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Proposed Regulation Agency Background Document

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) citation(s)	18 VAC 48 70
Regulation title(s)	Common Interest Community Ombudsman Regulations
Action title	Timeframe for Establishing Complaint Process
Date this document prepared	March 23, 2016 (revised June 2, 2016)

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*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This is a revision to the existing regulations to amend language pertaining to the timeframe for establishing the complaint process. The proposed regulation amends 18 VAC 48-70-40 by removing the provision applicable to associations registered with the Board before July 1, 2012, as the subsection is no longer relevant. In addition, the proposed regulation allows 90 days for establishing a complaint procedure for new associations, but requires any other association filing an initial application to certify that an association complaint procedure has been established and adopted at the time the registration application is filed.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. 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 or technical terms were identified that were not defined in the “Definitions” section of the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

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

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, some associations are registering that have been in existence for many years, but have never registered with the Board. This amendment will provide homeowner protection by ensuring that associations have a complaint process regardless of their registration status.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The proposed regulation amends 18 VAC 48-70-40 by removing the provision applicable to associations registered with the Board before July 1, 2012, as the subsection is no longer relevant. In addition, the proposed regulation allows 90 days for establishing a complaint procedure for new associations, but requires any other association filing an initial application to certify that an association complaint procedure has been established and adopted at the time the registration application is filed.

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 is that the revisions will improve clarity of the regulations as they pertain to establishment of the complaint process and provide additional homeowner protection by making clear that the establishment of a complaint procedure is not related to the association's registration status.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No impact on localities has been identified as resulting from the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Common Interest Community Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so 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. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage 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.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including:</p> <p>a) fund source / fund detail; and</p> <p>b) a delineation of one-time versus on-going expenditures</p>	<p>There are no projected costs to the state to implement and enforce the specifics of this proposed regulatory action.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no projected costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Community Associations that register with the Board and non-regulants, including but not limited to those who reside in registered community associations may be affected by the regulation change.</p>

<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 5,900 Community Associations registered with the Board. Community Associations are not generally considered small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</p> <p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Potentially, with more associations compliant with the law by having a complaint process in place, there could be slightly more notices of final adverse decisions filed with the Ombudsman’s office. There is a \$25 filing fee to submit a notice of final adverse action. Additional costs may be incurred by the Ombudsman’s office but the amount is indeterminate.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The removal of the 90 day allowance will provide homeowner protection by ensuring that associations have a complaint procedure regardless of their registration status.</p>

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.

Because § 55-530 of the Code of Virginia requires an association to have a complaint procedure and §§ 55-79.93:1, 55-516.1, and 55.504-1 of the Code of Virginia requires new associations to be registered with the Board, there were no viable alternatives to consider.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

The Board considered the most cost-efficient and least burdensome method for amending the regulations in conjunction with applicable law and the Board’s purpose to protect the health, safety, and welfare of the public. Thus the amendment was limited to only those changes necessary to ensure that associations have the required association complaint procedure.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Melissa Sabb, Brooks Real Estate, Inc.	Suggests some allowances for self-managed associations who were not aware of the requirement to establish a complaint process. In addition, require proof be provided of the complaint process at the time of renewal. In cases where a process was not established, allow a grace period (30 days).	The Board thanks the commenter for the suggestion. The Board’s and Department’s objective is to ensure compliance with the regulations and statutes and would work with an association that unknowingly failed to comply with the requirement to have a complaint process if it were taking steps to obtain such compliance. However, the discrepancy between the statute – which requires all associations to have a complaint process, without reference to status of registration – and the current regulations, which could be interpreted to inadvertently permit an existing association to not have a complaint process until such time as it decides to register, does not serve to protect the members’ right to have access to an association complaint process. Finally, the association annual report form includes a question and attestation regarding the establishment and use of the association complaint process.

Family impact

Please assess the impact of this 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.

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
48-70-40.A		Requires associations registered with the board to establish a complaint process prior to July 1, 2012.	Delete this language as it is no longer needed.
48-70-40.B	48-70-40.A	Requires associations filing an initial application to certify that a compliant procedure has been or will be established within 90 days	Language added referencing statutory provisions related to initial registration of association
	48-70-40.B		Language added to require certification by all other associations (i.e., associations that are not new) that a complaint procedure has been established and adopted