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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Common Interest Community Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	18 VAC 48-70
<b>Regulation title(s)</b>	Common Interest Community Ombudsman Regulations
<b>Action title</b>	Timeframe for Establishing Complaint Process
<b>Date this document prepared</b>	September 29, 2015 Revised October 8, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

The Board will conduct a review of the regulations to consider amending the regulation pertaining to the timeframe for establishing the complaint process as well as to consider any other revisions necessary to ensure that the regulations complement the current law, provide minimal burdens on regulants while still protecting the public, and reflect current procedures and policies of the Department of Professional and Occupational Regulation.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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’s overall regulatory authority.*

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The promulgating entity is the Virginia Common Interest Community Board.

Section 55-530.I states that “[t]he Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose of this chapter.”

In addition, § 55-530.E states that “[t]he 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. . . .”

Section 54.1-201.E states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

The imperative form of the verb “shall” is used, making the Board’s authority to regulate mandatory rather than discretionary.

### Purpose

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

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Section 18 VAC 48-70-40 of the Board’s regulations currently allow an association 90 days from the date the association files an application for registration with the Board to establish and adopt a complaint process. The 90-day grace period for establishment of the complaint process was intended to allow new associations time to establish the mandated complaint process; however, many associations are initially registering who have been created for many years, but never registered with the Board. Members in those associations do not have access to the complaint process – and the Board would have difficulty requiring establish of a complaint process, if the association has not been properly registered. In addition, the regulations have not undergone a general review since 2012. This general review is necessary to ensure that the existing regulation complements the current laws and industry practices while still protecting the public. A review is also necessary to ensure current procedures and policies of the Department are reflected. The regulations will be developed to achieve their intended objective in the most efficient, cost-effective manner, and will be clearly written and understandable.

### Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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The 90-day grace period for establishment of the complaint process was intended to allow new associations time to establish the mandated complaint process; however, many associations are initially registering who have been created for many years, but never registered with the Board. Members in those associations do not have access to the complaint process – and the Board would have difficulty requiring establish of a complaint process, if the association has not been properly registered. Amend the

section regarding establishing and adopting written association compliant procedures. Portions of this section are outdated and other portions do not adequately provide homeowner protection by allowing associations that have been in existence for years without a complaint procedure to continue to certify that one will be adopted.

## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

While establishing reasonable procedures for the resolution of written complaints from the members of the association and other citizens is required by law in § 55-530.E of the Code of Virginia, the board will consider reasonable alternatives to existing requirements which do not compromise the public's health, safety or welfare during the general review.

In addition, this review is necessary to comply with Executive Order 17 (2014). Alternatives may be considered after the review of any submissions during the public comment period.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

A panel will not be used.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Trisha L. Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, fax to (866) 490-2723, or email to [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.