



## Virginia Regulatory Town Hall

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### Proposed Regulation Agency Background Document

<b>Agency name</b>	Common Interest Community Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 48-45 replacing 18 VAC 48-40
<b>Regulation title</b>	Time-Share Regulations
<b>Action title</b>	General Review and Registration of Time-Share Resellers
<b>Date this document prepared</b>	October 21, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

#### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The regulations have not undergone substantial revision since 2003. Following a thorough review, the regulations were reorganized. Because of this reorganization, the Board proposes replacing the current regulatory chapter 18 VAC 48-40 with new chapter 18 VAC 48-45. As a result of this thorough review, it was determined that sections specifically pertaining to Time-Share Project Registration, Alternative Purchase Registration, Exchange Program Registration, and Time-Share Reseller Registration were necessary. Also, a new section was added outlining the Board's authority and standards of conduct.

The regulations were developed by a committee of Board members, consumer representatives, and members of the public with expertise in various areas related to time-share projects. The members of the public included a time-share association member, time-share developer attorney, time-share developers, consumers, attorney representing national time-share developers and owners association, and a representative from the exchange program segment of the time-share industry. The make-up of the committee ensured that the regulations complement the current Time-Share Act, provide minimal burdens on regulants while still protecting the public, and reflect current procedures and policies of the Department of Professional and Occupational Regulation.

#### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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No acronyms or technical terms were identified that were not defined in the "Definition" section of the regulations.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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Section 55-396.A of the *Code of Virginia* states that the Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of Chapter 21 of Title 55. In addition, this general review is necessary to comply with Executive Order 14.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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Minor changes have been made to the Time-Share Act by the General Assembly nearly every year since the last extensive review of the regulations. In addition, substantive changes were made to the Time-Share Act by the General Assembly in 2012. The Board will conduct a general review of the regulations to ensure that the regulations complement the current Virginia Real Estate Time-Share Act, provide minimal burdens on regulants while still protecting the public, and reflect current procedures and policies of the Department of Professional and Occupational Regulation. Amendments will also establish requirements and procedures for the registration of time-share resellers pursuant to § 55-394.3 of the *Code of Virginia*. The amendments are necessary to implement Chapter 751 of the Acts of the 2012 General Assembly, which were the result of HB 233.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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Proposed changes are intended to improve the clarity of the regulations, ensure consistency with current practices and legal requirements, and ensure full and accurate disclosure to potential and actual purchasers of time-share interests and units, all to better protect the health, safety, and welfare of citizens of the Commonwealth. As a result of this thorough review, it was determined that sections specifically pertaining to Time-Share Project Registration, Alternative Purchase Registration, Exchange Program

Registration, and Time-Share Reseller Registration were necessary. Also, a new section was added outlining the Board's authority and standards of conduct.

**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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage to the public is that the revisions will improve the clarity of the regulations, ensure consistency with current practices and legal requirements, and ensure full and accurate disclosure to potential and actual purchasers of time-share interests and units, all to better protect the health, safety, and welfare of citizens of the Commonwealth.

The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance that Virginia places on ensuring that potential and actual purchasers of time-share interests and units have been provided with full and accurate disclosure of their most significant purchase. No disadvantages to the Commonwealth could be identified.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

**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 has been identified as resulting from the proposed regulation.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking

information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Trisha L. Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233 fax to (866) 490-2723, or email to [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board	This regulation change will affect developers who offer time-share interests/units and alternative purchases. Time-share resellers and exchange programs are also affected.
<b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.</b> Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	As of October 1, 2013, there are approximately 100 time-share projects and 20 exchange programs registered with the Board. The Board anticipates registrations of approximately 100 alternative purchases and 75 time-share resellers.
<b>Benefits expected as a result of this regulatory proposal.</b>	The board is reorganizing the regulations to better complement The Virginia Real Estate Time-Share Act, to provide minimal burden to the regulants, and to reflect current policies and procedures of the department. Also, to incorporate a registration process for time-share resellers as required to implement Chapter 751 of the Acts of the 2012 General Assembly, which were the result of HB 233.
<b>Projected cost to the state to implement and enforce this regulatory proposal.</b>	No one-time costs or ongoing costs are expected as a result of this regulatory change.
<b>Projected cost to localities to implement and enforce this regulatory proposal.</b>	No change anticipated.
<b>All projected costs of this regulatory proposal for affected individuals, businesses, or other entities.</b> Please be specific and include all costs,	There is no anticipated additional cost to time-share projects and exchanges. Developers of alternative purchases will be required to register

<p>including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>and submit annual reports at a cost of \$100 annually. Time-share resellers will be required to register and submit annual reports at a cost of \$250 annually.</p>
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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.*

Section 55-396.A of the *Code of Virginia* states that the Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of Chapter 21 of Title 55. Section 55-394.3 of the *Code of Virginia* states that time-share resellers shall not provide or offer to provide any resale service unless registered with the Board; and the application for registration shall be filed in a form prescribed by the Board’s regulations and shall include such information as required by the Board. Therefore, no alternatives exist to evaluate. Alternatives may be considered after the review of any submissions during the public comment period.

**Regulatory flexibility analysis**

*Pursuant to §2.2-4007.1B of the Code of Virginia, 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 Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on individuals and businesses and ensuring that the health, safety and welfare of the public is protected.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

No comments were received during the public comment period.

**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 list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

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

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
	18 VAC 48-45-10	New section.	This section describes the purpose of the regulation.
18 VAC 48-40-10	18 VAC 48-45-20	Provides the definitions and explanation of terms.	This section provides the definitions.
18 VAC 48-40-10	18 VAC 48-45-30	Provides the definitions and explanation of terms.	This section provides the explanation of terms.
	18 VAC 48-45-40	New section.	This section provides the requirements specific to time-shares located outside of Virginia.
18 VAC 48-40-20  18 VAC 48-40-30	18 VAC 48-45-50	Provides application and submission requirements for time-share projects.	Provides general application procedures for time-share projects, alternative purchases, exchange companies and resellers.
	18 VAC 48-45-60	New section.	Provides general Board review information.
18 VAC 48-40-40	18 VAC 48-45-70	Filing fees for initial time-share project registration, phase amendments and annual reports as well as	Provides fees for time-share projects, alternative purchases, exchange companies and resellers registration and annual reports. Also provides fees for time-

		exchange program registration and annual reports.	share project phase filing and reseller reinstatement.
18 VAC 48-40-50	18 VAC 48-45-80	Prohibited preregistration offers and defines time-share marketing standards	Defines time-share marketing activities including that no time-share marketing activity shall be deemed an offer until the Board has issued an order of registration.
18 VAC 48-40-60	18 VAC 48-45-740	Provided time-share marketing standards.	Moved to Part X, Board Authority and Standards of Conduct. The section was amended (expanded) for clarity.
	18 VAC 48-45-90	New section.	States that offers of gifts and prizes shall be disclosed.
	18 VAC 48-45-100	New section.	Specifically states that registration of time-share project is required.
	18 VAC 48-45-110	New section.	Provides the prerequisites for time-share project registration.
	18 VAC 48-45-120	New section.	Provides specific Board review information of time-share projects.
	18 VAC 48-45-130	New section.	Provides minimum requirements for time-share project registration, including required exhibits.
18 VAC 48-40-70 18 VAC 48-40-80 18 VAC 48-40-90	18 VAC 48-45-140	States requirements for the preparation, including nature of information, and distribution of the public offering statement. States that the public offering statement shall be clear and understandable.	General public offering statement requirements.
18 VAC 48-40-70 18 VAC 48-40-80 18 VAC 48-40-90	18 VAC 48-45-150	States requirements for the preparation, including nature of information, and distribution of the public offering statement. States that the public offering statement shall be clear and understandable.	States requirements for full and accurate disclosure in the public offering statement.
18 VAC 48-40-70 18 VAC 48-40-80 18 VAC 48-40-90	18 VAC 48-45-160	States requirements for the preparation, including nature of information, and distribution of the public offering statement. States that the public offering statement shall be clear and understandable.	Provides the content requirements of the public offering statement, including narrative sections.
	18 VAC 48-45-170	New section.	Details requirement for a narrative section on the time-share concept.
	18 VAC 48-45-180	New section.	Details requirement for a narrative section on the creation of the time-share project.
	18 VAC 48-45-190	New section.	Details requirement for a narrative section on the description of the time-share concept.
	18 VAC 48-45-200	New section.	Details requirement for a narrative section on the individual time-shares.
	18 VAC 48-	New section.	Details requirement for a narrative section

	45-210		on the time-share developer.
	18 VAC 48-45-220	New section.	Details requirement for a narrative section on the terms of offering.
	18 VAC 48-45-230	New section.	Details requirement for a narrative section on any encumbrances.
	18 VAC 48-45-240	New section.	Details requirement for a narrative section on any exchange program.
	18 VAC 48-45-250	New section.	Details requirement for a narrative section on financial matters, including a budget.
	18 VAC 48-45-260	New section.	Details requirement for a narrative section on any restrictions on transfer.
	18 VAC 48-45-270	New section.	Details requirement for a narrative on any time-share owners' association.
	18 VAC 48-45-280	New section.	Details requirement for a narrative section on any managing entity.
	18 VAC 48-45-290	New section.	Details requirement for a narrative section on conversion time-share projects, if applicable to the registration application.
	18 VAC 48-45-300	New section.	Details requirement for a narrative section on insurance.
	18 VAC 48-45-310	New section.	Details requirement for a narrative section on any alternative purchase.
	18 VAC 48-45-320	New section.	Provides requirements for a substituted public offering statement from other jurisdictions outside of Virginia.
18 VAC 48-40-100	18 VAC 48-45-330	Provides requirements for material changes to the public offering statement.	Provides minimum post-registration requirements specific to time-share projects, including the requirement to file material changes. This section has been amended and expanded for clarity.
	18 VAC 48-45-340	New section.	States that any amendment to the time-share project public offering statement or substituted public offering statement shall comply with 18 VAC 48-45.
	18 VAC 48-45-350	New section.	Provides requirements for non-material changes to the time-share project public offering statement.
18 VAC 48-40-110	18 VAC 48-45-360	Provides requirements to file an amended public offering statement.	Provides requirements to file an amended time-share project public offering statement and details the Board's review. This section has been amended and expanded for clarity.
	18 VAC 48-45-370	New section.	Provides requirement to furnish the current (amended and accepted by the Board) time-share project public offering statement to any purchasers who received the public offering statement and summary of proposed amendments during the Board review period and that the public offering statement remains current until any future new effective date is established pursuant to 18 VAC 48-45.
	18 VAC 48-45-380	New section.	Provides that the developer shall notify purchasers who have not received the current time-share project public offering

			statement. Details the notification requirements.
	18 VAC 48-45-390	New section.	Provides the phase amendment application requirements for time-share projects. This application is used when phase(s) are added to a time-share project.
	18 VAC 48-45-400	New section.	Provides the requirement that a developer file an annual report for a time-share project. Details what is required in the annual report.
	18 VAC 48-45-410	New section.	Provides the Board's review of the time-share project annual report.
	18 VAC 48-45-420	New section.	Provides the process of returning the completion bond or letter of credit upon completion of the units and common elements in the time-share project.
	18 VAC 48-45-430	New section.	Provides the process for returning the escrow bond or letter of credit upon termination of the time-share project.
	18 VAC 48-45-440	New section.	Provides the requirement of the developer to report the extension, cancellation, amendment, expiration, termination or any other change of any bond or letter of credit.
	18 VAC 48-45-450	New section.	Provides how a time-share project registration can be terminated by the developer.
	18 VAC 48-45-460	New section.	Provides how a time-share project registration can be terminated by the Board.
	18 VAC 48-45-470	New section.	Provides the requirement that the developer report any change that may affect the accuracy or completeness of the time-share project registration.
	18 VAC 48-45-480	New section.	States that registration for alternative purchases is required.
	18 VAC 48-45-490	New section.	Provides specific registration requirements for alternative purchases.
	18 VAC 48-45-500	New section.	Provides public offering statement requirements for alternative purchases.
	18 VAC 48-45-510	New section.	Provides the Board's review of the alternative purchase registration.
	18 VAC 48-45-520	New section.	Provides minimum post-registration requirements specific to alternative purchases, including the requirement to file material changes.
	18 VAC 48-45-530	New section.	Provides requirements to file an amended alternative purchase public offering statement and details the Board's review.
	18 VAC 48-45-540	New section.	Provides the requirement that a developer file an annual report for an alternative purchase. Details what is required in the annual report.
	18 VAC 48-45-550	New section.	Provides the Board's review of the alternative purchase annual report.
	18 VAC 48-	New section.	Provides how an alternative purchase

	45-560		registration can be terminated by the developer.
	18 VAC 48-45-570	New section.	Provides the requirement that the developer report any change that may affect the accuracy or completeness of the alternative purchase registration.
	18 VAC 48-45-580	New section.	States that registration for an exchange program is required.
	18 VAC 48-45-590	New section.	Provides specific registration requirements, including a disclosure document, for exchange programs.
	18 VAC 48-45-600	New section.	Provides minimum post-registration requirements specific to exchange programs, including the requirement to file material changes.
	18 VAC 48-45-610	New section.	Provides the requirement that a developer file an annual report for an exchange program. Details what is required in the annual report.
	18 VAC 48-45-620	New section.	Provides the Board's review of the exchange program annual report.
	18 VAC 48-45-630	New section.	Provides how an exchange program registration can be terminated by the developer.
	18 VAC 48-45-640	New section.	Provides the requirement that the developer report any change that may affect the accuracy or completeness of the exchange program registration.
	18 VAC 48-45-650	New section.	States that registration for a time-share reseller is required.
	18 VAC 48-45-660	New section.	Provides exemption to registration of time-share resellers.
	18 VAC 48-45-670	New section.	Provides specific registration requirements for time-share resellers.
	18 VAC 48-45-680	New section.	Provides exhibits required for registration as a time-share resellers.
	18 VAC 48-45-690	New section.	Provides renewal and reinstatement requirements for time-share resellers.
	18 VAC 48-45-700	New section.	Provides the requirement that the time-share reseller report any change that may affect the accuracy or completeness of the time-share reseller registration.
	18 VAC 48-45-710	New section.	States that a time-share reseller shall comply with the recordkeeping provisions of 55.394.4 of the Code of Virginia.
	18 VAC 48-45-720	New section.	States the discipline authority of the Board for registrations that are not in compliance.
	18 VAC 48-45-730	New section.	States that registration is required prior to offering time-shares, alternative purchases, exchange programs, and resale services.
	18 VAC 48-45-740	New section.	States time-share advertising standards including that no promise, assertion, representation or statement of fact or opinion shall be made that is false, inaccurate or misleading.

	18 VAC 48-45-750	New section.	Provides details of the Board oversight of the public offering statement for time-share projects and alternative purchases, and Board oversight of the exchange program disclosure document.
	18 VAC 48-45-760	New section.	States that the developer of a time-share project, developer of an alternative purchase, the exchange company, or the reseller must respond within 15 days to a request by the Board or one of its agents regarding any complaint or request for any transaction document, book, or record. A 21 day response time is allowed for all other Board inquiries.
	18 VAC 48-45-770	New section.	States the prohibited acts for time-share projects, alternative purchases, exchange programs and time-share resellers. States that any violation of the prohibited acts may result in action by the Board.