



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC48-70
VAC Chapter title(s)	Common Interest Community Ombudsman Regulations
Action title	CIC Ombudsman Regulations - HB 1627/SB 1042 Amendments
Final agency action date	April 25, 2023
Date this document prepared	September 7, 2023

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action amends provisions of the Common Interest Community Ombudsman Regulations to conform to changes resulting from the enactment of Chapters 20 and 21 of the 2023 Acts of Assembly.

The legislation provides that the Office of the Common Interest Community Ombudsman, upon receiving a notice of final adverse decision, either (i) refer the final adverse decision to the Common Interest Community Board, or (ii) make a final determination as to whether the adverse decision is in conflict with common interest community law or regulations. The legislation also provides that the Ombudsman must promptly notify the governing board of the association, or its common interest community manager, if applicable, of the determination. The legislation further provides that if a subsequent notice of final adverse decision for the same violation is received within one year of such determination, the matter will be referred to the Common Interest Community Board.

The proposed amendments conform applicable provisions of the regulation to the legislation. Substantive amendments include:

1. A new section, 18VAC48-70-105, is added to provide that upon receipt of a notice of final adverse decision, the Office of the Common Interest Community Ombudsman may either (i) refer the adverse decision to the Common Interest Community Board for further review of whether the adverse decision is in conflict with the laws or Board regulations governing common interest communities, or (ii) review the adverse decision as provided in the Board's regulation.
2. Section 18VAC48-70-110 is amended to require that the upon receipt of a notice of final adverse decision, the Office of the Common Interest Community Ombudsman must provide a written copy of the notice to the governing board, and, if applicable, the common interest community manager of the association that made the final adverse decision.
3. Section 18VAC48-70-120 is amended to provide that if the Director of the Department of Professional and Occupational Regulation determines that a final adverse decision is in conflict with the laws or regulations governing common interest communities, the Director must provide the governing board and, if applicable, the common interest community manager of the association with the determination.
4. Section 18VAC48-70-120 is further amended to provide that if within 365 days of issuing a determination to an association that an adverse decision is in conflict with laws or regulations governing common interest communities, the Director receives a subsequent notice of final adverse decision for the same violation by the association, the Director must refer the repeat violation to the Common Interest Community Board, which must take action in accordance with §§ 54.1-2351 or 54.1-2352, as deemed appropriate by the Common Interest Community Board.

This action is exempt from the Administrative Process Act under § 2.2-4006(A)(4)(a) of the Code of Virginia, which states, in part:

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.

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, internal staff review, 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."

In March 2023, the Governor approved Chapters 20 (HB 1627) and 21 (SB 1042) of the 2023 Acts of Assembly, which provides that the Office of the Common Interest Community Ombudsman, upon receiving a notice of final adverse decision, either (i) refer the final adverse decision to the Common Interest Community Board, or (ii) make a final determination as to whether the adverse decision is in conflict with common interest community law or regulations. The legislation also provides that the Ombudsman must promptly notify the governing board of the association, or its common interest community manager, if applicable, of the determination. The legislation further provides that if a subsequent notice of final adverse decision for the same violation is received within one year of such determination, the matter will be referred to the Common Interest Community Board. The amendments to statute became effective on July 1, 2023.

The purpose of this regulatory change is to implement and comply with changes to the Code of Virginia resulting from the passage of HB 1627 and SB 1042 during the 2023 General Assembly Session.

Statement of Final Agency Action

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 April 25, 2023, the Common Interest Community Board adopted the amendments to the Common Interest Community Ombudsman Regulations.