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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC48-30
VAC Chapter title(s)	Condominium Regulations
Action title	General Review of Condominium Regulations
Date this document prepared	October 27, 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 Condominium Regulations. The regulation implements the requirements of the Virginia Condominium Act (§ 55.1-1900 et seq. of the Code of Virginia) regulating the offering and disposition of condominium units in Virginia. The regulation contains the requirements for registration of condominiums, including requirements for public offering statements and posting of required bonds or letters of credit. The regulation also provides for requirements for maintenance of a condominium registration, including filing and reporting requirements.

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 registration program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
- 2. Review to ensure the regulation complements current Virginia law and meets applicable federal requirements, if any;
- 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.

“DPOR” means Department of Professional and Occupational Regulation.

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.”

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.”

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.

The agency is Common Interest Community Board.

Section 55.1-1971 of the Virginia Condominium Act states, in part:

- A. The Common Interest Community Board shall prescribe reasonable regulations, which shall be adopted, amended, or repealed in compliance with law applicable to the administrative procedure of agencies of government. The regulations shall include provisions for advertising standards to assure full and fair disclosure, provisions for operating procedures, and other regulations as are necessary and proper to accomplish the purpose of this chapter.

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.

The General Assembly has charged the Board with the responsibility for administering the Virginia Condominium Act (Chapter 19 of Title 55.1 of the Code of Virginia) and prescribing reasonable regulations to include provisions for advertising standards to assure full and fair disclosure, provisions for operating procedures, and other regulations as are necessary and proper to accomplish the purpose of the Act.

Under applicable provisions of the Act, a declarant is prohibited from offering or disposing of any interest in a condominium unit unless the condominium is registered with the Board. The Act requires the declarant to deliver to a prospective purchaser a current public offering statement. The public offering statement must disclose fully and accurately the characteristics of the condominium and the units being offered and make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The public offering statement must be filed with the Board and in a form prescribed by the Board's regulations.

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 registration 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 registration 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.

The Board is forming a regulatory review committee composed of members of the Board and other individuals involved in the common interest community development industry to conduct a review of this regulation. The committee's membership is expected to include common interest community managers, representatives of developers, and residents who reside in common interest communities.

At this time, there are no new substantive provisions or substantive changes to existing provisions that are being considered.

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 registration 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 registration 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 registration 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.

The Board is forming a regulatory review committee composed of members of the Board and other individuals involved in the common interest community development industry to conduct a review of this regulation. Meetings of the committee will include opportunities for public comment.

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:

Lee D. Bryant
Board Administrator

9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, VA 23233
cic@dpor.virginia.gov
(866) 490-2723 (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.