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Periodic Review Report of Findings

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) citation	18 VAC48-50
Regulation title	Common Interest Community Manager 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.

"CIC" means common interest community.

"DPOR" means Department of Professional and Occupational Regulation.

"HOA" means homeowners' association.

"JLARC" means Joint Legislative Audit and Review Commission.

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.

Section 54.1-2349 of the Code of Virginia gives authority to the Common Interest Community Board to establish requirements for licensure of common interest community managers, certification of principal or supervisory employees of common interest community managers, and approval of common interest community manager training programs. 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 article in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), including the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses.
 2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities.
 3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community.
 4. Approve the criteria for accredited common interest community manager training programs;
 5. Approve accredited common interest community manager training programs;
 6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this article;
 7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this article;

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
<p>Judy English</p>	<p>The legislature voted to license CIC managers in an effort to protect HOAs, and gave DPOR the authority to create regulations governing licensure of CIC managers. The initial group of managers was licensed in 2009, and only that initial group licensed in 2009 was authorized to train all subsequently licensed managers.</p> <p>DPOR’s interpretation of its regulations means DPOR will only issue a license to someone who has previous experience managing a CIC under an already licensed management company. The practical effect of DPOR’s reading is that other qualified businesses are foreclosed from obtaining a CIC license unless the company’s principal or supervisory employee leave the company and spends three years managing a CIC under the supervision of an already licensed and competing company. Highly qualified companies are foreclosed from obtaining companies and existing HOA management companies have what is in essence a monopoly.</p> <p>DPOR’s reading of the regulation is not consistent with the plain language of the regulation, and is not supported by basic rules of statutory construction. The regulation is arbitrary and capricious as there is nothing to support the conclusion that managing a CIC for three years qualifies a licensee, and there is nothing to suggest other types of experience do not qualify a</p>	<p>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 initiating action to review or amend the regulation in the future.</p> <p>The requirement for licensure of CIC managers and certification of certain employees of CIC managers is established in statute by the General Assembly, and can only be changed through legislative action.</p> <p>It is not a requirement that experience in providing management services must be obtained under a licensed common interest community manager. For example, an individual may obtain experience providing management services as an employee of an association, which may be used to demonstrate qualification for licensure.</p> <p>The Board thanks the commenter for her participation.</p>

	<p>licensee. DPOR's reading turns over licensing authority to existing CIC management companies because those companies control who passes the three year threshold. DPOR's reading violates its own policies of being permissive and allowing licensing based on minimum qualifications.</p> <p>The licensing requirements do not protect HOAs because HOAs are forced to contract with management companies whose managers do not have the qualifications, business expertise, and ability to deliver services other companies offer. The regulation adversely affects small businesses.</p> <p>In 2017 JLARC reviewed DPOR and recommended elimination regulation of CIC managers on the basis unregulated property managers pose little or no risk to the public.</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 licensure of common interest community managers, certification of principal or supervisory employees of common interest community managers, and approval of common interest community manager training programs, and provides for standards of conduct for common interest community managers and certificate holders. The regulation is necessary to interpret and apply the requirements imposed upon the Board by Chapter 23.3 of the Code of Virginia, and to protect the public welfare, in part by ensuring those providing management services to common interest community associations meet minimum standards for competence and integrity. 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.

Section 54.1-2349 of the Code of Virginia mandates the Common Interest Community Board promulgate regulations to carry out the duties imposed upon it by Chapter 23.3 of the Code of Virginia. 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 managers meet minimum standards for competence and integrity.

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.