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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) Chapter citation(s)</b>	18 VAC48-70
<b>VAC Chapter title(s)</b>	Common Interest Community Ombudsman Regulations
<b>Action title</b>	CIC Ombudsman Regulations General Regulatory Review
<b>Date this document prepared</b>	July 18, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Common Interest Community Board (“the Board”) intends to undertake a general regulatory review of the Common Interest Community Ombudsman Regulations. This regulation implements the requirements of § 54.1-2354.4 of the Code of Virginia, which provides that common interest community (CIC) associations “...establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens.”

The regulation establishes the (i) requirements for an association complaint procedure; (ii) requirements for development, adoption, and distribution of the complaint procedure; (iii) requirements for retention of records of association complaints; (iv) procedure for the filing of a notice of final adverse decision (NFAD) with the Office of the Common Interest Community Ombudsman (CICO) and review of an NFAD by the CICO; and (v) provisions for a final determination made by the CICO regarding a NFAD.

This Board has not undertaken a general review and revision of the regulation since the regulation became effective in 2012.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation complements current Virginia law;
3. Review to ensure the regulation is organized, clear, and understandable; and
4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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CIC means common interest community.

CICO means Common Interest Community Ombudsman.

NFAD means notice of final adverse decision.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor "...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth." In addition, CICO and agency staff review of the regulation has determined that review of the regulation is necessary and appropriate.

This action is not the result of a mandate.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the*

*promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The agency is the Common Interest Community Board. Chapter 23.3 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to make regulations regarding the association complaint procedure and the filing and review of NFADs.

Section 54.1-2354.4 of the Code of Virginia states, in part:

A. The 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.

B. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board.

**Purpose**

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

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This regulation implements the requirements of § 54.1-2354.4 of the Code of Virginia, which provides that common interest community (CIC) associations “...establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens.”

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation the (i) requirements for an association complaint procedure; (ii) requirements for development, adoption, and distribution of the complaint procedure; (iii) requirements for retention of records of association complaints; (iv) procedure for the filing of a notice of final adverse decision (NFAD) with the Office of the Common Interest Community Ombudsman (CICO) and review of an NFAD by the CICO; and (v) provisions for a final determination made by the CICO regarding a NFAD.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

**Substance**

*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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During its review of the regulation, the Board is expected to consider the following:

1. General (18VAC48-70-10)

- Revise the “Definitions” section to incorporate applicable statutory definitions from the Code of Virginia.
  - Revise existing definitions to make these terms clearer and, where applicable, ensure terms complement Virginia law.
2. Association Complaint Procedure (18VAC48-70-30 through 18VAC48-70-80)
    - Revise association complaint procedure provisions to make these provisions clearer and, where appropriate, less restrictive.
  3. Final Adverse Decision (18VAC48-70-90 through 18VAC48-70-120)
    - Revise procedures for receipt and review of NFADs to make these provisions clearer and, where applicable, ensure provisions complement Virginia law.
    - Incorporate the Board’s previous guidance regarding procedures for waiver of the NFAD filing fee.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the program, the Board will consider eliminating the requirement.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

**Periodic Review and Small Business Impact Review Announcement**

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

This NOIRA is not being used to announce a periodic review or a small business impact review.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Common Interest Community Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Tanya M. Pettus  
Board Administrator  
9960 Mayland Drive  
Perimeter Center, Suite 400  
Richmond, VA 23233  
[cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov)  
(804) 367-8510 (fax)

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 the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.