



# Virginia Department of Planning and Budget **Economic Impact Analysis**

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**18 VAC 48-50 Common Interest Community Manager Regulations**  
**Department of Professional and Occupational Regulation**  
**Town Hall Action/Stage: 5734/9559**  
April 25, 2022

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB’s best estimate of these economic impacts.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

The Common Interest Community Board (Board) proposes to make a number of discretionary amendments to the regulation governing common interest community management firms (CIC managers) and their employees.<sup>2</sup> The most substantive changes include (i) increasing the training requirements for certification (and renewal) of principal and supervisory employees at CIC managers, (ii) making a number of changes relating to the standards of conduct and disciplinary requirements, (iii) adding requirements pertaining to fidelity bonds or dishonesty insurance, and (iv) extending the license period for CIC managers from one year to two years.

## **Background**

Virginia Code § 54.1-2345 defines a common interest community as “real estate subject to a declaration containing lots, at least some of which are residential or occupied for recreational

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> Here, as in the regulation, “manager” and “management company” refer to the business entity that provides property management services, whereas “principal or supervisory employees” refers to individual professionals. Managers are licensed, whereas individuals are certified.

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."<sup>3</sup> The Code also defines a CIC manager as "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."

CICs include property owners' associations, condominium unit owners' associations, and proprietary lessees' associations in real estate cooperatives. Data from Community Associations Institute, a trade group for community associations, indicate there are over 8,800 CICs in the Commonwealth.<sup>4</sup> An estimated 1.9+ million residents in Virginia (approximately 23.6 percent of the state's population) live in CICs, and the value of association housing services in Virginia in 2020 was estimated at \$3.65 billion.<sup>5</sup> According to the Board's records, there are 7,865 CIC associations registered with the Board. Of these, 5,192 (approximately 66 percent) are professionally managed by a management company.<sup>6</sup>

CIC managers provide a variety of services to CICs, including management of the real and personal property, and financial accounts, belonging to the association. The Board reports that management services performed by individuals who lack sufficient training and expertise expose the public to the risk for harm. Mismanagement of a CIC may (i) imperil an association's finances, requiring the association to impose costly special assessments on its members; or (ii) expose the association to legal liability. Mismanagement of an association may also affect the perceived value of the community in the marketplace, thereby reducing property values for owners in the community.

Based on feedback from regulants and the experience of staff who field questions regarding requirements, the Board seeks to make a number of discretionary changes that would update and clarify the provisions of the regulation, conform the regulation to statute, remove

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<sup>3</sup> The definition specifically excludes time-share projects. See <https://law.lis.virginia.gov/vacode/title54.1/chapter23.3/section54.1-2345/>.

<sup>4</sup> Foundation for Community Association Research. (2021). Virginia State Summary: Community Association Fact Book 2020. <https://foundation.caionline.org/wp-content/uploads/2021/08/VA2020.pdf>.

<sup>5</sup> *Ibid.*

<sup>6</sup> See Agency Background Document (ABD) page 5: [https://townhall.virginia.gov/L/GetFile.cfm?File=147\5734\9559\AgencyStatement\\_DPOR\\_9559\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=147\5734\9559\AgencyStatement_DPOR_9559_v1.pdf).

some unnecessary requirements, add others that would strengthen the standards of conduct and practice, and ensure that individuals engaged in the profession receive additional training to better ensure legal compliance. The most substantive changes are summarized below.<sup>7</sup>

### Training requirements

As per sections 30 and 35, principal or supervisory employees at CIC managers are currently required to complete an 80-hour introductory or comprehensive training course as described in section 250. During the regulatory review, multiple members of the regulatory review panel indicated that individuals providing management services to CICs in Virginia, particularly those who are newer to the community management profession, lack knowledge about Virginia's CIC laws and regulations.<sup>8</sup> To address these concerns, the Board seeks to add a four hour module to the required training that would specifically cover Virginia's CIC laws and regulations; the content requirements for this module would be added in a new section (252), and sections 30 and 35 would be amended to add this new training requirement for initial certification.<sup>9</sup> These training requirements would apply to the same personnel at CIC managers who are currently required to hold a certification.

Certified principals and supervisory employees are currently required to complete four contact hours of Board-approved training every two-year certification cycle, comprising two hours of CIC law and regulation training and two hours of fair housing training. These requirements would be moved from section 100 to a new section (95) and increased to six hours of training per two-year cycle. The six hours of training would consist of two hours of CIC legal updates, two hours of fair housing, and two hours of training on any of the following subject areas as they relate to CICs: (1) Governance, legal matters, and communications; (2) Financial matters, including budgets, internal controls, and assessments; (3) Reserves, reserve studies, and investments; (4) Contracting; (5) Risk management and insurance; (6) Management ethics for CIC management companies; (7) Facilities maintenance; (8) Human resources; or (9) Diversity,

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<sup>7</sup> A thorough description of the proposed changes can be found in the ABD on pages 6-9 and the rationale for each change is provided on pages 15-50.

<sup>8</sup> See ABD, page 46.

<sup>9</sup> These training requirements would also apply to "qualifying individuals," a new term that would be defined to mean "the supervisory employee, officer, owner, manager, or principal, howsoever denominated, involved in all aspects of the management services offered and provided" by the CIC managers when the firm does not have an Accredited Association Management Company designation from the Community Associations Institute.

equity, and inclusion. Further, a new section 97 would be added to require certificate holders to retain proof of training completion for a period of at least three years; the new section would also specify the acceptable documentation.<sup>10</sup>

Accordingly, section 253, which contains requirements for training providers, would be amended to reflect the change from “CIC law and regulation training” to “legal updates,” specifying that the material must cover changes to statute or regulations, recent court decisions, and recent significant determinations of the CIC Ombudsman. A new section 256 would be added to cover requirements for training providers for the new miscellaneous topics that are being added in section 95.

Lastly, the minimum length of each training program in sections 253 (legal updates), 255 (fair housing) and 256 (miscellaneous topics) would be one hour, rather than the current two-hour minimum for CIC law and regulation and fair housing. The Board reports that this change is intended to provide greater flexibility in meeting the continuing education requirement, so that certificate holders can take six one-hour programs rather than having to schedule at least two two-hours long programs.

### Standards of conduct

The Board proposes to make a number of changes throughout the regulation that are intended to increase transparency, prevent conflicts of interest and the appearance of self-dealing, and generally reduce incidences of financial mismanagement and/or legal misconduct.

Sections 30 and 35 would be amended to add a requirement that applicants disclose any disciplinary action taken against a professional or occupational license issued to the applicant, its principals, the qualifying individual, and the responsible person, and clarify that the Board may deny licensure to an applicant based on disciplinary action taken by any board or administrative body in any jurisdiction.

Section 100, pertaining to license renewal, would be amended to add a reminder to regulants that “the board may conduct an audit of any regulant to ensure the regulant’s continued compliance with the requirements for licensure or certification, as applicable, established by

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<sup>10</sup> The documentation must include: identifying information for the training provider, including address and contact information, dates of the training, a description of the subject matter covered in the training, and a statement from the training provider of the hours completed.

Chapter 23.3 of Title 54.1 of the Code of Virginia and this chapter.” This could include review of a licensee’s bond or insurance policy to ensure the bond or policy meets the requirements in statute or the regulation, or a review to determine a licensee’s compliance with employee certification requirements in statute in order to renew a license.<sup>11</sup>

Section 150 would be amended to specify all instances in which a CIC manager must report changes to the Board in writing in order to maintain licenses and certifications. Section 160 would be amended to specify that all funds belonging to the association must be maintained in a fiduciary trust account in an FDIC-insured financial institution, separate from the funds of the CIC manager or other associations managed by the CIC manager. Section 190, Prohibited Acts, would be revised significantly for clarity, and to add language prohibiting an applicant from “furnishing substantially inaccurate information to the board in obtaining, renewing, reinstating, or maintaining a license or certificate.”

Language pertaining to the management services contract between an association and the licensee would be moved to a new section (195) with added requirements. The new section would establish that a licensee deliver a fully executed contract to the association prior to performing management services, and that any modification to the contract which changes the cost, term of the contract, cancellation rights of the parties, or scope of management services be made in writing and signed by all parties. The new section would also include minimum requirements for the management services contract, including that the licensee disclose relationships with other firms that provide services to CICs, or to either of the contracting parties, that may give rise to a conflict of interest.

Similarly, a new section (205) would be added specifying that unless authorized in writing by the governing board of the association, a CIC manager may not accept remuneration from vendors, independent contractors, service providers, or others providing goods or services to the association, whether in the form of commissions, finders fees, services fees, discounts, or otherwise. The Board reports that this provision is intended to address a practice in which a management company will charge a fee or commission to vendors that provide services to CICs

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<sup>11</sup> See ABD, page 31.

(such contractors or landscapers) in order to be on the management company's "approved" vendor list.<sup>12</sup>

Lastly, a new section (225) would be added to establish regulants' obligations to the public. The section would also prohibit a regulant from knowingly associating in a venture or allowing the use of the regulant's name when the regulant believes the person or firm is engaging in fraudulent or dishonest activity or is violating any law or regulation of the Board. The section also requires a regulant who has direct knowledge that another individual or firm may have violated, or may be violating, CIC laws or regulations to inform the Board in writing and cooperate with the Board in providing information or assistance the Board requires.

#### Blanket fidelity bonds

The Board seeks to add a new section (33) to the regulatory text that would specify the requirements for the blanket fidelity bond or employee dishonesty insurance policy that a CIC manager must obtain pursuant to Virginia Code § 54.1-2346.<sup>13</sup> This includes:

- A requirement that the insurance must include coverage for losses of the firm's clients resulting from theft or dishonesty of officers, directors, and firm employees.
- A requirement that coverage must be the lesser of two million dollars or the highest aggregate amount of the operating and reserve balances of all associations under the firm's control during the firm's prior fiscal year.
- A statement that the minimum coverage amount is \$10,000.
- A requirement that the surety company or insurance company must be authorized to do business in Virginia.
- A description of the minimum requirements necessary to provide proof of insurance.
- A statement that the Board may obtain certification from the surety company or insurer in order to demonstrate that there is sufficient coverage, and

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<sup>12</sup> See ABD, page 41.

<sup>13</sup> The contents of this section can currently be found in two guidance documents pertaining to obtaining and providing evidence of a fidelity bond or dishonesty insurance. See <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=4190> and <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=5049>.

- A requirement that the bond or insurance policy obtained by the CIC manager must be separate from the insurance policies that are required to be obtained by associations under the Property Owners' Association Act (POA Act) or the Virginia Condominium Act.

In addition, section 30 would be revised to conform the insurance requirements for obtaining a license to the proposed language in this section.

#### Length of license

CIC manager licenses are currently valid for one year and must be renewed annually, whereas certifications for principal and supervisory employees are valid for two years. The proposed amendments include extending the license period for CIC managers to two years. License reinstatements are currently valid for six months and would be extended to one year. License fees and reinstatement fees would be doubled accordingly. The Board reports that this change is intended to reduce the regulatory burden on CIC managers.

#### **Estimated Benefits and Costs**

CIC associations and residents would benefit from the proposed amendments to the extent that the increased training and clear and specific standards of conduct improve fiduciary management and legal compliance by CIC managers. Principal and supervisory employees and qualifying individuals who are employed by the CIC manager would face additional costs due to the new training requirements; these costs would likely be borne by the CIC managers that employ them. CIC managers may also face additional costs if the standards of conduct and disciplinary requirements lead to changes in their business practices. For instance, the new prohibition against remuneration from vendors could make some CIC managers worse off if they currently accept commissions from vendors to place them on a "preferred" list. CIC managers that did not previously keep adequate records, or obtain sufficient fidelity bonds as required by law, or report all the required information to the Board would likely face costs from doing so. These costs may be especially relevant if the Board also exercised its authority to conduct audits more frequently. However, unless the market for CIC managers is competitive, CIC managers would likely pass on any additional costs to the CIC associations via higher management fees, which associations would likely pass on to residents. Thus, on the whole, CIC residents may bear most, if not all, of the costs that accrue as a result of the proposed changes to the extent that managers are not constrained from doing so by market competition. CIC managers would also

benefit from the increased license period and less frequent renewals and certificate holders would benefit from greater flexibility in meeting the training requirements in hour-long increments rather than two-hour programs.

Training providers would incur some new costs to develop new training materials on CIC law and regulations for new certification applicants and on the miscellaneous topics that would be required for certification renewals. However, training providers would likely recoup these costs from training program participants. Hence, the proposed increase in required training would likely benefit some training providers.

### **Businesses and Other Entities Affected**

The Department of Professional and Occupational Regulation (DPOR) reports that there are 172 CIC managers, 304 CIC principal or supervisory employee certificate holders, and 9 training providers who would be affected by the proposed amendments.<sup>14</sup> The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>15</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the additional training requirements and associated recordkeeping would create certain new costs for current and future CIC principal or supervisory employee certificate holders. CIC managers would likely face new costs to comply with the reporting and recordkeeping requirements that would be explicitly added to the regulation. Lastly, training providers would also face new costs for preparing new programs. Thus, an adverse impact is indicated.

### **Small Businesses<sup>16</sup> Affected:<sup>17</sup>**

The proposed amendments would adversely affect small businesses.

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<sup>14</sup> See ABD, page 11.

<sup>15</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>16</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>17</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills



### Types and Estimated Number of Small Businesses Affected

Most CIC managers and training providers are considered small businesses.<sup>18</sup> However, DPOR does not collect information on which regulants are small businesses, so the exact number is unknown.

### Costs and Other Effects

As mentioned previously, the additional training requirements would create certain new costs for CIC managers as well as training providers. The other proposed changes may also create new costs related to recordkeeping and reporting to the extent that CIC managers were not already implementing those requirements.

### Alternative Method that Minimizes Adverse Impact

There are no clear alternatives to the proposed amendments that both reduce adverse impact and meet the intended policy goals.

### **Localities<sup>19</sup> Affected<sup>20</sup>**

The proposed amendments do not introduce costs for local governments. Accordingly, no additional funds would be required. Consequently, an adverse economic impact is not indicated for localities.

### **Projected Impact on Employment**

The proposed amendments do not appear to affect total employment.

### **Effects on the Use and Value of Private Property**

To the extent that the proposed amendments improve the property management services provided by CIC managers, the proposed changes may modestly increase the value of the property held by CIC members. The proposed amendments do not affect real estate development costs.

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necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>18</sup> ABD, page 11.

<sup>19</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>20</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.