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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	Common Interest Community Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC48-50 18 VAC48-60 18 VAC48-70
<b>VAC Chapter title(s)</b>	Common Interest Community Manager Regulations (18VAC48-50) Common Interest Community Association Registration Regulations (18VAC48-60) Common Interest Community Ombudsman Regulations (18VAC48-70)
<b>Action title</b>	Resale Disclosure Act Amendments
<b>Final agency action date</b>	April 25, 2023
<b>Date this document prepared</b>	September 13, 2023

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This action amends provisions of the Common Interest Community Manager Regulations (18VAC48-50), Common Interest Community Association Registration Regulations (18VAC48-60), and the Common Interest Community Ombudsman Regulations (18VAC48-70) to conform to changes resulting from the enactment of Chapters 387 and 388 of the 2023 Acts of Assembly.

The most significant change resulting from the legislation was the creation of the Resale Disclosure Act, Chapter 23.1 of Title 55.1 of the Code of Virginia. The legislation repealed provisions pertaining to disclosure requirements for the resale of lots or units in developments subject to the Property Owners' Association Act (Chapter 18 of Title 55.1), the Virginia Condominium Act (Chapter 19 of Title 55.1) and the Virginia Real Estate Cooperative Act (Chapter 21 of Title 55.1) and consolidated these into the new Chapter 23.3.

The proposed amendments conform applicable provisions of the Board's regulations to the new provisions of Chapter 23.1 of Title 55.1. Substantive amendments include:

1. Section 18VAC48-50-140 of the Common Interest Community Manager Regulations is amended to provide that the Common Interest Community Board may assess a monetary penalty or issue a cease and desist order against a common interest community manager for failure to deliver a resale certificate or updated resale certificate as required by Chapter 23.1 of Title 55.1 of the Code of Virginia.
2. Section 18VAC48-60-14 of the Common Interest Community Association Registration Regulations is amended to remove the provision that stipulates a disclosure packet or resale certificate is "...deemed not available..." if the common interest community association does not have a current registration with the Common Interest Community Board. This section is also amended to provide that an association is prohibited from collecting authorized fees for resale certificates if it is not registered with the Common Interest Community Board, current in filing an annual report, and current in paying any assessment made by the Board pursuant to § 54.1-2354.5 of the Code of Virginia.

This action is exempt from the Administrative Process Act under § 2.2-4006(A)(4)(a) of the Code of Virginia, which states, in part:

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

4. Regulations that are:

- a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.

## 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, internal staff review, 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."*

In March 2023, the Governor approved Chapters 387 (HB 2235) and 388 (SB 1222) of the 2023 Acts of Assembly, establishing the Resale Disclosure Act, which sets out disclosure requirements and authorized fees relating to contracts for the resale of property located within common interest communities and provides for the issuance of resale certificates or financial updates. This legislation repealed the existing disclosure requirements and authorized fees relating to association disclosure packets under the Property Owners' Association Act and resale certificates under the Virginia Condominium Act. The amendments became effective on July 1, 2023.

The purpose of this regulatory change is to implement and comply with changes to the Code of Virginia resulting from the passage of HB 2235 and SB 1222 during the 2023 General Assembly Session.

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On April 25, 2023, the Common Interest Community Board adopted the amendments to the Common Interest Community Manager Regulations, the Common Interest Community Association Registration Regulations, and the Common Interest Community Ombudsman Regulations.