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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC48-50
VAC Chapter title(s)	Common Interest Community Manager Regulations
Action title	General Regulatory Review
Date this document prepared	June 9, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Common Interest Community Board (“the Board”) intends to undertake a general regulatory review of the Common Interest Community Manager Regulations. The goals of the planned regulatory action are to review the existing regulation and propose any amendments the Board determines to be necessary and appropriate.

The Board last undertook a significant review and revision of the regulation in 2012, when the regulation was amended to establish certification requirements for principal or supervisory employees of common interest community managers. Since 2012, members of the public, individuals in the community management industry, and agency staff have identified several areas where the regulation would benefit from revision or clarification. A thorough review of the regulation is necessary to address these areas, ensure the regulation complements current Virginia law, provides minimal burdens on regulants while still protecting the public, are clearly written and understandable, and reflect current procedures and policies of the Department of Professional and Occupational Regulation (“the Department”). In addition, the

review will be conducted in an effort to identify areas for regulatory reduction in accordance with Chapter 444 of the 2018 Virginia Acts of Assembly.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“CIC” means common interest community.

“POA” means property owners’ association.

“UOA” means condominium unit owners’ association.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This regulatory change is prompted by (i) feedback received by the agency from members of the public, including individuals in the community management industry and members of CIC associations, and (ii) agency staff review of the regulation. Sources of public feedback have included formal comments received during meetings of the Board or committees of the Board, informal comments made to agency staff during public outreach events, and informal comments received by agency staff from licensees and applicants for licensure.

Both the public and agency staff have identified areas where the regulation would benefit from revision or clarification to better ensure the regulation achieves its intended purpose to protect the public welfare by ensuring only those individuals who are properly qualified engage in the profession, while also reducing or mitigating regulatory burdens on applicants seeking to obtain a license, and licensees who maintain a license. In addition, the review will be conducted in an effort to identify areas for regulatory reduction in accordance with Chapter 444 of the 2018 Virginia Acts of Assembly.

In consideration of the above, on March 4, 2021, the Board voted to initiate a general regulatory review of the regulation.

This regulatory change is not the result of a mandate.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The agency is the Common Interest Community Board. Chapter 23.3 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for common interest

community managers and principal or supervisory employees. Section 54.1-2349 of the Code of Virginia states, in part:

A. The Board shall administer and enforce the provisions of this article. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this article in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), including the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses.
2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities.
3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community.
4. Approve the criteria for accredited common interest community manager training programs;
5. Approve accredited common interest community manager training programs;
6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this article;

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The General Assembly has charged the Board with the responsibility for regulating those who provide management services to CICs by requiring that common interest community managers (CIC managers) obtain a license in order to provide management services to CICs, and that employees of CIC managers who have principal responsibility for providing management services, or have supervisory responsibility for those that directly provide management services, are certified as having the character and minimum skills to provide management services.

Millions of Virginians are residents of CICs. CICs include property owners' associations (POAs), condominium unit owners' associations (UOAs), and proprietary lessees' associations in real estate cooperatives. Data from Community Associations Institute (CAI), a trade group for community associations, indicate there are over 8,700 CICs in the Commonwealth.¹ An estimated number of 1.9+

¹ Source: Foundation for Community Association Research. (2020). *Virginia State Summary: Community Association Fact Book 2019*. <https://foundation.caionline.org/wp-content/uploads/2020/08/VA2019.pdf>

million residents in Virginia, approximately 23.5% of the state's population, live in CICs. CAI estimates the value of association housing services² in Virginia in 2019 was \$3,529,000,000.

The governing board of a CIC has a fiduciary duty to the members of the association to ensure the proper management and maintenance of their community. This includes ensuring the association complies with various laws and regulations, such as (i) common interest community specific statutes, such as the Property Owners' Association Act or the Virginia Condominium Act; (ii) federal and state tax laws; and (iii) laws governing corporations (if the association is incorporated). Further, governing boards are also responsible for ensuring that the association and its members comply with the various covenants established by the community's governing documents, and rules and regulations adopted for the community.

Generally, governing boards of CIC associations are comprised of volunteers who reside in their communities. Though many communities choose to be self-managed, many others are professionally managed by CIC managers. According to the Board's records, there are 6,787³ CIC associations registered with the Board. Of these, 4,721 (approximately 70%) are managed by a CIC manager. The governing boards of communities that choose to employ a community manager are relying on the expertise and experience of the community manager to ensure the community is properly managed and maintained.

CIC managers provide a variety of services to CICs. These include management of the real and personal property belonging to the association, and management over the association's financial accounts. Community managers are often responsible for negotiating contracts and arranging for services on behalf of the community. Such services might include grounds maintenance, trash removal, and orders for ordinary repairs. Managers may also be involved in selecting contractors and administering contracts for more significant capital projects, such as replacement of roads in a community or re-roofing of buildings. In the financial sphere, community managers are often responsible for collecting the assessments imposed on association members for common expenses, making payments to contractors or other vendors hired by the association, managing the association's bank and other financial accounts, and reporting on the association's finances. Managers are also often responsible for preparing the association's budgets. They may also be responsible for obtaining insurance on behalf of the association.

Community managers may be the custodian of an association's books and records, and are responsible for ensuring the association complies with legal requirements for members' access to books and records. Managers may assist the association in the conduct of meetings, including annual meetings of the membership and governing board meetings, and assist in the administering of elections for directors or other association votes. Managers may also assist the association in meeting other legal obligations, such as the preparation of resale packets when a lot or unit in the community is sold.

Community management companies are entrusted with the valuable property and funds of CICs. Management services performed by individuals who lack sufficient training and expertise expose the public to the risk for harm. Mismanagement of a community by a management company 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. Moreover, due to the significant amount of control a management company may exercise over the funds of associations, ensuring those who provide management services meet a minimum level of character provides a safeguard to the public welfare.

² These include: operations, physical asset management, major repairs and replacements, capital improvements, conservation & sustainability, and contingencies.

³ Note: This number reflects CIC's with active, current registrations as of June 8, 2021. Under applicable provisions of statute, CICs are required to register with the Board. However, not all CICs are in compliance with registration requirements.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession, as well as the minimum requirements for the provision of management services.

As the regulation is developed, the Board will likely need to address issues surrounding (i) how applicants can adequately demonstrate requisite knowledge and experience in order to qualify for licensure or certification, (ii) how to best ensure licensees comply with statutory requirements for insurance; (iii) the minimum standards of conduct and practice for community managers, including possible conflicts of interest; and (iv) what minimum training should be required in order to obtain and maintain a license or certificate. These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

During its review of the regulation, the Board is expected to consider the following topics:

1. General (18VAC48-50)
 - Repeal provisions of the regulation that are out-of-date.
 - Amend regulations to provide clarity and to align with current practices and processes.
2. Definitions (18VAC48-50-10)
 - Establish definition for the “qualifying individual” for a common interest community manager described in 18 VAC 48-50-30.L to qualify a firm for licensure. Add the term “qualifying individual” in the regulations where applicable.
3. Entry Requirements (18VAC48-50-20 through 18VAC48-50-40)
 - Review requirements for disclosure of criminal convictions and disciplinary actions for a management company license, and for a principal or supervisory employee certificate.
 - Revise requirements pertaining to fidelity bond or employee dishonesty policy to be obtained by common interest community manager to incorporate Board’s previous interpretative guidance regarding minimum requirements for insurance and proof of insurance.
 - Review training and experience requirements for qualifying individuals for common interest community managers, and principal or supervisory employee certificates.
 - Consider whether other types of management experience other than community association management may be acceptable to qualify for licensure or certification.
4. Renewal and Reinstatement Requirements (18VAC48-50-90 through 18VAC48-50-130)
 - Consider extending license period for common interest community manager licenses from one year to two years.
 - Consider extending the reinstatement period for common interest community manager licenses and principal or supervisory employee certificates from six months to one year.
 - Review current requirements for continuing education for principal or supervisory employee certificate holders.
5. Standards of Conduct and Practice (18VAC48-50-140 through 18VAC48-50-220)
 - Consider revising reporting requirements such as reporting changes of name or fictitious name, reporting changes to the company principals, responsible person, or qualifying individual of a management company; and reporting actions taken against a qualifying individual (e.g. criminal conviction or regulatory discipline).
 - Review prohibited acts outlined in 18 VAC 48-50-190.
 - Review provision relating to conflicts of interest.
 - Clarify requirements to respond to inquiries from the Board and Board’s agents (i.e. investigative staff).

- Consider duty to report requirement.
6. Training Programs and Examination (18VAC48-50-230 through 18VAC48-50-290)
- Review current training program and examination requirements

The above list is not inclusive of all items that may be presented for amendment. Draft regulatory text is not available at this time.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

Common interest community manager licenses are issued to firms. Some of these firms would likely qualify as small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Prior to undertaking this regulatory action, the Board has attempted to address some of the concerns brought to its attention through issuing interpretive guidance. However, these efforts are insufficient to adequately address these concerns on a long-term basis, as interpretive guidance cannot be a substitute for amending a regulation. No other viable alternatives to a regulatory change have been identified. One of the objectives of the regulatory review will be to identify areas where the regulation can be changed to reduce or mitigate regulatory burdens on applicants and licensees.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

In accordance with the Board's Public Participation Guidelines (18VAC48-10), notification of this regulatory action will be made to persons on the agency's notification list.

The Board has formed a committee of subject matter experts with representation including community managers, an attorney represents common interest community associations, a CPA whose practice includes providing attest services to associations, a licensed real estate professional, and other citizens involved with community association management. The committee is charged with developing

recommended amendments to the Board. Members of the public may attend and offer public comment during any meetings of the committee.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Joseph C. Haughwout, Jr.
Regulatory Administrator
9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, VA 23233
CIC@dpor.virginia.gov
(866) 350-5354 (fax)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.