



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	18
<b>VAC Chapter Number:</b>	135
<b>Regulation Title:</b>	Common Interest Community Management Information Fund Rules and Regulations
<b>Action Title:</b>	Amending
<b>Date:</b>	March 10, 2003

Please refer to the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The regulations will implement the provisions of the Common Interest Community Management Information Fund (§§ 55-528 *et seq.*) of the *Code of Virginia*. The Act requires the payment of a fee into the Fund by Condominium, Cooperative, and Property Owners' Associations to be used to promote the improvement and more efficient operation of common interest communities through research and education.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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The Virginia Real Estate Board reviewed and adopted the final regulations, entitled “Common Interest Community Management Information Fund Regulations,” on January 16, 2003.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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The Board’s authority to promulgate regulations for the administration of the Common Interest Community Management Information Fund may be found in § 55-530(C) of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+55-530>) which provides the Real Estate Board with authority to prescribe regulations to accomplish the purposes of the statute.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The Common Interest Community Management Information Fund (the Fund) was created by Acts of the 1993 General Assembly (chapter 958) and assigned to the Real Estate Board for administration and support. The Fund was established to be used by the Board to "promote the improvement and more efficient operation of common interest communities through research and education." The 2001 General Assembly (chapter 816) amended the statutes to include the establishment of the Community Association Liaison who is responsible for the administration of "the requirements of this chapter [Chapter 29 of Title 55] and serves as an information resource on issues relating to the governance, administration and operation of common interest

communities, including the laws and regulations relating thereto." These regulations will be the first set in place for the administration of the Fund; there are no existing regulations to amend.

Implementing the requirement for an annual report filing fee is essential to protect the health, safety and welfare of citizens in two areas. First, moneys are used to educate association board members and residents to ensure that appropriate disclosures are made in accordance with statute when the property is sold. It is crucial that potential buyers understand the nature of the association and how being a member of the association impacts on their rights. Second, the moneys are used to maintain a database of information on association officers and contact points which is distributed to residents upon request.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

Current estimates indicate that as many as one in seven individuals living in Virginia resides in a common interest community. A large number of those living in these communities are often not aware of the requirements of the various statutes involved in the day to day operation of the community. This includes the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia), the Virginia Real Estate Cooperative Act (§ 55-424 et seq. of the Code of Virginia), and the Property Owners' Association Act (§ 55-508 et seq. of the Code of Virginia).

These regulations are necessary to implement the Acts of the 1993 General Assembly and administer the Common Interest Community Management Information Fund, as well as provide for the implementation of the Community Associations Liaison, mandated by the 2001 General Assembly. Both the Fund and the Liaison are mandated to protect the public health, safety, and welfare of the citizens of the Commonwealth by improving and enhancing the efficient operation of common interest communities through research and especially education.

### Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.*

The advantages to the public and the Commonwealth are that the regulations will permit compliance with the statutory intent to promote the improvement and more efficient operation of common interest communities through education and research. No disadvantages have been identified.

**Statement of Changes Made Since the Proposed Stage**

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

18 VAC 135-60-50 (A) – deleted “first anniversary of the” between “the” and “creation”. Deleted “an” and added “the” between “thereafter,” and “association”.

18 VAC 135-60-50 (B) – deleted the whole subsection.

**Public Comment**

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

The following comments were supplied in writing by the following commenter:

Geraldine L. Johnson  
1722 Early Settlers Road  
Richmond, Virginia 23235

Summary of Comment	Proposed Response
18 VAC 135-60-20 – agrees with the proposed language.	No response needed.
18 VAC 135-60-30 – agrees with the proposed language. Recommends that the annual report filed by condominium associations be filed when the first unit is sold.	The recommendation made in the comment should not be implemented. Section 55-79.93 of the Condominium Act already requires the declarant to file an annual report with the Board during the declarant control period. Section 18 VAC 135-60-30 of the proposed regulations continues this annual reporting requirement once the declarant control period ends and the unit owners’ association control period begins.
18 VAC 135-60-40 – agrees with the proposed language. Recommends that the annual report filed by a cooperative associations be filed when the first cooperative is sold.	The recommendation made in the comment should not be implemented. Section 55-504 of the Virginia Real Estate Cooperative Act already requires the declarant to file an annual report with the Board during the declarant control period. Section 18 VAC 135-60-40 of the proposed regulations continues this annual reporting requirement once the declarant control period ends and the cooperative association control period begins.
18 VAC 135-60-50 (A) - Recommends that the annual	The recommendation made in the comment should be implemented. The Property Owners’ Association Act (§§ 55-508 et seq.) does not

<p>report filed by a property owners’ associations be filed within 30 days of the creation of the association.</p>	<p>have the same reporting requirements on declarants as the Condominium Act or the Virginia Real Estate Cooperative Act. The current wording of this proposed regulation would mean that a year and 30 days would go by before any information was received about the property owners’ association. In order to prevent such a gap in timely information, this section should read as follows:</p> <p><u>A. Within 30 days of the creation of the association, and every year thereafter, the association shall file an annual report with the board.</u></p>
<p>18 VAC 135-60-50 (B) – Recommends that if an association has already filed with the Board then it can continue filing its annual reports in that same month since that would be a definite set time to file and not random for each association.</p>	<p>The recommendation made in the comment is valid and points out a potential conflict between sections (A) and (B) of 18 VAC 135-60-50. (A) establishes a specific date, “within 30 days of the first anniversary of the creation of the association”, for the filing of the annual report. (B), on the other hand, allows associations to choose the date they file with the State Corporation Commission (“SCC”) as the date they have to file with the Board. These may be in conflict with each other if the date an association files with the SCC is past the 30 day period mentioned in (A).</p> <p>For this reason, 18 VAC 135-60-50 (B) should be deleted in its entirety.</p>
<p>18 VAC 135-60-60 - agrees with the proposed language and fee set in this section.</p>	<p>No response needed.</p>

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

18 VAC 136-60-50 (A) – deleted the requirement for reporting on the first anniversary of the creation of the property owners’ association since the Property Owners’ Association Act (§§ 55-508 et seq.) does not have the same immediate reporting requirements on declarants as the Condominium Act or the Virginia Real Estate Cooperative Act. The original wording of this proposed regulation would mean that a year and 30 days would go by before any information was received about the property owners’ association. Additionally, changed the “an” to “the” for grammatical reasons and consistency within this subsection.

18 VAC 136-60-50 (B) – deleted this entire subsection in order to avoid a potential conflict between sections (A) and (B) of 18 VAC 135-60-50. (A) establishes a specific date, “within 30 days of the first anniversary of the creation of the association”, for the filing of the annual report. (B), on the other hand, allows associations to choose the date they file with the State Corporation Commission (“SCC”) as the date they have to file with the Board. These may be in conflict with each other if the date an association files with the SCC is past the 30 day period mentioned in (A).

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.*

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It is anticipated that the proposed regulatory changes will have no impact on families.