



Final Regulation Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) citation	18 VAC 135-60
Regulation title	Real Estate Board Common Interest Community Management Information Fund Regulations
Action title	Restructure registration fees proportional to the size of the community
Date this document prepared	October 16, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The proposed fee structure is divided into seven (7) categories reflecting a graduated scale which represents the number of units/lots in a community. Also, the initial application fee is different and slightly higher than the annual renewal fee. Language has been added to have registration certificate expiration dates coincide with the community's annual meeting to elect officers.

There are no changes from publication of the proposed regulation to the final regulation.

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.

The Real Estate Board adopted the proposed amendment to the Common Interest Community Management Information Fund Regulations as final regulation on September 20, 2007.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Common Interest Community Management Information Fund is created in § 55-529 of the Code of Virginia “to be used in the discretion of the Real Estate Board to promote the improvement and more efficient operation of common interest communities through research and education.” The Board’s authority to promulgate regulations is established in § 55-530 which states that “the Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act to accomplish the purpose of this chapter” (Chapter 29 of Title 55 of the Code of Virginia - Common Interest Community Management Information Fund).

Purpose

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

House Joint Resolution 686 (2005 Session) requested the Virginia Real Estate Board to conduct a study to review the adequacy of, training of, and disclosure of financial information to consumers by financially compensated professional managers of condominium associations, property owners’ associations and other similar common interest communities. As a result of this study, the Board concluded that further education was needed to make associations and those who are directing them better aware of their duties and responsibilities to their communities and would help to alleviate potential problems and misunderstandings with financially compensated professional association managers. The Board acknowledged that because of high volume of turnover in associations and board membership, training should be an ongoing process.

The Board further concluded that the Common Interest Community Management Information Fund Regulations should be revised to create an annual filing fee schedule structured proportional to the size of the association. An association of 5 lots/units should not be paying the same fee as an association containing 5,000 lots/units. Currently, the annual filing fee for all associations is \$25 regardless of size. This increase in funding would be used to either hire additional staff to assist the Community Association Liaison or to engage a third-party firm to provide the much needed training/education for associations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

The current filing fee is \$25 annually for all associations regardless of size. The proposed seven-tier fee structure would increase revenue to provide funding for additional training and education for common interest communities and those who run these communities. Since the larger registration fees are for the larger communities, there is relatively no impact on the individual unit/lot owner.

Since more administrative input is required by Board staff when processing initial applications, an application fee has been created which is slightly higher than the annual renewal fee.

In an effort for Board staff to maintain current information on a community’s point of contact and officers, language has been added to have registration certificate expiration dates coincide with the community’s annual meeting to elect officers. This will ensure that communities can be contacted for informational and educational purposes.

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 public, who are unit owners/lot owners, would be to alleviate potential problems and misunderstandings with financially compensated professional association managers as well as conflicts between association boards and their membership. Informing association membership of how an association should operate and of their responsibilities and opportunities as unit owners/lot owners will encourage participation by members in community meetings and will foster volunteers to serve on boards and committees. This process must be ongoing because of the high volume of turnover in associations and their board membership.

The primary advantage to the agency will be that an increase in fees will generate the necessary funding for the Board to provide more training to associations and those who are directing them in an effort to educate them regarding their duties and responsibilities to their communities as required by the Property Owners’ Association Act and the Condominium Act.

This regulatory action poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

There are no changes from publication of the proposed regulation to the final regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Jim Young (Town Hall Public Comment Forum and Public Hearing)	<p>Mr. Young cannot understand why an effort to register all associations is not being made.</p> <p>He feels that the few associations who register are being required to shoulder an additional burden to fund the Real Estate Board's projects.</p> <p>He plans to recommend to his association to discontinue filing and paying further fees until the Real Estate Board brings most of the associations into compliance.</p>	<p>The Board will take this comment into consideration when approving final regulations.</p> <p>Unfortunately, the Real Estate Board has no statutory authority to force communities to register. The Board has made every effort to locate and identify these communities, and to encourage them to register.</p> <p>Both the Property Owners' Association Act and the Condominium Act require that their respective associations register with the Real Estate Board. Disclosure Packets (POAs) and Resale Certificates (Condominiums) must contain certification that the association has filed with the Real Estate Board an annual report and indicate the filing number assigned by the Real Estate Board and the expiration date of such filing.</p> <p>If a Disclosure Packet or Resale Certificate does not contain this information, it shall be considered unavailable and the contract of a purchaser can be cancelled. Individuals in your community could potentially lose sales.</p> <p>The proposed amendments create an annual filing fee schedule structured proportional to the size of the association. Increased funding will be used to provide assistance to associations in resolving problems and to provide much needed training/education for associations.</p>

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

<p>18 VAC 135-60- 60</p>	<p>Same</p>	<p>Annual report filing fee for all communities is \$25.</p>	<p>To lessen the financial burden on individual unit/lot owners, larger registration fees are planned for the larger communities. The following seven-tier fee structure is proposed:</p> <table border="1" data-bbox="889 361 1360 667"> <thead> <tr> <th><u>Number of Lots/Units</u></th> <th><u>Application Fee</u></th> <th><u>Renewal Fee</u></th> </tr> </thead> <tbody> <tr> <td>1 - 50</td> <td>45</td> <td>30</td> </tr> <tr> <td>51 - 100</td> <td>65</td> <td>50</td> </tr> <tr> <td>101 - 200</td> <td>100</td> <td>80</td> </tr> <tr> <td>201 - 500</td> <td>135</td> <td>115</td> </tr> <tr> <td>501 - 1000</td> <td>145</td> <td>130</td> </tr> <tr> <td>1001 - 5000</td> <td>165</td> <td>150</td> </tr> <tr> <td>5001+</td> <td>180</td> <td>170</td> </tr> </tbody> </table> <p>A separate fee, which is slightly higher than the annual renewal fee, has been created for initial applications since more administrative input is required by Board staff when processing these applications.</p> <p>Language has been added to indicate that registration certificates are renewable in the month that the community holds its annual meeting to elect officers. This addition will assist Board staff in maintaining current information on a community's point of contact and officers. This will ensure that communities can be contacted for informational and educational purposes.</p>	<u>Number of Lots/Units</u>	<u>Application Fee</u>	<u>Renewal Fee</u>	1 - 50	45	30	51 - 100	65	50	101 - 200	100	80	201 - 500	135	115	501 - 1000	145	130	1001 - 5000	165	150	5001+	180	170
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Regulatory flexibility analysis

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.

No viable alternatives could be determined. The proposed changes are not expected to have an impact on small businesses.

Family impact

Please assess the impact of the proposed 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.

The proposed changes are not expected to have an impact on families.