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Fast-Track Regulation Agency Background Document

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) citation(s)	18 VAC 48-40
Regulation title(s)	Time-Share Regulations
Action title	Alternative Purchase
Date this document prepared	December 2, 2014, Revised December 10, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

An amendment incorporating alternative purchase registration procedures to the Time-Share Regulations is necessary as a result of changes to the Time-Share Act pursuant to Chapter 623 of the 2014 Virginia Acts of Assembly (Senate Bill 348).

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.

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

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 September 11, 2014, the Common Interest Community Board voted unanimously to authorize the amendment of the Time-Share 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 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.

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 55-394.5 of the *Code of Virginia* states the registration requirements for time-share alternative purchase.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

An amendment to the Time-Share Regulations is necessary as a result of changes to the Time-Share Act pursuant to Chapter 623 of the 2014 Virginia Acts of Assembly (Senate Bill 348). The changes to the Time-Share Act included alternative purchase registration requirements, therefore, regulation amendment is necessary to incorporate and reflect the statutory changes.

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?

The fast-track process was used because this amendment is a result of a statutory change. The need for a statutory change was identified during general review of the Time-Share Regulations. During that review, it was determined that the statutory requirements to register alternative purchases included the

same items required of time-share project registration such as escrow bonds for deposits and lengthy disclosure statements, which would be onerous and overly burdensome for the developer. The Committee involved in conducting the general review of the Time-Share Regulations included consumers, time-share developers, and representation from time-share industry organizations, the American Resort Development Association (ARDA) and the Virginia Resort Development Association (VRDA). ARDA and VRDA assisted in the general review and sought the statutory change to the alternative purchase registration requirements because the statutory provisions were overly and unnecessarily burdensome to developers, and such requirements did not serve to increase protection to the public.

This amendment should not be controversial as it is more detrimental to protection of the public (including developers) by not having the process formalized in regulation in a manner that can be clearly understood by the affected parties. In order to be consistent with current industry and common interest community processes, the proposed regulations for alternative purchase registration require a disclosure statement and yearly renewal through an annual report process. Annual reports are submitted currently by time-share projects, exchange programs, condominium project registrations and community association registrations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

This amendment to the time-share regulations includes procedures for alternative purchase application for registration such as the filing must be in a form prescribed by the Board's regulations and shall include a general description of the types of alternatives purchases, a copy of the terms and conditions applicable to the alternative purchase, and the name, address, and contact information of the developer offering the alternative purchases, such information as required by the Board. The amendment also incorporates a fee for filing a time-share alternative purchase registration application and annual report as well as a directive that any material change to the standard terms and conditions applicable to an alternative purchase shall be filed with the Board within 30 days.

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.

The primary advantage to the Commonwealth and public is that the revisions will ensure consistency with current legal requirements and ensure full and accurate disclosure to potential and actual purchasers of alternative purchases, all to better protect the health, safety, and welfare of citizens of the Commonwealth.

No disadvantages to the Commonwealth could be identified.

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

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 small businesses. In addition, the Board does not believe any of the registered 100 time-share projects and related developers meet the small business definition.

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.

Common Interest Community Board **Economic and Fiscal Impact of Proposed Regulation**

Summary:

The Time-Share Regulations under the Common Interest Community Board are being amended to include the registration of developers offering alternative purchases. The additional requirements also include a filing of an annual report. The Board expects an increase in revenue from this regulatory change.

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. The Board has no other source of income.

Economic Impact:

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>Time-share projects and the related developers that offer alternative purchases are affected by this regulatory change.</p>
<p>Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. 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.</p>	<ol style="list-style-type: none"> 1) Approximately 100 time-share projects and related developers will be affected by the regulation change. 2) None of the 100 affected developers are considered small businesses.
<p>Benefits expected as a result of this regulatory proposal.</p>	<p>The primary advantage to the Commonwealth and public is that the revisions will ensure consistency with current legal requirements and ensure full and accurate disclosure to potential and actual purchasers of time-share alternative purchases, all to better protect the health, safety, and welfare of citizens of the Commonwealth.</p>
<p>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</p>	<p>No anticipated costs to any locality.</p>
<p>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>The time-share projects and related developers that offer alternative purchases will be required to submit an initial application along with the \$100 application fee. Each year thereafter, an annual report must be submitted along with the filing fee of \$100. Minimal costs are also expected for application and annual report preparation.</p>

<p>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</p> <p>See Fiscal Impact by year below:</p>	<p>No additional costs to Virginia, the Department, or the Board are expected from this regulatory change.</p> <p>The Board expects additional annual revenue of approximately \$10,000 as a result of the initial application and annual filing fee of \$100 for the estimated 100 time-share projects that offer alternative purchases.</p>
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	FY 2015	FY 2016	FY2017	FY2018
Fund	NGF (02590)	NGF (02590)	NGF (02590)	NGF (02590)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	\$0	\$0	\$0	\$0
Ongoing Costs	\$0	\$0	\$0	\$0
Total Fiscal Impact	\$0	\$0	\$0	\$0
Additional Revenue		\$10,000	\$10,000	\$10,000
FTE	0.00	0.00	0.00	0.00

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 55-394.5 of the *Code of Virginia* states the registration requirements for time-share alternative purchase, including application for registration shall be filed in a form prescribed by the Board's regulations and shall include a general description of the types of alternative purchases, a copy of the terms and conditions applicable to the alternative purchase, and the name, address, and contact information of the developer offering the alternative purchases, 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.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

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. 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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Not applicable.

Family impact

Please assess the impact of this 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; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18VAC48-40-20		Application for registration	For clarification and differentiation from new section 18VAC48-40-25, a change in section title only from Application for registration to Application for registration of time-share projects and programs.
	18VAC48-40-25		States requirement for application for registration of alternative purchases shall be on a form furnished by the Board and shall contain the requirements of § 55-394.5.
18VAC48-40-40		Filing fees	Revised to include fee for filing an alternative purchase registration and for filing an alternative purchase annual report.
	18VAC48-40-120		States requirement for application for registration of alternative purchases pursuant to § 55-394.5.
	18VAC48-40-130		Provides the Board’s review of the alternative purchase registration.
	18VAC48-40-140		Provides the requirement that a developer file an annual report for an

			alternative purchase. Details what is required in the annual report.
	18VAC48-40-150		Provides how an alternative purchase registration can be terminated by the developer.
	18VAC48-40-160		Provides the requirement that the developer report any change that may affect the accuracy or completeness of the alternative purchase registration.