



Fast Track Proposed Regulation Agency Background Document

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) citation	18 VAC 48-20
Regulation title	Condominium Regulations
Action title	Regulations Governing Return of Bonds/Letters of Credit
Date this document prepared	June 25, 2010; amended January 13, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

In accordance with the requirements of § 55-79.84:1 of the Code of Virginia, the regulation will be amended to incorporate the requirements governing return of a bond or letter of credit to the declarant of a condominium project. The regulatory amendment will formalize the procedures currently used by the Common Interest Community Board staff to return the bond or letter of credit required by § 55-79.84:1. The proposed amendment also requires the declarant to maintain the bond or letter of credit and notify the Board office of any change to the bond or letter of credit.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 3, 2010, the Common Interest Community Board voted unanimously to authorize the amendment of the Condominium Regulations through the fast-track process.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2349 states in part that the Board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 23.3 of Title 54.1 of the Code of Virginia. In addition, § 55-79.98 of the Condominium Act states in part that the Board shall prescribe reasonable rules which shall be adopted, amended or repealed in compliance with law applicable to the administrative procedures of agencies of government. Section 55-79.84:1.B of the Code of Virginia specifies that the Board may promulgate reasonable regulations which govern the return of bonds submitted in accordance with this section of Chapter 4.2 of Title 55 of the Code of Virginia. Section 54.1-201(E) states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. This regulation is necessary to protect the interests of associations by ensuring that the declarant has filed an appropriate bond or letter of credit, as well as the interests of the declarant by providing the requirements for returning a bond or letter of credit if the unit owners' association is unresponsive. In addition, the regulation clarifies the Board's authority to discipline a regulant for failing to properly maintain the bond or letter of credit required by law.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Section 55-79.83 provides that the expenses for common elements are to be paid by the condominium unit in accordance with this section and the condominium instruments. In addition, § 55-79.83 states in part that "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 thereof." Section 55-79.84:1.A of the Code of Virginia states that the declarant of a condominium containing registered units shall post and file with the Board a bond in favor of the unit owners' association for the payment of delinquent assessments. The amount of the bond is \$1,000 per unit, with a minimum of \$10,000 and a maximum of \$100,000. The bond shall be maintained by the declarant for so long as the declarant owns more than 10% of the units in the condominium or, if the declarant owns less than 10% of the units, until the declarant is current in the payment of assessments. For a condominium containing less than 10 units, the bond may be returned once the declarant owns one unit in the condominium and is current in the payment of assessments. Further, the proposed amendment includes the procedures for returning a bond or letter of credit upon proper termination of the condominium registration. In addition, the regulation clarifies the Board's authority to discipline a regulant for failing to properly maintain the bond or letter of credit required by law. Because the statute only covers the filing of the bond with the Board, the amount, and the point at which it may be returned, there has been confusion and inconsistency in the process for determining whether a declarant is current in the payment of assessments, the process for the unit owners' association to affirm such, and the requirements for ensuring the bond or letter of credit is current and maintained throughout the required period. There have been situations where a unit owners' association cannot collect assessments from a declarant but is unable to make a claim on the bond or letter of credit because it has lapsed and the Board has not been notified. In addition, the

procedures currently being followed for returning bonds and terminating condominium registrations are often not known by declarants of condominiums, or their agents, or the unit owners' associations. The proposed amendments will place in administrative code these provisions, thus providing more accessibility to affected parties and ensuring consistency in their application.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

These are the procedures currently practiced by the Board staff. Currently, it is more detrimental to protection of the public (including associations and declarants) by not having the process formalized in regulation in a manner that can be clearly understood by the affected constituents. The Board determined that these procedures should be codified in the Board's regulations to ensure accessibility by affected persons and consistency in their application.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The regulation creates a section which specifies requirements for both the declarant of a registered condominium and the unit owners' association for the release of a bond or letter of credit to ensure the payment of assessments by the declarant. The section also specifies action taken by the Board if the unit owners' association indicates that the declarant is not current in the payment of assessments, or no response is received from the unit owners' association.

The regulation includes provisions regarding the return of a bond or letter of credit upon the proper termination of a condominium registration when all units have been sold, or if no units have been sold and the declarant decides to use the property for other purposes other than residential condominiums (i.e., rental apartments). Further, the proposed amendment includes provisions for maintaining the bond or letter of credit and the consequences for failure to do so. Finally, the proposed regulatory amendment clarifies the Board's authority against regulants that fail to respond to requests for specific information in a timely manner.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*

3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. The primary advantage to declarants of condominiums is that the requirements for having a bond or letter of credit returned in accordance with § 55-79.84:1 will be clearer and more consistent and their obligation to pay assessments on units they own will be emphasized. In addition, the expectations for maintaining the bond or letter of credit will be clearly stated, as well as the consequences for failure to do so.
2. The primary advantage to unit owners' associations and their membership is that their role in verifying payment of assessments will be clarified, as well as the importance of responding to the request for such verification by the Board, as failure to respond could result in the return of the bond or letter of credit to a declarant that is delinquent in assessments if the association fails to respond, thus removing a source available to the association to recover unpaid funds.
3. The primary advantage to the Board is that the proposed language codifies and streamlines the requirements, thus ensuring consistency in application and clarifying the requirements related to bonds and letters of credit for which there is only a brief statutory reference at this time.
4. There are no known advantages or disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements for this regulation.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No impact on localities in Virginia has been identified as resulting from the proposed amendments to the regulation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5)

the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulations were developed with consideration that the industry may include small business entities that form some associations. The Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.</p> <p>One-Time: There are no new one-time costs associated with the regulations.</p> <p>Ongoing: There are no new ongoing costs associated with the regulations.</p>
<p>Projected cost of the regulation on localities</p>	<p>No change anticipated.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Unit owners' associations will be required to confirm information from declarants before bonds can be released. Declarants will be required to follow regulations to obtain the release of bonds and to terminate condominium registrations, thereby relieving them of the obligation to submit an annual report to the Board.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.</p>	<p>There are 572 registered condominiums in Virginia and the same number of unit owner's associations connected with them. Based on the definition to the left, declarants for condominium projects may or may not be considered small businesses, but virtually all unit owners' associations would be considered small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other</p>	<p>The proposed amendments place in regulation current requirements, and therefore would not incur any additional costs to either declarants or unit owners' associations.</p>

administrative costs required for compliance by small businesses.	
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The alternative is to not incorporate the proposed regulations, thus requiring the Board to leave the requirements as staff procedures. To do so would continue the confusion and inconsistency of the procedures for declarants and their agents, as well as for unit owners’ associations. In addition, not implementing the proposed regulations leaves the Board in a precarious position as to the breadth of its authority when requesting information from regulants, when defending the return of a bond or letter of credit, and when determining appropriate action against regulants who have been found to not have maintained the required bond or letter of credit.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A	18 VAC 48-20-733	No current regulatory requirement.	Creates a section that specifies requirements for both the declarant of a registered

			condominium and the unit owners' association for the release of a bond or letter of credit to ensure the payment of assessments by the declarant. The section also specifies action taken by the Board if the unit owners' association indicates that the declarant is not current in the payment of assessment, or no response is received from the unit owners' association.
N/A	18 VAC 48-20-735	No current regulatory requirement.	Creates a section that provides the requirements for return of a bond or letter of credit to a declarant for a properly terminated condominium registration.
N/A	18 VAC 48-20-737	No current regulatory requirement.	Creates a section that includes the provisions for maintaining a bond or letter of credit, including the specific changes in status that must be reported to the Board and the consequences for failure to do so.
N/A	18 VAC 48-20-739	No current regulatory requirement.	Provides the timeframes by which a declarant must respond to a request for information from the Board or its agents, and the actions that are prohibited relative to the response.