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Periodic Review Report of Findings

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) citation	18 VAC48-70
Regulation title	Common Interest Community Ombudsman Regulations
Date this document prepared	December 16, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. 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 are used in this report.

Legal Basis

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

Sections 54.1-2349, 54.1-2351, and 54.1-2354.4 of the Code of Virginia give authority to the Common Interest Community Board to promulgate regulations for common interest community associations to establish reasonable procedures for the resolution of written complaints from association members and other citizens. Section 54.1-2349 states, in part:

- A. The Board shall administer and enforce the provisions of this chapter. 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 chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.)...
- B. 1. The Board shall have the sole responsibility for the administration of this chapter and for the promulgation of regulations to carry out the requirements thereof.

Section 54.1-2351 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 chapter, 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 chapter or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

Section 54.1-2354.4 states, in part:

- A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No viable alternatives for achieving the purpose of the existing regulation could be determined. The regulation enables the Board to fulfill the statutory requirements established in Chapter 23.3 of Title 54.1 of the Code of Virginia. Further, the regulation is necessary to ensure that the Board's statutory requirements are executed in the least burdensome and most efficient and cost effective manner possible while protecting the welfare of the citizens of Virginia.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Robert P. Sledzaus	Many owners residing in common interest communities may be unaware of that an association complaint process exists in order to	The Board elects to retain the regulation in its current form without amendment at this time. The decision to retain a regulation in its current form does not prevent the Board from

	<p>report alleged violations of common interest community statutes or regulations. Making the complaint process and complaint form available is insufficient for those who are unaware the process exists. The complaint process and sample form need to be distributed to all association members upon initial adoption or revision; and annual notification to members and residents regarding how to request the procedure and form should be provided. In addition, when there are changes to an association's complaint procedure, the association governing board should readopt the resolution establishing the procedure, and distribute to the membership.</p>	<p>initiating action to review or amend the regulation in the future.</p> <p>The Board thanks the commenter for his participation.</p>
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An informal advisory group was not formed for purposes of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set forth in Executive Order 14 (2018). The regulation contains the requirements for the establishment of complaint procedures by common interest community associations. The regulation is necessary to interpret and apply the requirements imposed upon the Board by Chapter 23.3 of Title 54.1 of the Code of Virginia, and protects the public welfare, in part, by requiring common interest community associations to establish written procedures for the resolution of complaints from association members, and other members of the public. The regulation is clearly written and understandable. The regulation is designed to achieve its objective in the most efficient and cost effective manner.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency is recommending that the regulation stay in effect without change.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, 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. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

Sections 54.1-2349, 54.1-2351, and 54.1-2354.4 of the Code of Virginia mandate the Common Interest Community Board promulgate regulations. Section 54.1-2354.4 specifically mandates the Board establish by regulation that common interest community associations establish procedures for the resolution of complaints. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation.

Common interest community associations do not appear to be small businesses as contemplated under § 2.2-4007.1 of the Code of Virginia.

The Common Interest Community Board provides protection to the public welfare of the citizens of the Commonwealth by assuring common interest community associations establish procedures for the resolution of complaints from association members, and other members of the public.

The regulation is clearly written, easily understandable, and does not overlap, duplicate or conflict with federal or state law or regulation. Based on the comment received during the public comment period, there does not appear to be a reason to repeal the regulation. There also does not appear to be a reason to amend the regulation at this time. However, the decision to retain a regulation in its current form does not prevent the Board from conducting review or amendment of the regulation in the future.

The most recent periodic review of the regulation occurred in 2015. On December 5, 2019, the Board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.