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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 VAC48-60
VAC Chapter title(s)	Common Interest Community Association Registration Regulations
Action title	General Review of Common Interest Community Association Registration Regulations
Date this document prepared	February 7, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 Association Registration Regulations. The regulation implements the requirements and duties imposed upon the Board by Virginia law, including §§ 54.1-2350 and 54.1-2354.2 of the Code of Virginia. The regulation prescribes when and how common interest community associations (property owners' associations, condominium unit owners' associations, and proprietary lessees' associations in real estate cooperatives) are to register with the Board by filing an annual report in accordance with Chapters 18, 19, and 21 of Title 55.1 of the Code of Virginia. The regulation establishes registration application filing fees, procedures for renewing registrations, and requirements for updating registration information.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the registration program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation complements current Virginia law and meets applicable federal requirements, if any;
3. Review to ensure the regulation is organized, clear, and understandable; and
4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“CIC” means common interest community.

“DPOR” means Department of Professional and Occupational Regulation.

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 the ORM procedures, “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.”

The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.”

This action 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.

Section 54.1-2349(A) of the Code of Virginia specifies the Board shall administer the provisions of Chapter 23.3 of Title 54.1 of the Code of Virginia, and 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.)...

8. Issue a certificate of registration to each association that has properly filed in accordance with this chapter;

In addition, § 54.1-2350 of the Code of Virginia states, in part:

In addition to the provisions of § 54.1-2349, the Board shall:

1. Administer the provisions of Article 2 (§ 54.1-2354.1 et seq.);

2. Develop and disseminate an association annual report form for use in accordance with §§ 55.1-1835, 55.1-1980, and 55.1-2182...

Further, § 54.1-2351 of the Code of Virginia states, in part:

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this article, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this article or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

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 to administer the registration program for common interest community associations.

Unlike most DPOR regulatory programs, the Board’s association registration program does not grant a license or other authorization for an association to operate or exist. However, the General Assembly has imposed on associations certain obligations that are tied to registration with the Board. The Resale Disclosure Act (§ 55.1-2307 et seq.) requires that when selling a home in a CIC, the owner must provide a potential purchaser with certain legally required information regarding the home, common areas, and the association. The Act calls the legally required information a resale certificate. One component of the disclosure packet is documentation the association has a current registration with the Board. In addition, the Act provides that no association may collect certain authorized fees for the preparation and delivery of a resale certificate unless the association is registered with the Board. Failure of an association to comply with registration requirements poses a risk of financial harm to innocent third parties, namely purchasers and sellers in real estate transactions, due to the potential for contract cancellation and civil litigation.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the registration program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the registration program, the Board will consider eliminating the requirement.

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.

The Board has performed a review of this regulation. The Board's membership includes individuals who are involved in the CIC industry, including community managers, an attorney who represents associations, and citizens who reside in CICs. The Board is expected to consider the substantive changes detailed below. However, the Board may consider other changes prior to adoption of the proposed regulation.

Definitions (18 VAC 48-60-13): Rewording the section to more clearly incorporate statutory terms from §§ 54.1-2345, 55.1-1800, and 55.1-2100 of the Code of Virginia that are used in the regulation.

Timeframe for Association Registration and Annual Report (18 VAC 48-60-15): Revising the section to reorder the existing subsections. Existing subsection C will become new subsection A. Existing subsection A will become new subsection B. Existing subsection B will become new subsection C. This change is made to make the order of these subsections consistent with the numerical ordering of the applicable sections in Title 55.1 of the Code of Virginia related to filing of annual reports.

Adding a new section - Designation of Association Contact Person; Certification of Association Complaint Procedure (18 VAC 48-60-16):

- Add a provision which requires an association to include the name and contact information of the contact person for the association. The contact person is the individual designated by an association to receive communications and notices from the Board on behalf of the association. Currently, an association is required to provide the Board with a contact person for the association in order to register. However, this requirement is not expressly stated in the regulation. This change will ensure the regulation conforms to current agency practice.
- Add a provision which requires an association to provide the name and contact information for a governing board member who is authorized by the association to receive correspondence related to notices of final adverse decision from the Office of the Common Interest Community Ombudsman. This change is made to complement a change to Virginia law resulting from the enactment of Chapters 20 and 21 of the 2023 Acts of Assembly. The legislation amended § 54.1-2354.4 of the Code of Virginia to require the governing board of an association be provided with (i) a copy a notice of final adverse decision filed with the Ombudsman against an association; and (ii) a copy of any determination made as the result of Ombudsman review of the notice of final adverse decision. This change will facilitate compliance with the amended law by ensuring the Board has record of a governing board member to whom such correspondence can be sent.
- Add a provision that an association must certify with each annual report filing that it has adopted an association complaint procedure in accordance with the Common Interest Community Ombudsman Regulations (18 VAC 48-70) and that such procedure is in effect. Currently, 18 VAC 48-70-40 of the Ombudsman Regulations requires that an association must make this certification when filing an annual report. However, since this requirement is actually applicable to association registrations, it is appropriate to include the requirement in this regulation.

Association Registration Expiration and Renewal (18 VAC 48-60-17):

- Revising the provisions of subsection B to remove language that provides that failure to receive a renewal notice does not relieve the association of the obligation to renew registration. This language is being removed because it is not necessary. Unlike other DPOR regulations, where a licensee can choose not to renew a license, but must do so in order to continue engaging in regulated activity, an association does not have such an option. An association is required by statute to file an annual report (i.e. renew registration) with the Board.
- Rewording the provisions of subsection C to more clearly state that an association will renew a registration by filing an annual report, which includes the renewal fee; and that upon receipt and processing of the annual report, the registration will be considered current.

Maintenance of Registration (18 VAC 48-60-25):

- Revising the provisions of subdivision 1 to provide that an association must notify the Board in writing within 30 days of a change in contact person information. Currently, the regulation only requires notification of a change of address.
- Adding a subdivision that requires an association to notify the Board in writing within 30 days of a change in the governing board member designated by the association to receive notices from the Office of the Common Interest Community Ombudsman pursuant to 18 VAC 48-60-16.A.2.

Registration and Renewal Fees (18 VAC 48-60-60): Revising the provisions of the section to provide a meaning for the phrase “lots or units subject to the declaration” used in the section. The registration or renewal fee an association must pay is based on a tiered fee structure tied to the number of lots or units in the community. Some associations will make inquiries to the Board seeking clarification as to the meaning of the phrase “lots or units subject to the declaration.” Those filing an annual report on behalf of an association may need clarification on the meaning of “lots or units subject to the declaration” in order to (i) ensure the annual report is accurate regarding the number of lots or units in the community, and (ii) pay the appropriate registration or renewal fee. In September 2021, the Board adopted guidance that the term “lots or units subject to the declaration” means “any lots or units in a development to which the provisions of the recorded declaration, as amended, for the common interest community are applicable.” This change incorporates the meaning of the term adopted by the Board in its guidance document.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the registration program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the registration program, the Board will consider eliminating the requirement.

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.

A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the registration program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

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 the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it 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.

The Board performed a review of this regulation at its meeting on September 21, 2023. This meeting included an opportunity for public comment.

The Common Interest Community 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:

Anika Coleman
Executive Director
9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, VA 23233
cic@dpwr.virginia.gov
(866) 490-2723 (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.