on behalf of the organization. 2) The volunteer's act or omission constitutes gross negligence, reckless, willful, or wanton misconduct, or intentional tortious conduct.	None	Yes. Immunity is premised on the trust fund theory, that is, because funds of the organization are impressed with a trust for charitable purposes, those funds should not be diverted to pay tort damage awards. If an organization carries insurance, recovery is limited to policy limits.
Massachusetts	MASS. GEN. LAWS CH. 231, § 85W	Director	Notwithstanding any other provision of this section, the liability of charitable corporations, the trustees of charitable trusts, and the members of charitable associations shall not be subject to the limitations set forth in this section if the tort was committed in the course of activities primarily commercial in character even though carried on to obtain revenue to be used for charitable purposes. No person who serves as a director, officer or trustee of an educational institution which is, or at the time the cause of action arose was, a charitable organization, qualified as a tax-exempt organization under 26 USC 501(c)(3) and who is not compensated for such services, except for reimbursement of out of pocket expenses, shall be liable solely by reason of such services as a director, officer or trustee for any act or omission resulting in damage or injury to another, if such person was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by willful or wanton misconduct. The limitations on liability provided by this section shall not apply to any cause or action arising out of said person's operation of a motor vehicle. Because the immunity requires an association to be organized pursuant to § 501(c)(3) of the Internal Revenue Code, it is likely that the immunity would not apply to a	None	Yes. Damages capped at $20,000

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STATE	STATUTE	SCOPE: WHO IS COVERED?*	EXCEPTIONS	ADDITIONAL STATE REQUIREMENTS TO THE VPA	ORGANIZATIONAL IMMUNITY
			community association or its volunteers; volunteers may still be covered under the VPA.		
Michigan	MICH. COMP. LAWS ANN. § 450.2209(e).	General	Gross negligence or willful and wanton misconduct, an intentional tort, or a tort arising out of the ownership, maintenance, or use of a motor vehicle.	None	No. An organization can protect its directors and officers by providing for immunity in the articles of incorporation.
Minnesota	MINN. STAT. ANN. § 317A.257	General	An act or omission that constituted willful or reckless misconduct.	None	No
Mississippi	MISS. CODE ANN. § 95-9-1	General	If the volunteer engages in acts or omissions that are intentional, willful wanton, reckless or grossly negligent, or where the volunteer negligently operates a motor vehicle. Because the immunity requires an association to be organized pursuant to § 501(c)(3) of the Internal Revenue Code, it is likely that the immunity would not apply to a community association or its volunteers; volunteers may still be covered under the VPA.	None	No
Missouri	MO. REV. STAT. § 537.118	General	Damage or injury caused by intentional or malicious conduct or by the volunteer's negligence.	None	No
Montana	MONT. CODE ANN. § 27-1-732	General	Willful or wanton misconduct.	None	No
Nebraska	NEB. REV. STAT. § 25-21,191	Director	Damage or injury was caused by willful or wanton acts or omissions.	None	No
Nevada	NEV. REV. STAT. § 41.485	General	An intentional, willful, wanton or malicious act.	None	No
New Hampshire[1]	N.H. REV. STAT. ANN. § 508:17	General	Damage or injury was caused by willful, wanton or grossly negligent misconduct by the volunteer.	Opted out of VPA; state act controls	No
New Jersey	N.J. STAT. ANN. § 2A:53A-7	General	(1) any trustee, director, officer, employee, agent, servant or volunteer causing damage by a willful, wanton or grossly negligent act of commission or omission, including sexual assault and other crimes of a sexual nature; (2) any trustee, director, officer, employee, agent, servant or volunteer causing damage as the result of the negligent operation of a motor vehicle; or (3) an independent contractor of a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes.	None	Yes. Nonprofits are not liable for negligently causing injury to a beneficiary of the organization
New Mexico	N.M. STAT. ANN. § 53-8-25.3	Director	Willful misconduct or recklessness.	None	No clear authority
New York	N.Y. Not-For-Profit Corp. Law § 720-A	General	Gross negligence or intentional torts.	None	No
North Carolina	N.C. GEN. STAT. § 1-539.10 N.C. GEN. STAT. § 55A-8-60	General Director	Volunteers: the acts or omissions of the volunteer amount to gross negligence, wanton conduct or intentional wrongdoing, the acts or omissions occurred while the volunteer was operating a motor vehicle. To the extent that any charitable organization or volunteer has liability insurance, that charitable organization or volunteer shall be deemed to have waived the immunity to the extent of indemnification by insurance for the negligence by any volunteer. Directors: if the director or officer was compensated beyond reimbursement for expenses, they were not acting in the scope of duty, they committed gross negligence or willful or wanton misconduct that resulted in the damage or injury, or they incurred the liability from the operation of a motor vehicle.	None	No

[1] Opted out of VPA

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STATE	STATUTE	SCOPE: WHO IS COVERED?*	EXCEPTIONS	ADDITIONAL STATE REQUIREMENTS TO THE VPA	ORGANIZATIONAL IMMUNITY
North Dakota	N.D. CENT. CODE § 32-03-45	General	The act or omission constitutes willful misconduct or gross negligence.	None	Yes. Immunity abolished only for hospitals.
Ohio	OHIO REV. CODE ANN. § 2305.38 OHIO REV. CODE ANN. § 2305.38	General Director	The liability relief is not granted if the volunteer actively and knowingly participated with the action or omission of an officer, employee, trustee or other volunteer, or if the volunteer ratifies the act or omission of another after it is done, or if the act or omission of the volunteer constitutes willful or wanton misconduct or intentionally tortuous conduct.	None	No
Oklahoma	OKLA. STAT. ANN. tit. 76, § 31 OKLA. STAT. ANN. tit. 18, § 866-867	General Director	Volunteers: gross negligence, willful or wanton misconduct. Directors: intentional torts or grossly negligent omissions personal to any director.	None	No
Oregon	Or. Rev. Stat. § 65.369	Director	Gross negligence or intentional conduct.	None	No
Pennsylvania	42 PA. CONS. STAT. ANN. § 8332. 42 PA. CONS. STAT. ANN. § 8332.	General Director	Volunteers: the conduct of the volunteer fell substantially below generally accepted standards, and the person did an act or omitted doing an act that the person was under a recognized duty to do, and knew this created a substantial risk of harm. Nothing in this act will be construed so as to affect the liability of a volunteer for acts or omissions relating to the transportation of participants in a public service program project. Directors: the conduct of the volunteer fell substantially below generally accepted standards, and the person did an act or omitted doing an act that the person was under a recognized duty to do, and knew this created a substantial risk of harm. Nothing in this section will be construed as affecting the liability of a non-profit association.	None	No
Rhode Island	R.I. GEN. LAWS § 7-6-9	General	Conduct constituted malicious, willful or wanton misconduct.	None	No
South Carolina	S.C. CODE ANN. § 33-56-180	General	Reckless, willful, or grossly negligent manner. If the actual damages arose from the operation of a motor vehicle and exceed $250,000, this section does not prevent the injured person from recovering benefits pursuant to §38-77-160. The amount may not exceed the limits of the uninsured or underinsured coverage.	None	Yes. Awards against "charitable organization" are limited to $250,000 in actions for injury or death caused by the tort of an agent or officer.
South Dakota	S.D. CODIFIED LAWS § 47-23-29 S.D. CODIFIED LAWS § 47-23-2.1	General Director	The damage or injury was caused by gross negligence or willful and wanton misconduct.	None	No clear authority
Tennessee	TENN. CODE ANN. § 48-58-601	Director	There is no immunity from suit when conduct amounts to willful, wanton or gross negligence.	None	Yes. Property used solely for charitable purposes and not ―derived from the operation of a business or concession incidental to [the organization's] main object‖ is exempt from execution under a tort judgment.
Texas	TEX. CIV PRAC & REM CODE ANN. § 84.004 TEX. BUS ORGS CODE § 23.235	General Director	Volunteers: A volunteer for a charitable organization is liable for injuries arising from the operation of motor-driven equipment, to the extent that insurance is required and existing insurance covers the act or omission. This section applies only to the liability of volunteers, and not to organizations. This chapter does not limit or modify the duties and liabilities of a member of the board of directors or an officer to the organization or its members and shareholders.	The Texas Act does not apply to a community association (or its "employees") if it does not have liability insurance coverage in effect on any act or omission to which Chapter 84 applies. The coverage shall apply to the acts or omissions of the organization and its employees and volunteers and be in the amount of at least	Yes. Liability limited to money damage to $500.000 per person and $1,000,000 for each occurrence of bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property.

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STATE	STATUTE	SCOPE: WHO IS COVERED?*	EXCEPTIONS	ADDITIONAL STATE REQUIREMENTS TO THE VPA	ORGANIZATIONAL IMMUNITY
			Directors: the officer's conduct was not exercised in good faith; or with ordinary care; or in a manner the officer reasonably believed to be in the best interest of the corporation.	$500,000 for each person and $1,000,000 for each single occurrence for death or bodily injury and $100,000 for each single occurrence for injury to or destruction of property.	
Utah	UTAH CODE ANN. § 78-19-2	General	Damage or injury was caused an intentional or knowing act of the volunteer that constituted illegal, willful or wanton misconduct. The protection from liability does not apply if the injuries resulted from operation of a motor vehicle, vessel or aircraft or other vehicle for which a license is needed, when the suit is brought by a government official to enforce a law, where the non-profit organization fails to provide a financially secure source of recovery for the harmed individual. However, the non-profit organization is not under a duty to provide a financially secure source of recovery. The granting of immunity to volunteers has no effect on the liability of the non-profit organization providing the source of recovery.	Additional requirement that limitation of liability only applies if the community association for which the volunteer is working provides a financially secure source of recovery for individuals who suffer injuries as a result of actions taken by the volunteer on behalf of the nonprofit organization. A financially secure source of recovery may be an insurance policy or a qualified trust.	Yes. Nonprofit not liable for acts of its volunteers unless nonprofit should have had reasonable notice of volunteer's unfitness. A non-profit organization is also not liable where under the law a business employer would not be liable for an employee. An organization can protect its directors and officers by providing for immunity in the articles of incorporation.
Vermont	VT. STAT. ANN. tit.12, § 5781	Director	An act or omission that constitutes gross negligence or an intentional tort. This section does not protect a person from liability for damages that result from the operation of a motor vehicle.	None	No
Virginia	VA. CODE ANN. § 13.1-870.1	Director	Liability is not limited if the officer or director engaged in willful misconduct or knowingly violated the law.	None	Yes. Nonprofits are immune from suits by beneficiaries alleging negligence, unless nonprofit fails to exercise ordinary care in selecting employees.
Washington	WASH. REV. CODE ANN. § 4.24.264 WASH. REV. CODE ANN. § 4.24.670	Director General	The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; The harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to either possess an operator's license or maintain insurance	None	No. An organization can protect its directors and officers by providing for immunity in the articles of incorporation.
West Virginia	W. VA. CODE § 55-7C-3	Director	Gross negligence.	None	No
Wisconsin	WIS. STAT. ANN. § 181.0670	General	A knowing violation of criminal law, willful misconduct, an act or omission for which the volunteer received compensation, if the volunteer is a director or officer of the corporation--an act or omission within the scope of the volunteer's duties as director or officer, if proper credentials or a license were required and the volunteers did not have it. The section does not apply to: a civil or criminal proceeding brought by a government entity, a proceeding brought for violation of state or federal law if it is brought under an express, private right of action created by state or federal statute, claims arising from the negligent operation of any motor vehicle for which a permit is required.	None	No
Wyoming	WYO. STAT. ANN. § 1-1-125 WYO. STAT. ANN. § 17-19-830	General Directors	An act or omission that constitutes willful or wanton misconduct or gross negligence. This does not grant immunity to any person who causes damage as a result of the operation of a motor vehicle. A non-profit organization is liable for the negligent act of a volunteer under the theory of respondeat superior, notwithstanding personal immunity the volunteer may have.	None	Yes. Applies if an organization renders services without charge. However, Wyoming volunteer protection statutes provide that a nonprofit is liable for negligent acts of volunteers.

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STATE	STATUTE	SCOPE: WHO IS COVERED?*	EXCEPTIONS	ADDITIONAL STATE REQUIREMENTS TO THE VPA	ORGANIZATIONAL IMMUNITY

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FLORIDA SB 4-D

Committee on Appropriations

SB 4-D — Building Safety

by Senator Boyd

The bill requires the Florida Building Code to provide that when 25 percent or more of a roofing system or roof section is being repaired, replaced, or recovered, only the portion of the roofing system or roof section undergoing such work need be constructed in accordance with the current Florida Building Code in effect at the time of such work. This new provision applies only to roof systems and roof sections built, repaired, or replaced in accordance with the requirements of the 2007 Florida Building Code or subsequent editions. The provision revises the current Florida Building Code which requires that not more than 25 percent of the total roof area or roof section, of any existing building or structure, may be repaired, replaced, or recovered in any 12-month period—unless the entire existing roofing system or roof section conforms to the current requirements of the Code.

The bill also provides building safety inspection requirements for condominium and cooperative association buildings, increases the rights of unit owners and prospective unit owners to access information regarding the condition of such buildings, and revises the requirements for associations to fund reserves for the continued maintenance and repair of such buildings.

Regarding building safety inspections, the bill:

- Requires condominium and cooperative association buildings that are three or more stories in height to have a "milestone inspection" of the buildings' structural integrity by an architect or engineer when a building reaches:
  - 30 years of age and every 10 years thereafter, or
  - 25 years of age and every 10 years thereafter if the building is located within three miles of a coastline.
- Requires, if a milestone inspection is required and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection to be performed before December 31, 2024.
- Requires that a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency.
- Requires a phase two milestone inspection if there is evidence of "substantial structural deterioration" as determined by a phase one inspection.
- Specifies the minimum contents of a milestone inspection report.
- Requires inspection report results to be provided to local building officials and the associations, and requires an inspector-prepared summary to be provided to unit owners by mail and by email to unit owners who have consented to receive notices by email.
- Requires that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) or CAM firm must require compliance with those requirements as directed by the board.
- Requires the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial

deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.
- Requires the Florida Building Commission to make recommendations to the Governor and Legislature regarding the inspection requirements in the bill and inspection for other types of buildings and structures that are three stories or more.
- Provides that a willful and knowing failure by an officer or director of an association to have a milestone inspection performed is a breach of the officer's and director's fiduciary relationship to the unit owners.
- Gives unit owners the right to inspect and copy, as official records, the milestone inspection report and all other inspection reports relating to structural or life safety, and gives renters the right to inspect the milestone inspection reports.
- Requires the developer's turnover inspection report to comply with the milestone inspection requirements.
- Requires associations to report to the Florida Division of Condominiums, Timeshare, and Mobile Homes (division) the number of buildings that are three stories or higher in height and the total number of units in such buildings on or before January 1, 2023, and requires the division to publish that information on its website.
- Requires developer and non-developer unit owners to give prospective buyers of a unit a copy of the inspector-prepared summary of the milestone inspection report.
- Extends the jurisdiction of the division to investigate complaints to include complaints related to the procedural completion of milestone inspections.

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, the bill:
- Requires condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height.
- Requires associations existing on or before July 1, 2022, that are controlled by non-developer unit owners to have a structural integrity reserve study completed by December 31, 2024.
- Defines "structural integrity reserve study" as a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection of the common elements.
- Requires the study to include a visual inspection, state the estimated remaining useful life, and the estimated replacement cost of the roof, load bearing walls or other primary structural members, floor, foundation, fireproofing and fire protection systems, plumbing, and any item with a deferred maintenance or replacement cost that exceeds $10,000.
- Requires the visual inspection to be performed by a person licensed as an engineer or an architect. However, any qualified person or entity may perform the other components of a structural integrity reserve study.
- Requires a developer to have a structural integrity reserve study completed for each building in the association that is three stories or more in height before turning over control of an association to the non-developer unit owners.

- Provides that it is a breach of a board member or officer's fiduciary duty if an association fails to complete a structural integrity reserve study.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 110-0

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An act relating to building safety; amending s. 553.844, F.S.; providing that the entire roofing system or roof section of certain existing buildings or structures does not have to be repaired, replaced, or recovered in accordance with the Florida Building Code under certain circumstances; requiring the Florida Building Commission to adopt rules and incorporate the rules into the building code; prohibiting local governments from adopting certain administrative or technical amendments to the building code; amending s. 468.4334, F.S.; requiring community association managers and community association management firms to comply with a specified provision under certain circumstances; creating s. 553.899, F.S.; providing legislative findings; defining the terms "milestone inspection" and "substantial structural deterioration"; specifying that the purpose of a milestone inspection is not to determine compliance with the Florida Building Code or the firesafety code; requiring condominium associations and cooperative associations to have milestone inspections performed on certain buildings at specified times; specifying that such associations are responsible for costs relating to milestone inspections; providing applicability; requiring that initial milestone inspections for certain buildings be performed before a specified date; requiring local enforcement agencies to provide certain written notice

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to condominium associations and cooperative associations; requiring condominium associations and cooperative associations to complete phase one of a milestone inspection within a specified timeframe; specifying that milestone inspections consist of two phases; providing requirements for each phase of a milestone inspection; requiring architects and engineers performing a milestone inspection to submit a sealed copy of the inspection report and a summary that includes specified findings and recommendations to certain entities; providing requirements for such inspection reports; requiring condominium associations and cooperative associations to distribute and post a copy of each inspection report and summary in a specified manner; authorizing local enforcement agencies to prescribe timelines and penalties relating to milestone inspections; authorizing boards of county commissioners to adopt certain ordinances relating to repairs for substantial structural deterioration; requiring local enforcement agencies to review and determine if a building is unsafe for human occupancy under certain circumstances; requiring the Florida Building Commission to review milestone inspection requirements and make any recommendations to the Governor and the Legislature by a specified date; requiring the commission to consult with the State Fire Marshal to provide certain recommendations to the Governor and the Legislature by a specified date; amending s. 718.103, F.S.; providing a definition;

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amending s. 718.111, F.S.; revising the types of records that constitute the official records of a condominium association; requiring associations to maintain specified records for a certain timeframe; specifying that renters of a unit have the right to inspect and copy certain reports; requiring associations to post a copy of certain reports and reserve studies on the association's website; amending s. 718.112, F.S.; specifying the method for determining reserve amounts; prohibiting certain members and associations from waiving or reducing reserves for certain items after a specified date; requiring certain associations to receive approval before waiving or reducing reserves for certain items; prohibiting certain associations from using reserve funds, or any interest accruing thereon, for certain purposes after a specified date; requiring certain associations to have a structural integrity reserve study completed at specified intervals and for certain buildings by a specified date; providing requirements for such study; conforming provisions to changes made by the act; restating requirements for associations relating to milestone inspections; specifying that if the officers or directors of a condominium association fail to have a milestone inspection performed, such failure is a breach of their fiduciary relationship to the unit owners; amending ss. 718.116 and 718.117, F.S.; conforming cross-references; amending s. 718.301, F.S.; revising reporting requirements

relating to the transfer of association control; amending s. 718.501, F.S.; revising the Division of Florida Condominiums, Timeshares, and Mobile Homes' authority relating to enforcement and compliance; requiring certain associations to provide certain information and updates to the division by a specified date and within a specified timeframe; requiring the division to compile a list with certain information and post such list on its website; amending s. 718.503, F.S.; revising the documents that must be delivered to a prospective buyer or lessee of a residential unit; revising requirements for nondeveloper disclosures; amending s. 718.504, F.S.; revising requirements for prospectuses and offering circulars; amending s. 719.103, F.S.; providing a definition; amending s. 719.104, F.S.; revising the types of records that constitute the official records of a cooperative association; requiring associations to maintain specified records for a certain timeframe; specifying that renters of a unit have the right to inspect and copy certain reports; amending s. 719.106, F.S.; specifying the method for determining reserve amounts; prohibiting certain members and associations from waiving or reducing reserves for certain items after a specified date; requiring certain associations to receive approval before waiving or reducing reserves for certain items; prohibiting certain associations from using reserve funds, or any interest accruing thereon, for certain purposes after a

specified date; requiring certain associations to have a structural integrity reserve study completed at specified intervals and for certain buildings by a specified date; providing requirements for such study; conforming provisions to changes made by the act; restating requirements for associations relating to milestone inspections; specifying that if the officers or directors of a cooperative association fail to have a milestone inspection performed, such failure is a breach of their fiduciary relationship to the unit owners; amending s. 719.301, F.S.; requiring developers to deliver a turnover inspection report relating to cooperative property under certain circumstances; amending s. 719.501, F.S.; revising the division's authority relating to enforcement and compliance; requiring certain associations to provide certain information and updates to the division by a specified date and within a specified time; requiring the division to compile a list with certain information and post such list on its website; amending s. 719.503, F.S.; revising the documents that must be delivered to a prospective buyer or lessee of a residential unit; revising nondeveloper disclosure requirements; amending s. 719.504, F.S.; revising requirements for prospectuses and offering circulars; amending ss. 720.303, 720.311, and 721.15, F.S.; conforming cross-references; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 553.844, Florida Statutes, to read:

553.844 Windstorm loss mitigation; requirements for roofs and opening protection.—

(5) Notwithstanding any provision in the Florida Building Code to the contrary, if an existing roofing system or roof section was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, and 25 percent or more of such roofing system or roof section is being repaired, replaced, or recovered, only the repaired, replaced, or recovered portion is required to be constructed in accordance with the Florida Building Code in effect, as applicable. The Florida Building Commission shall adopt this exception by rule and incorporate it in the Florida Building Code. Notwithstanding s. 553.73(4), a local government may not adopt by ordinance an administrative or technical amendment to this exception.

Section 2. Subsection (1) of section 468.4334, Florida Statutes, is amended to read:

468.4334 Professional practice standards; liability.—

(1)(a) A community association manager or a community association management firm is deemed to act as agent on behalf of a community association as principal within the scope of authority authorized by a written contract or under this chapter. A community association manager and a community association management firm shall discharge duties performed on behalf of the association as authorized by this chapter loyally,

skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.

(b) If a community association manager or a community association management firm has a contract with a community association that has a building on the association's property that is subject to s. 553.899, the community association manager or the community association management firm must comply with that section as directed by the board.

Section 3. Section 553.899, Florida Statutes, is created to read:

553.899 Mandatory structural inspections for condominium and cooperative buildings.—

(1) The Legislature finds that maintaining the structural integrity of a building throughout its service life is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare. As such, the Legislature finds that the imposition of a statewide structural inspection program for aging condominium and cooperative buildings in this state is necessary to ensure that such buildings are safe for continued use.

(2) As used in this section, the terms:

(a) "Milestone inspection" means a structural inspection of a building, including an inspection of load-bearing walls and the primary structural members and primary structural systems as those terms are defined in s. 627.706, by a licensed architect or engineer authorized to practice in this state for the

purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code.

(b) "Substantial structural deterioration" means substantial structural distress that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.

(3) A condominium association under chapter 718 and a cooperative association under chapter 719 must have a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If the building is located within 3 miles of a coastline as defined in s. 376.031, the condominium association or cooperative association must have a milestone inspection performed by December 31 of the year in which the building

reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. The condominium association or cooperative association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the inspection. This subsection does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.

(4) If a milestone inspection is required under this section and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.

(5) Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the condominium association or cooperative association by certified mail, return receipt requested.

(6) Within 180 days after receiving the written notice under subsection (5), the condominium association or cooperative association must complete phase one of the milestone inspection. For purposes of this section, completion of phase one of the milestone inspection means the licensed engineer or architect who performed the phase one inspection submitted the inspection

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report by e-mail, United States Postal Service, or commercial delivery service to the local enforcement agency.

(7) A milestone inspection consists of two phases:

(a) For phase one of the milestone inspection, a licensed architect or engineer authorized to practice in this state shall perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration to any building components under visual examination, phase two of the inspection, as provided in paragraph (b), is not required. An architect or engineer who completes a phase one milestone inspection shall prepare and submit an inspection report pursuant to subsection (8).

(b) A phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report

pursuant to subsection (8).

(8) Upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

(a) Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.

(b) Indicate the manner and type of inspection forming the basis for the inspection report.

(c) Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.

(d) State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.

(e) Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.

(f) Identify and describe any items requiring further inspection.

(9) The association must distribute a copy of the inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner, regardless of

the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to received notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

(10) A local enforcement agency may prescribe timelines and penalties with respect to compliance with this section.

(11) A board of county commissioners may adopt an ordinance requiring that a condominium or cooperative association schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report; however, such repairs must be commenced within 365 days after receiving such report. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial structural deterioration identified in a phase two inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

(12) The Florida Building Commission shall review the milestone inspection requirements under this section and make recommendations, if any, to the Legislature to ensure inspections are sufficient to determine the structural integrity of a building. The commission must provide a written report of any recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by

December 31, 2022.

(13) The Florida Building Commission shall consult with the State Fire Marshal to provide recommendations to the Legislature for the adoption of comprehensive structural and life safety standards for maintaining and inspecting all types of buildings and structures in this state that are three stories or more in height. The commission shall provide a written report of its recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2023.

Section 4. Subsections (25) through (30) of section 718.103, Florida Statutes, are renumbered as subsections (26) through (31), respectively, and a new subsection (25) is added to that section, to read:

718.103 Definitions.—As used in this chapter, the term:

(25) "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed by an engineer licensed under chapter 471 or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or

deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

Section 5. Paragraph (b) of subsection (7) and paragraphs (a), (c), and (g) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(7) TITLE TO PROPERTY.—

(b) Subject to s. 718.112(2)(o) ~~the provisions of s. 718.112(2)(m)~~, the association, through its board, has the limited power to convey a portion of the common elements to a condemning authority for the purposes of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer under s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s.

718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, structural integrity reserve studies, and financial reports of the association or condominium. Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. A copy of the inspection reports ~~report as~~ described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of

condominium property. Such record must be maintained by the association for 15 years after receipt of the report ~~s. 718.301(4)(p)~~.

16. Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, ~~and~~ the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th

working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for

the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing

address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, collection of subpages or web portals, or an application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application which contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to

the articles of incorporation or other documents. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for

the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or

restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 6. Paragraphs (g) through (o) of subsection (2) of section 718.112, Florida Statutes, are redesignated as paragraphs (i) through (q), respectively, paragraphs (d) and (f) of that subsection are amended, and new paragraphs (g) and (h) are added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an

eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not

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enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon’s civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

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3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is

provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide

an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or

transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best

of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to

all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (l) ~~(j)~~, and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass e-mails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative,

a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (l) ~~(j)~~ and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board

shall adopt the annual budget at least 14 days before ~~prior to~~ the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is ~~shall be~~ deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must ~~shall~~ adopt a separate budget of common expenses for each condominium the association operates and must ~~shall~~ adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do ~~need~~ not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved for an item is determined by the association's most recent structural integrity reserve study that must be completed by December 31, 2024. If the amount to be reserved for an item is not in the association's initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount

must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the ~~each~~ reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. ~~This subsection does not apply to an adopted budget in which~~ The members of a unit-owner controlled ~~an~~ association may determine ~~have determined~~, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection. Effective December 31, 2024, the members of a unit-owner controlled association may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g).

b. Before turnover of control of an association by a developer to unit owners other than a developer under ~~pursuant to~~ s. 718.301, the developer-controlled association ~~developer~~ may not vote ~~the voting interests allocated to its units~~ to waive the reserves or reduce ~~the~~ funding of the reserves ~~through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association~~. If a meeting of the unit owners has been called

to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. Effective December 31, 2024, members of a unit-owner controlled association may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (g) for any other purpose other than their intended purpose ~~without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association~~.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized,

bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Structural integrity reserve study.*—

1. An association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the condominium property that is three stories or higher in height which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Load-bearing walls or other primary structural members.

c. Floor.

d. Foundation.

e. Fireproofing and fire protection systems.

f. Plumbing.

g. Electrical systems.

h. Waterproofing and exterior painting.

i. Windows.

j. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in subparagraphs a.-i., as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

2. Before a developer turns over control of an association to unit owners other than the developer, the developer must have

a structural integrity reserve study completed for each building on the condominium property that is three stories or higher in height.

3. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height.

4. If an association fails to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

(h) *Mandatory milestone inspections.*—If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the inspection. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners under s. 718.111(1)(a). Upon completion of a phase one or phase two milestone inspection and receipt of the inspector-prepared summary of the inspection report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal

delivery and by electronic transmission to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Section 7. Paragraph (f) of subsection (8) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(8) Within 10 business days after receiving a written or electronic request therefor from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(f) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(k) ~~s. 718.112(2)(i)~~, an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed $250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the

request, the association may charge an additional fee of $100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed $150.

Section 8. Paragraph (b) of subsection (8) of section 718.117, Florida Statutes, is amended to read:

718.117 Termination of condominium.—

(8) REPORTS AND REPLACEMENT OF RECEIVER.—

(b) The unit owners of an association in termination may recall or remove members of the board of administration with or without cause at any time as provided in s. 718.112(2)(l) ~~s. 718.112(2)(j)~~.

Section 9. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended, and paragraph (r) is added to that subsection, to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was

issued or the height of the building, a milestone inspection report in compliance with s. 553.899 included in the official records, under seal of an architect or engineer authorized to practice in this state, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property ~~common elements~~ comprising a turnover inspection report:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool or spa and equipment.

9. Seawalls.

10. Pavement and parking areas.

11. Drainage systems.

12. Painting.

13. Irrigation systems.

14. Waterproofing.

(r) A copy of the association's most recent structural integrity reserve study.

Section 10. Subsection (1) of section 718.501, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

718.501 Authority, responsibility, and duties of Division

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of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under s. 718.111(12), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination

and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as

follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to

pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such

other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division

has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk

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assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution proceedings under s. 718.1255 requesting a copy of the list. The division shall

include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status

of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a

hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(3)(a) On or before January 1, 2023, condominium associations existing on or before July 1, 2022, must provide the following information to the division in writing, by e-mail, United States Postal Service, commercial delivery service, or hand delivery, at a physical address or e-mail address provided by the division and on a form posted on the division's website:

1. The number of buildings on the condominium property that are three stories or higher in height.

2. The total number of units in all such buildings.

3. The addresses of all such buildings.

4. The counties in which all such buildings are located.

(b) The division must compile a list of the number of buildings on condominium property that are three stories or

higher in height, which is searchable by county, and must post the list on the division's website. This list must include all of the following information:

1. The name of each association with buildings on the condominium property that are three stories or higher in height.

2. The number of such buildings on each association's property.

3. The addresses of all such buildings.

4. The counties in which all such buildings are located.

(c) An association must provide an update in writing to the division if there are any changes to the information in the list under paragraph (b) within 6 months after the change.

Section 11. Present paragraphs (b) and (c) of subsection (2) of section 718.503, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, a new paragraph (b) is added to that subsection, and paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of that section are amended, to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee

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delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days after ~~following~~ the execution of the agreement and delivery of the documents to the buyer as evidenced by a signed receipt for documents unless the buyer is informed in the 15-day voidability period and agrees to close before ~~prior to~~ the expiration of the 15 days. The developer shall retain in his or her records a separate agreement signed by the buyer as proof of the buyer's agreement to close before ~~prior to~~ the expiration of the ~~said~~ voidability period. The developer must retain such ~~Said~~ proof ~~shall be retained~~ for a period of 5 years after the date of the closing of the transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to ~~the provisions of~~ s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the condominium.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a

service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees assessed pursuant to s. 718.113(1) for the maintenance of limited common elements where such costs are shared only by those entitled to use the limited common elements.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions <u>that</u> ~~which~~ will affect the use of the property and ~~which~~ are not contained

in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1), or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

18. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p).

19. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must ~~shall~~ comply with ~~the provisions of~~ this subsection before ~~prior to~~ the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of all of the following:

1. The declaration of condominium.~~,~~

2. Articles of incorporation of the association.~~,~~

3. Bylaws and rules of the association.~~,~~

4. Financial information required by s. 718.111.~~,~~

5. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and

718.301(4)(p), if applicable.

6. The association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

7. ~~and~~ The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(b) ~~On and after January 1, 2009,~~ The prospective purchaser is ~~shall~~ also ~~be~~ entitled to receive from the seller a copy of a governance form. Such form shall be provided by the division summarizing governance of condominium associations. In addition to such other information as the division considers helpful to a prospective purchaser in understanding association governance, the governance form shall address the following subjects:

1. The role of the board in conducting the day-to-day affairs of the association on behalf of, and in the best interests of, the owners.

2. The board's responsibility to provide advance notice of board and membership meetings.

3. The rights of owners to attend and speak at board and membership meetings.

4. The responsibility of the board and of owners with respect to maintenance of the condominium property.

5. The responsibility of the board and owners to abide by the condominium documents, this chapter, rules adopted by the division, and reasonable rules adopted by the board.

6. Owners' rights to inspect and copy association records and the limitations on such rights.

7. Remedies available to owners with respect to actions by the board which may be abusive or beyond the board's power and

authority.

8. The right of the board to hire a property management firm, subject to its own primary responsibility for such management.

9. The responsibility of owners with regard to payment of regular or special assessments necessary for the operation of the property and the potential consequences of failure to pay such assessments.

10. The voting rights of owners.

11. Rights and obligations of the board in enforcement of rules in the condominium documents and rules adopted by the board.

The governance form shall also include the following statement in conspicuous type: "This publication is intended as an informal educational overview of condominium governance. In the event of a conflict, the provisions of chapter 718, Florida Statutes, rules adopted by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, the provisions of the condominium documents, and reasonable rules adopted by the condominium association's board of administration prevail over the contents of this publication."

Section 12. Paragraph (f) of subsection (24) of section 718.504, Florida Statutes, is amended, and paragraph (q) is added to that subsection, to read:

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential

condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will

assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(f) The estimated operating budget for the condominium, ~~and~~ the required schedule of unit owners' expenses, and the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(q) A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p), as applicable.

Section 13. Subsections (24) through (28) of section 719.103, Florida Statutes, are renumbered as subsections (25) through (29), respectively, and a new subsection (24) is added to that section, to read:

719.103 Definitions.—As used in this chapter:

(24) "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed by an engineer licensed under chapter 471 or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study

must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

Section 14. Paragraphs (a) and (c) of subsection (2) of section 719.104, Florida Statutes, are amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those

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unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, <u>structural integrity reserve studies,</u> and financial reports of the association. <u>Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.</u>

d. All contracts for work to be performed. Bids for work to

be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. A copy of the inspection reports described in ss. 553.899 and 719.301(4)(p) and any other inspection report relating to a structural or life safety inspection of the cooperative property. Such record must be maintained by the association for 15 years after receipt of the report.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. A renter of a unit has a right to inspect and copy only the association's bylaws and rules and the inspection reports described in ss. 553.899 and 719.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location,

notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to members and prospective purchasers,

and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to members:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this

subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the

owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

Section 15. Paragraphs (k) through (m) of subsection (1) of section 719.106, Florida Statutes, are redesignated as paragraphs (m) through (o), respectively, paragraph (j) of subsection (1) is amended, and new paragraphs (k) and (l) are added to subsection (1) of that section, to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(j) *Annual budget.*—

1. The proposed annual budget of common expenses must ~~shall~~ be detailed and must ~~shall~~ show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days before ~~prior to~~ the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is ~~shall be~~ deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget must ~~shall~~ include reserve accounts for capital expenditures and deferred maintenance. These accounts must ~~shall~~ include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance

expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds $10,000. The amount to be reserved for an item is determined by the association's most recent structural integrity reserve study that must be completed by December 31, 2024. If the amount to be reserved for an item is not in the association's initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount must ~~shall~~ be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the ~~each~~ reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. ~~This paragraph shall not apply to any budget in which~~ The members of a unit-owner controlled ~~an~~ association may determine ~~have~~, at a duly called meeting of the association, ~~determined~~ for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. Before turnover of control of an association by a developer to unit owners other than a developer under s. 719.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. Effective December 31, 2024, a unit-owner controlled association may not determine to provide no reserves or reserves less adequate than required by this paragraph for items listed in paragraph (k) ~~However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 719.301, the developer may vote to waive the reserves or reduce the funding of reserves for the~~

~~first 2 years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association~~. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association. Before ~~Prior to~~ turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended ~~without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association~~. Effective December 31, 2024, members of a unit-owner controlled association may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (k) for purposes other than their intended purpose.

(k) *Structural integrity reserve study.*—

1. An association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height that includes, at a minimum, a study of the following items as

related to the structural integrity and safety of the building:

a. Roof.

b. Load-bearing walls or other primary structural members.

c. Floor.

d. Foundation.

e. Fireproofing and fire protection systems.

f. Plumbing.

g. Electrical systems.

h. Waterproofing and exterior painting.

i. Windows.

j. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in subparagraphs a.-i., as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

2. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a structural integrity reserve study completed for each building on the cooperative property that is three stories or higher in height.

3. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height.

4. If an association fails to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary

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relationship to the unit owners under s. 719.104(8).

(l) *Mandatory milestone inspections.*—If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the inspection. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners under s. 719.104(8)(a). Upon completion of a phase one or phase two milestone inspection and receipt of the inspector-prepared summary of the inspection report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Section 16. Paragraphs (p) and (q) are added to subsection (4) of section 719.301, Florida Statutes, to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a

majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a milestone inspection report in compliance with s. 553.899 included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property comprising a turnover inspection report:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool or spa and equipment.

9. Seawalls.

10. Pavement and parking areas.

11. Drainage systems.

12. Painting.

13. Irrigation systems.

14. Waterproofing.

(q) A copy of the association's most recent structural integrity reserve study.

Section 17. Subsection (1) of section 719.501, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

719.501 Powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 718, has the power to enforce and ensure compliance with this chapter and adopted rules relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units, complaints related to the procedural completion of the structural integrity reserve studies under s. 719.106(1)(k), and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division shall have the following powers and duties:

(a) The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid

in the adoption of rules or forms hereunder.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against a developer, association, officer, or member of the board, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings

and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, association, officer, or member of the board, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter. Such affirmative action may include, but is not limited to, an order requiring a developer to pay moneys determined to be owed to a condominium association.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignees or agents, for any violation of this chapter or related rule. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant to this chapter, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division, and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply

with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the cooperative residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the

division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential cooperatives in assessing the rights, privileges, and duties pertaining thereto.

(f) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association when the division is considering the issuance of a declaratory statement with respect to the cooperative documents governing such cooperative community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act, subsequent changes to this act on an annual basis, an amended version of this act as it becomes available from the Secretary of State’s office on a biennial basis, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of cooperatives which were rendered by the division during the previous year.

(j) The division shall adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by this chapter. The principles, policies, and standards shall take into consideration the size of the association and the total revenue collected by the association.

(k) The division shall provide training and educational programs for cooperative association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner.

(l) The division shall maintain a toll-free telephone number accessible to cooperative unit owners.

(m) When a complaint is made to the division, the division shall conduct its inquiry with reasonable dispatch and with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the

complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of cooperative disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of voluntary mediators only persons who have received at least 20 hours of training in mediation techniques or have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any

person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(3)(a) On or before January 1, 2023, cooperative associations existing on or before July 1, 2022, must provide the following information to the division in writing, by e-mail, United States Postal Service, commercial delivery service, or hand delivery, at a physical address or e-mail address provided by the division and on a form posted on the division's website:

1. The number of buildings on the cooperative property that are three stories or higher in height.

2. The total number of units in all such buildings.

3. The addresses of all such buildings.

4. The counties in which all such buildings are located.

(b) The division must compile a list of the number of buildings on cooperative property that are three stories or higher in height, which is searchable by county, and must post the list on the division's website. This list must include all of the following information:

1. The name of each association with buildings on the cooperative property that are three stories or higher in height.

2. The number of such buildings on each association's property.

3. The addresses of all such buildings.

4. The counties in which all such buildings are located.

(c) An association must provide an update in writing to the division if there are any changes to the information in the list under paragraph (b) within 6 months after the change.

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Section 18. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 719.503, Florida Statutes, are amended to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may ~~shall~~ not close for 15 days after ~~following~~ the execution of the agreement and delivery of the documents to the buyer as evidenced by a receipt for documents signed by the buyer unless the buyer is informed in the 15-day voidability period and agrees to close before ~~prior to~~ the expiration of the 15 days. The developer shall retain in his or her records a separate signed agreement as proof of the buyer's agreement to close before ~~prior to~~ the expiration of the ~~said~~ voidability period. The developer must retain such ~~Said~~ proof ~~shall be retained~~ for a period of 5 years after the date of the closing transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to ~~the provisions of~~ s. 719.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 719.504, and cooperative documents, or the proposed cooperative documents if the documents have not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 719.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the cooperative.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the cooperative and a schedule of expenses for each type of unit, including fees assessed to a shareholder who has exclusive use of limited common areas, where such costs are shared only by those entitled to use such limited common areas.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

8. The lease of recreational and other common areas that will be used by unit owners in common with unit owners of other cooperatives.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the

association is to manage more than one cooperative, a description of the plan of phase development or the arrangements for the association to manage two or more cooperatives.

12. If the cooperative is a conversion of existing improvements, the statements and disclosure required by s. 719.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions <u>that</u> ~~which~~ will affect the use of the property and ~~which~~ are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the cooperative, a copy of any such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502(1) or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

<u>18. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 719.301(4)(p), if applicable.</u>

<u>19. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.</u>

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with ~~the provisions of~~ this subsection before ~~prior to~~ the sale of his or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of all of the following:

1. The articles of incorporation of the association.~~,~~

2. The bylaws~~,~~ and rules of the association.

3. ~~,as well as~~ A copy of the question and answer sheet as provided in s. 719.504.

4. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 719.301(4)(p), if applicable.

5. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

Section 19. Paragraphs (q) and (r) are added to subsection (23) of section 719.504, Florida Statutes, to read:

719.504 Prospectus or offering circular.—Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to

each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and state whether membership in a recreational facilities association is mandatory and, if so, identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one cooperative, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(23) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(q) A copy of the inspector-prepared summary of the

milestone inspection report as described in ss. 553.899 and 719.301(4)(p), if applicable.

(r) The association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

Section 20. Paragraphs (d) and (k) of subsection (10) of section 720.303, Florida Statutes, are amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(10) RECALL OF DIRECTORS.—

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file an action with a court of competent jurisdiction or file with the department a petition for binding arbitration under the applicable procedures in ss. 718.112(2)(l) ~~ss. 718.112(2)(j)~~ and 718.1255 and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any director or directors of the board, the recall will be effective upon the final order of the court or the mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(k) A board member who has been recalled may file an action with a court of competent jurisdiction or a petition under ss. 718.112(2)(l) ~~ss. 718.112(2)(j)~~ and 718.1255 and the rules adopted challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the parcel owner representative shall be named as respondents.

Section 21. Subsection (1) of section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department under s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(l) ~~ss. 718.112(2)(j)~~ and 718.1255 and the rules adopted by the division. In addition, the department shall conduct binding arbitration of election disputes between a member and an association in accordance with s. 718.1255 and rules adopted by the division. Election disputes and recall disputes are not eligible for presuit mediation; these disputes must be arbitrated by the department or filed in a court of competent jurisdiction. At the conclusion of an arbitration proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding.

Initially, the petitioner shall remit a filing fee of at least $200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

Section 22. Subsection (6) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.—

(6) Notwithstanding any contrary requirements of s. 718.112(2)(i) ~~s. 718.112(2)(g)~~ or s. 719.106(1)(g), for timeshare plans subject to this chapter, assessments against purchasers need not be made more frequently than annually.

Section 23. This act shall take effect upon becoming a law.

NEWS AND JOURNAL ARTICLES

CAI Leadership Meets With HUD to Discuss Condo Safety

by Dawn Bauman, CAE and C. Scott Canady | Jun 9, 2022 | Federal Advocacy | 0 comments

This week, CAI government and public affairs volunteers and staff met with leaders from the U.S. Department of Housing and Urban Development to discuss condominium safety regulatory and legislative solutions. CAI identified financial resources that may help homeowners and condominium associations finance structural integrity projects.

1. Clarifying Community Development Block Grant and/or other Department-administered grant funds may be used by local and state governments to fund initiatives for condominium safety, soundness, and habitability of condominium and cooperative housing.

2. Endorsing the SAFER Condos Act by U.S. Rep. Charlie Crist, D-Florida, to authorize Federal Housing Administration (FHA) insurance of loans and mortgages under the Title I property preservation and 203(k) rehabilitation programs that fund condominium association special assessments for structural repairs and financial reserves for future repairs. For the SAFER Act to pass, we need your help. Please click here to contact your U.S. House of Representatives member to urge them to support the SAFER Condos Act.
3. Working to modify FHA multifamily mortgage insurance programs to authorize blanket mortgage insurance for loans obtained by condominium associations to finance structural repairs.
4. Exploring policies to enable participation by cooperative unit owners and cooperative corporations in Department programs that support financing project-level structural repairs.

This meeting was another step in our conversations with HUD leaders to explore and support financial solutions for condo safety. A special thank you to the meeting participants, including:

Ron Perl, Esq.

Hill Wallack, LLP (New Jersey): Chair, CAI Federal Legislative Action Committee; CAI National Past President; CAI New Jersey Chapter; CAI New Jersey Legislative Action Committee; Fellow, College of Community Association Lawyers
Ronald L. Perl is a partner in the Princeton, N.J. office of Hill Wallack LLP and a member of the firm's Management Committee. He is partner-in-charge of the firm's Community Associations practice group.

Lisa Magill, Esq.

Kaye Bender Rembaum (Florida): Member, CAI Government and Public Affairs Committee; Member, CAI Federal Legislative Action Committee; Member, CAI Florida Legislative Alliance; Co-Chair, CAI Surfside Response Reserve Study & Funding Plans Policy Taskforce

Mitch Frumkin, PE, RS

Kipcon Engineering, Inc. (NJ, PA, NY): CAI National Past President; Co-Chair, CAI Surfside Response Reserve Study & Funding Plans Policy Taskforce; CAI New Jersey Chapter; CAI Keystone Chapter; Member, CAI New Jersey Legislative Action Committee; Co-Chair, CAI Surfside Response Reserve Study & Funding Plans Policy Taskforce

Mitchell H. Frumkin founded Kipcon, Inc. in 1986 and fosters its growth with constant innovation and education. A Licensed Professional Engineer in eighteen states, Mr. Frumkin holds the Community Associations Institute's (CAI) Reserve Specialist designation. A recognized industry expert, Mitch Frumkin is a frequent speaker, writer, and committee member on the state and national levels for the CAI, NAHB, and many other professional organizations.

Don Plank

(Virginia) Assistant Vice President, National Cooperative Bank: Member, CAI District of Columbia Legislative Action Committee

Mr. Plank provides financing solutions to condominium associations, homeowner associations and housing cooperatives throughout the DC Area, including term loans (amortized), lines of credit, and balloon loans.

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Dawn Bauman, CAE

Senior Vice President, Government & Public Affairs
Executive Director, Foundation for Community Association Research

Full Bio

Bio | Latest Posts

C. Scott Canady

Principal at Tambala Strategy, LLC

Scott Canady's 13-year record of public service includes experience gained in the U.S. House of Representatives and in the U.S. Department of Housing and Urban Development.

In Congress, Scott served as chief policy and political aide to a senior member of the House Financial Services Committee, working to reform the National Flood Insurance Program and improve the regulation of housing finance giants Fannie Mae and Freddie Mac.

Following his time in Congress, Scott was appointed Deputy Assistant Secretary for Legislative Affairs at the U.S. Department of Housing and Urban Development. Scott served as a key legislative liaison with members of the House Financial Services Committee and the Senate Banking Committee.

In 2009, Scott began his partnership with Community Associations Institute by launching Tambala Strategy. Through this partnership, Scott has worked with CAI's members and leadership team to advance the views of common interest communities on a variety of issues including federal

condominium standards, federal disaster assistance for community associations, and community association lien priority.

Scott earned a Bachelor of Arts in Political Science and History from Louisiana State University and a Master of Public Administration from the George Mason University Schar School of Policy and Government.

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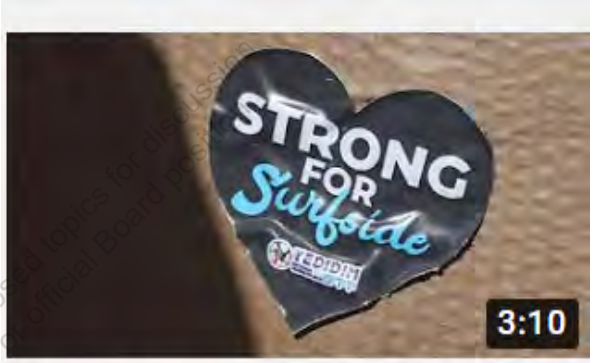
Florida Lawmakers Pass Condominium Safety Legislation

by Dawn Bauman, CAE | May 27, 2022 | State Advocacy | 2 comments

This week the Florida legislature was in special session and condominium safety was one of three initiatives addressed. CAI Florida Legislative Alliance is pleased to announce that SB 4D – Building Safety Act for condominium and cooperative associations ***passed unanimously*** through both the House and Senate on May 24th and 25th respectively, after a powerful and heartfelt appreciation for the sponsors, Sen. Jennifer Bradley (R-5), Senator Jason Pizzo (D-38) and Rep. Daniel Perez (R-116) was expressed by Members in both the House and Senate. Governor DeSantis signed the bill on May 26th. This bipartisan legislation is the result of tireless advocacy by you, our membership; thanks to your determination, CAI Florida Legislative Alliance was able to work with legislators in both chambers to craft an effective condo safety bill that will protect Floridians. Travis Moore, CAI's long-time lobbyist was in n Tallahassee this week during the legislature's special session and was the only ones to speak on behalf of the new bill – to urge passage, thank lawmakers, and extend the continued offer to work together on implementation of these important measures. Travis Moore worked day and night alongside these lawmakers leading these efforts since last summer. CAI and our members are extremely fortunate to have Travis on the ground in Tallahassee.



Watch video: FL Gov. DeSantis signs condo safety bill

The legislation includes a framework largely based on CAI condominium safety public policy recommendations for:

- Building inspections as structures reach 30 years old and every 10 years thereafter.
- Mandatory reserve study and funding for structural integrity components (building, floors, windows, plumbing, electrical, etc.).
- Removal of opt-out funding of reserves for structural integrity components.
- Mandatory transparency—providing all owners and residents access to building safety information.
- Clear developer requirements for building inspections, structural integrity reserve study, and funding requirements prior to transition to the residents.
- Engagement of the Florida Department of Business and Professional Regulation and local municipalities to track condominium buildings and the inspection reporting

Associations will have two years to comply with these requirements. CAI will be working closely with policymakers before the bill takes effect in 2024 to be certain the new requirements and directives are workable and practical for Florida's impacted associations.

Since June 24, 2021, the tragic collapse of Champlain Towers South where 98 people perished and many others lost their homes, CAI mourned, prayed, and committed to doing whatever we could to make sure this never happened again. Following the collapse, CAI members and volunteers worked closely with Florida Sens. Jennifer Bradley and Jason Pizzo, as well as Rep. Daniel Perez to lead the efforts to pass this important legislation.

The comprehensive legislation makes certain that no matter in what county a condominium or cooperative is located, they will be periodically inspected with information shared with unit owners, local building officials, and prospective buyers. CAI will continue working with policymakers to make certain that associations have the time to

meet these changes and that these new processes are practically workable for associations while making certain they are fiscally sound and physically safe.

A special thanks to the CAI Florida Legislative Alliance and lobbyist, Travis Moore for their commitment to advocating for strong and sensible public policy for community associations in Florida.

For more resources, visit www.condosafety.com

Condominium Safety Legislative Timeline in Florida

June 2021

- Champlain Towers South condominium partial collapse killing 98 people

July 2021

- CAI begins work on comprehensive public policy report for condominium safety

August 2021

- Conversations begin with stakeholders, allied organizations, legislators, Members of Congress, regulators, and others

October 2021

- CAI Board of Trustees approves Condominium Safety Public Policy

November 2021

- In person meetings with CAI members, CAI Florida Legislative Alliance, and Florida legislators to discuss condominium safety measures

January 11-March 14, 2022

- CAI Florida Legislative Alliance works around the clock to advocate for condominium policy. Unfortunately, the House and Senate were unable to come to agreement before the end of session. Condominium safety legislation stalls and the legislative session ends sine die.

May 23-27, 2022

- Florida Special Legislative session – comprehensive condominium safety legislation, much of it based on CAI condominium safety public policy recommendations passes the

Senate, House, and signed by Governor DeSantis

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Dawn Bauman, CAE

Senior Vice President, Government & Public Affairs
Executive Director, Foundation for Community Association Research

Full Bio

2 Comments

Chuck Allaman on June 7, 2022 at 2:43 pm

Does this new law apply to Townhomes who have an HOA, or just apply to condominium laws? We live in a 6 plex of townhomes. The base floor is your individual garage and an entry way into your townhome unit. Then there is 3 stories above the ground floor. Do you count the ground floor therefore having a 4 story townhome? Thank you.

Reply

Daphne Rosen on June 21, 2022 at 8:05 pm

Did the reserve study mandate pass for all of Maryland?

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The Washington Post
Democracy Dies in Darkness

Surfside tragedy makes condo buying challenging nationwide

Real estate agents, condo associations and mortgage brokers say the new rules from Fannie Mae and Freddie Mac are having a chilling effect on the market

By Kathy Orton

Updated July 14, 2022 at 2:40 p.m. EDT | Published July 14, 2022 at 9:00 a.m. EDT

First-time home buyer Gabrielle Smychynsky had started packing in anticipation of moving into a townhouse in Myrtle Beach, S.C., excited to have a contract accepted after getting outbid on three homes.

Then she received a phone call the day before settlement, telling her the financing had fallen through. The 24-year-old teacher was devastated.

“I had saved up all this money,” Smychynsky said. “It was something I was looking forward to, and it felt like it was all crashing down.”

Under new rules instituted by Fannie Mae and Freddie Mac in the wake of the collapse of Champlain Towers South condominium in Surfside, Fla., last year, condo boards or property managers are required to answer a 12-question form about the structural integrity of the building and the financial health of the association for the transaction to proceed.

Because her two-bedroom, two-and-a-half-bathroom townhouse was deeded as a condo, Smychynsky had to follow the rules even though they were originally intended for multistory buildings.

Real estate agents, condo associations and mortgage brokers say the questionnaire is having a chilling effect on the condo market across the country and making it even harder for first-time buyers like Smychynsky or those on fixed incomes who are already up against overheated housing prices and more expensive mortgage rates.

“Seniors, first-time home buyers, those who are able to own a home because condominiums are often more affordable housing options, they are going to lose out,” said Dawn Bauman, senior vice president of government and public affairs at Community Associations Institute.

Fannie Mae said it has not experienced a drop-off in its business. “We’ve seen no significant impact overall related to our temporary policies,” a Fannie Mae spokesperson wrote in an email. “These measures help protect borrowers from physically unsafe or financially unstable projects.”

Buildings that don’t meet the standards are added to a list of buildings ineligible for loans backed by Fannie Mae.

While that list is not public, Orest Tomaselli, president of project review at CondoTek, a company that reviews condo documentation for lenders, says it included more than 900 condo buildings within 60 days. It has since grown to more than 1,000 properties.

“That list is the worst list you can be on if you are a condominium property,” Tomaselli said.

A Fannie Mae spokesperson wrote in an email: “Fannie Mae has long required scrutiny of project reserves on condo loans delivered to us. … There are a number of factors that would make a specific condo property eligible or ineligible for mortgage financing.”

However, some board members and property management companies say the questions are vague or require a level of expertise that is beyond them.

For example, Question 3 asks if the condo board is aware of any deficiency in the structure of the building. Critics say this question is better asked of a structural engineer than a volunteer board member.

As a follow-up to Question 4 about outstanding zoning violations or codes, Question 5 asks: “Is it anticipated the project will, in the future, have such violations?” — a question critics say is impossible to answer.

Because they fear liability, associations are refusing to fill out the form.

In Smychynsky’s case, neither the property management company, First Service Residential, nor the homeowners association would fill out the questionnaire. First Service Residential did not respond when asked for comment.

“A lot of these HOAs, they’re not signing the documents so now you have an incomplete condo questionnaire and the loan can’t close,” said Hans A. Neugebauer, the real estate agent who represented Smychynsky.

Smychynsky was not the only one frustrated by the new requirements.

The seller “was emailing the HOA begging them to do the questionnaire because she had to pay a bunch of medical bills and needed to sell the house,” Smychynsky said.

After much back-and-forth communication with the underwriter, Tim Diedrich, senior loan officer at Motto Mortgage, found a workaround.

“The underwriter says if you can get me six months’ worth of HOA meeting minutes we’ll review those,” Diedrich said. “If we don’t see anything that looks like it’s a structural issue or something like that we’ll consider approving it.”

Smychynsky closed a week after her initial settlement date. Asked if he had run into this problem with other loans, Diedrich said, “Absolutely.” At the moment he is working with a registered dietitian who is trying to buy her first home, but the homeowners association is refusing to fill out the questionnaire.

The problem is widespread, according to Ken Fears, a senior policy representative for banks, lending and housing finance for the National Association of Realtors.

“It was initially suggested to us that this change would only be a challenge in Florida, but we are seeing it in markets across the country — urban, rural, coastal and central,” he said. “What’s already been a tough market for underserved communities has been made even worse. In a worst-case scenario, it could create an open door for investors to take over the market or push some homeowners into distress because they can’t sell when they need to.”

It’s not just real estate agents who are concerned. The Mortgage Bankers Association has been hearing from big, medium and small lenders, said Dan Fichtler, associate vice president of housing finance policy at MBA.

And Hanna Pitz, a senior policy specialist at MBA, said the new requirements could make it harder to get condo loans.

“We saw in previous years when FHA added some more requirements for their condominium lending that share of the market correspondingly decreased, she said.

Tomaselli is sympathetic to the associations that are struggling to adhere to the new policies but says they are needed.

“The reality is in 13 years of doing this type of work we’ve seen many, many, many developments that have massive problems that the unit ownership within the building didn’t even know how pervasive and extensive the problems were,” Tomaselli said. “This flushes that all out.”

Even those who have problems with the new requirements agree their intention is sound. “We all want safe, stable buildings," Bauman said. “We all want this to work.”

CAI, MBA and NAR have written letters to the Federal Housing Finance Agency, which oversees Fannie Mae and Freddie Mac, asking for a pause in the implementation of the rules. MBA’s letter offers suggestions on how to reword each of the questions so that Fannie Mae and Freddie Mac can obtain the information they are seeking without unduly burdening the condo associations.

An FHFA spokesperson said that the agency is working with Fannie Mae and Freddie Mac to review the rules and is soliciting feedback.

Smychynsky and her boyfriend are now living in the townhouse.

“We have exactly what we wanted. Our neighbors are great. It’s a great community,” she said.

But the experience has left its scars.

“I don’t want to move again,” she said. “I don’t want to buy a house again. It’s too scary. All that money I had saved, they were kind of playing with my money, my emotions.”

CORRECTION

An earlier version of this story said that buildings that don’t meet the standards are added to a list of buildings ineligible for loans backed by Fannie Mae or Freddie Mac. Freddie Mac does not compile such a list, only Fannie Mae does.

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One Year Later: The Surfside Condo Collapse

Law360 (July 6, 2022, 9:56 PM EDT) -- A year after 98 people lost their lives in the collapse of the Champlain Towers South in Surfside, Florida, a $1 billion global settlement has been reached, the state enacted legislation attempting to prevent a recurrence of the tragedy, and condominium owners are pondering the safety of their homes. Law360 looks back at the year's coverage of the Surfside condo collapse.

(AP Photo/Mark Humphrey)

ABOUT THE COLLAPSE

- The Champlain Towers South building in Surfside, Florida, collapsed without warning early on June 24, 2021, leaving 98 people dead.
- A settlement of more than $1 billion was reached for the families of victims and the owners of 136 units in the building.
- A federal investigation into the collapse is continuing.
- Materials from the collapse are being held in a Miami-Dade County warehouse, where it is being used to create a 3-D model of the building.
- Poor original construction and inspection, sea level rise and saltwater intrusion have all been suggested as possible reasons for the collapse.

Judge Approves $1B Surfside Deal, Holds Off On Fee Request
Carolina Bolado | June 23, 2022

The judge overseeing the consolidated litigation over the collapse of the Champlain Towers South condominium in Surfside, Florida, approved a $1.02 billion global settlement, but said he would not rule on a $100 million fee request from class counsel until after he had completed the claims process with victims.

Developers Circle Aging Condos A Year After Tragedy
Nathan Hale | June 27, 2022

A year after the partial collapse of a condominium building in Surfside, Florida, killed 98 people, settlements totaling more than $1 billion have largely resolved litigation involving the victims, but unit owners in thousands of aging condos are still grappling with what the incident means for the future, with many considering a path that could reshape skylines in the state.

LITIGATION

Judge Raises Payout To Unit Owners Amid $1B Surfside Deal
Carolina Bolado | May 24, 2022

The Florida state court judge overseeing consolidated litigation over the collapse of the Champlain Towers South condominium in Surfside agreed to increase the payouts to unit owners now that a recently announced $1 billion settlement will provide a better recovery for victims than initially expected.

Judge Wants Streamlined Claim Process In $1B Surfside Deal
Carolina Bolado | May 18, 2022

The judge overseeing the consolidated litigation over the collapse of Champlain Towers South condominium in Surfside, Florida, told the plaintiffs' attorneys to streamline the forms victims will have to submit to get their share of a nearly $1 billion settlement, stressing that he does not want to burden the victims or create a lengthy process.

Blockbuster Surfside Settlement Left Judge Speechless
Carolina Bolado | May 13, 2022

The nearly $1 billion in settlements in the Champlain Towers South condominium collapse litigation resolved what could have been a messy, emotionally charged dispute pitting neighbor against neighbor and was an outcome that left Judge Michael Hanzman, who took pains to expedite the complicated case, speechless.

Insurer Says Coverage Limited In Co.'s Surfside Collapse Row
Hope Patti | April 6, 2022

A general contractor facing a number of underlying suits for its alleged role in the collapse of the Champlain Towers South condo in Surfside, Florida, is not owed coverage under its parent company's policy, an insurer told a Massachusetts federal court Wednesday, citing the policy's anti-stacking endorsement.

Judge OKs $83M Deal In Surfside Collapse Over Objections
Carolina Bolado | March 30, 2022

The Florida judge overseeing the consolidated litigation over the Champlain Towers South condominium collapse approved the $83 million deal that will allow property loss victims to exit the litigation, calling it an "outstanding result" for survivors who lost their units.

Rarely Used Fla. Condo Law May Be Key In Surfside Deal
Carolina Bolado | February 16, 2022

An obscure provision in the Florida Condominium Act making individual unit owners liable for acts by the condo association board looms large in the wake of the Champlain Towers South collapse and will play a central role in the recently announced $83 million deal to resolve property loss claims.

Feds Assert Control Over Surfside Condo Collapse Evidence
Nathan Hale | January 28, 2022

An unexpected twist added new controversy to a proposed class action filed by the victims of the deadly collapse of a Surfside, Florida, condominium tower, as word reached the court that a federal agency investigating the incident had asserted possession over key physical evidence being held in two Miami warehouses.

Condo Collapse Litigation Leaders Talk Of Coming Challenges
Carolina Bolado | July 23, 2021

As leaders of the team representing victims of the Surfside, Florida, condominium collapse, Harley Tropin of Kozyak Tropin Throckmorton and Rachel Furst of Grossman Roth Yaffa Cohen PA will have their hands full trying to maximize recovery for the victims and balancing what will sometimes be competing interests between those who lost their apartments and the 97 who lost their lives.

AFTERMATH

Top Personal Injury, Med Mal News: Midyear Report
Y. Peter Kang | July 1, 2022

A U.S. Supreme Court ruling that Florida has broad authority to recoup Medicaid costs from plaintiffs' injury awards and a rapid $1 billion settlement of litigation related to the Surfside condo collapse are among Law360's top personal injury and medical malpractice cases for the first six months of 2022.

Florida Real Estate Roundup: Surfside, Deauville, 800 Brickell
Nathan Hale | May 27, 2022

The Dubai-based company that is purchasing the site of last year's deadly condominium collapse in Surfside, Florida, revealed plans to build a Cavalli-branded luxury condo tower on the property.

Fla. Lawmakers Pass Condo Reform Bill Requiring Inspections
Carolina Bolado | May 25, 2022

Florida legislators unanimously passed reforms to the Florida Condominium Act, sending a bill meant to prevent another collapse like that of the Champlain Towers South building to the governor's desk.

Surfside Collapse Site Will Sell For $120M To Sole Bidder
Carolina Bolado | May 20, 2022

The Champlain Towers South condominium collapse site in Surfside, Florida, will sell for $120 million to Dubai-based buyer Damac Properties PJSC after other potential buyers failed to submit bids by the Friday deadline for next week's auction.

Fla. Virtual Inspection Law Could Lead To Liability Issues
Andrew McIntyre | October 5, 2021

A new Florida law allowing for certain inspections to be done remotely will likely speed up construction projects, but it could also create a fresh slate of liability issues for building departments and app developers, experts say.

EXPERTS

5 Policy Changes To Prevent Another Surfside Tragedy
Michael Polentz and Daniel Abram | October 25, 2021

As a result of the collapse of the Champlain Towers South in June, state and local governments will likely take steps to strengthen building regulations and ensure that condominium associations maintain adequate reserve funds to perform necessary repairs.

Time To Rethink Florida's Condo Termination Law
Martin Schwartz | August 2, 2021

In light of the Champlain Towers tragedy, legislators must find a proactive strategy for dealing with Florida's other aging condominiums, although previous attempts have been complicated by judicial actions and financial downturns.

Surfside Condo Collapse Highlights HOA Responsibilities
Jeanne Grove | July 9, 2021

The recent collapse of a condo building in Surfside, Florida, and the ensuing litigation, are calling attention to the obligations of homeowners' associations across the country, making it a good time to brush up on best practices.

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