

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
PERIMETER CENTER
9960 MAYLAND DRIVE
RICHMOND, VIRGINIA 23233

COMMON INTEREST COMMUNITY BOARD

Tentative AGENDA

THURSDAY, SEPTEMBER 23, 2021, 9:30 A.M.
2nd FLOOR, BOARD ROOM 3

I. CALL TO ORDER

II. EMERGENCY EVACUATION PROCEDURES

III. APPROVAL OF AGENDA

- a. Board Agenda, September 23, 2021

IV. APPROVAL OF MINUTES

- a. Board Meeting, June 3, 2021
- b. CIC Manager Regulatory Review Committee, August 4, 2021

V. PUBLIC COMMENT PERIOD*

VI. REVIEW FILES AND DISCIPLINARY MATTERS**

- a. File Number 2020-01680, Barkan Management, LLC
Disciplinary (Mulhare)
- b. File Number 2020-02432, Property Management Associates, LLC dba PMA
Disciplinary (Mulhare)
- c. Consider Temporary Cease and Desist Orders Regarding Condominium
Registrations

VII. BOARD BUSINESS

- a. Update on Regulatory Actions
- b. Update on CIC Manager Regulatory Review Committee
- c. Request for Interpretive Guidance Regarding 18VAC48-60-60

VIII. OTHER BUSINESS

- a. Ombudsman Report
- b. Board Financial Statements
- c. Staff Event Calendar
- d. Biennial Conflict of Interest Training
- e. Other Board Business

IX. COMPLETE CONFLICT OF INTEREST FORMS AND TRAVEL VOUCHERS

X. ADJOURN

NEXT MEETING SCHEDULED FOR DECEMBER 2, 2021, at 9:30 A.M.

* Five minute public comment, per person, with the exception of any open disciplinary or application files.

** Agenda materials made available to the public do not include disciplinary case files or application files pursuant to §54.1-108 of the *Code of Virginia*.

Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the Department at (804) 367-8510 at least ten days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The Department fully complies with the Americans with Disabilities Act.

PERIMETER CENTER CONFERENCE CENTER
EMERGENCY EVACUATION OF BOARD AND TRAINING ROOMS
(Script to be read at the beginning of each meeting.)

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In the event of a fire or other emergency requiring the evacuation of the building, alarms will sound. When the alarms sound, leave the room immediately. Follow any instructions given by Security staff

Board Room 1

Exit the room using one of the doors at the back of the room. Upon exiting the room, turn **RIGHT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

Board Room 2

Exit the room using one of the doors at the back of the room. (Point) Upon exiting the room, turn **RIGHT**. Follow the corridor to the emergency exit at the end of the hall.

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You may also exit the room using the side door, turn **Right** out the door and make an immediate **Left**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

Board Rooms 3 and 4

Exit the room using one of the doors at the back of the room. Upon exiting the room, turn **RIGHT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

Training Room 1

Exit the room using one of the doors at the back of the room. Upon exiting the room, turn **LEFT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

Training Room 2

Exit the room using one of the doors at the back of the room. Upon exiting the doors, turn **LEFT**. Follow the corridor to the emergency exit at the end of the hall.

Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board (Board) met virtually via Google Meet on June 3, 2021, at 9:30 a.m. Board staff was present at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, Richmond, Virginia 23233. The meeting was held virtually due to the current public health emergency related to COVID-19 declared by the Governor, which made it impracticable or unsafe for the Board to assemble in a single location. The purpose of meeting was to discuss or transact business statutorily required or necessary to continue operations of the Board.

The following members were present:

Drew Mulhare, Chair
Maureen Baker
Jim Foley
Eileen M. Greenberg
Amanda Jonas
David S. Mercer, Vice-Chair
Lori Overholt
Anne M. Sheehan
Scott Sterling
Katherine Waddell

DPOR staff present for all or part of the meeting included:

Mary Broz-Vaughan, Director
Trisha L. Lindsey, Executive Director
Joseph C. Haughwout, Jr., Board and Regulatory Administrator
Heather Gillespie, Common Interest Community Ombudsman
Tanya M. Pettus, Administrative Assistant

Joshua Laws, Assistant Attorney General with the Office of the Attorney General, was present.

Mr. Mulhare, Chair, called the meeting to order at 9:30 a.m. Ms. Lindsey took roll of Board members and advised those in attendance at the meeting of staff present. **Call to Order**

Ms. Lindsey advised the Board of procedures in place for conducting the meeting virtually. **Announcements**

Ms. Lindsey introduced to the Board newly appointed Board member Eileen Greenberg, who will serve as a citizen serving on an association board, the seat vacated by Tom Burrell. **Introduction of New Board Member**

Ms. Jonas moved to approve the agenda as presented. Mr. Foley seconded the motion which was unanimously approved by: Baker, Foley, Greenberg, Jonas, Mercer, Mulhare, Overholt, Sheehan, Sterling, and Waddell.

Approval of Agenda

Ms. Jonas moved to approve the March 4, 2021, Board meeting minutes as presented. Ms. Overholt seconded the motion which was approved by: Baker, Foley, Jonas, Mercer, Mulhare, Overholt, Sheehan, Sterling, and Waddell. Ms. Greenberg abstained as she did not attend the March meeting.

Approval of Minutes

The Board reviewed a written comment from Joe Littleton, who expressed his concern over the number of statutory and regulatory changes that have affected common interest communities over the last 15 years, specifically the effects of these changes on smaller, self-managed associations.

Public Comment Period

Ms. Lindsey advised the Board that Ken Lion was in attendance at the meeting. Mr. Lion submitted a written comment regarding reserve study guidelines that Ms. Lindsey advised would be reviewed and discussed later in the meeting.

Dan Catlett was present to address the Board. Mr. Catlett expressed his disappointment that the Board voted to find his management company in violation of a Board regulation [File Number 2019-00655] at its March 4, 2021, Board meeting. Mr. Catlett stated he feels the finding of the violation was not based on evidence or material fact, and that this violation had not been discussed during the informal fact finding conference on this matter. Mr. Catlett thanked the Board for their service and consideration, and asked that the Board reconsider the finding and find no violation in this matter.

Mr. Haughwout provided an update on the current status of the regulatory review processes for the Board's regulatory packages:

Update on Regulatory Actions

Final amendments to the CIC Management Information Fund Regulations are currently undergoing Executive Branch review, after which a final 30-day public comment period will be held, prior to becoming effective.

The Board authorized the filing of a Notice of Intended Regulatory Action (NOIRA) and the formation of a regulatory review committee for a general review of the CIC Manager Regulations at its March 4, 2021,

Board meeting. The NOIRA is in development and the committee is being formed.

The amended guidance document regarding the distribution of time-share public offering statements authorized by the Board at its March 4, 2021, Board meeting has been published. The guidance document was made available for a 30-day public comment period. No public comments were received. The amended guidance document is now effective.

Ms. Lindsey presented the Board with two draft legislative proposals to be submitted for consideration during the 2022 General Assembly session. Ms. Lindsey reminded the Board that due to COVID-19, there were no legislative proposals submitted for the 2021 General Assembly session, and that the legislative proposals before the Board had been carried over from the previous year. In addition, the Board was reminded about previous discussions regarding the possibility of amending § 54.1-2349.B.2, which pertains to the powers and duties of the CIC Board. Specifically, this provision authorizes the Real Estate Board to enforce Chapter 23.3 of Title 54.1 of the Code of Virginia (Common Interest Communities act) for a real estate broker, salesperson, or brokerage firm that is licensed by the Real Estate Board and is also licensed as a common interest community manager.

**2022 Legislative
Items for
Consideration**

After review of the draft legislative items, Mr. Foley moved to approve the proposals for submission as presented. Ms. Sheehan seconded the motion which was unanimously approved by: Baker, Foley, Greenberg, Jonas, Mercer, Mulhare, Overholt, Sheehan, Sterling, and Waddell.

Ms. Gillespie provided the Board with a summary of current complaint and file statistics as of May 28, 2021.

Ombudsman Report

The Board reviewed written comments submitted by Ken Lion, in which he stated that he disagrees with the cash-flow analysis method used in most reserve studies, and that the rate of inflation is not properly considered when conducting reserve studies. Mr. Lion also stated that he reviewed the Guidelines for the Development of Reserve Studies for Capital Components and feels the guidelines are not based on sound advice.

**Discussion of
Reserve Study
Guidelines**

Mr. Lion was present to address the Board and reiterated that he feels association members are required to pay for reserve studies that are not based on solid mathematics.

Ms. Lindsey advised the Board and Mr. Lion that the Board formed a committee to develop guidelines for reserve studies as required by legislation that was passed in 2019. The committee was composed of association members, reserve study specialists, and other financial experts and stakeholders.

Mr. Mulhare, who chaired the committee, stated that interest rates were discussed thoroughly by the committee in 2019, and after review of Mr. Lion's comments, stated that he does not recommend reconsidering the guidelines at this time. In addition, Mr. Mulhare and Ms. Lindsey reiterated that the Guidelines for the Development of Reserve Studies for Capital Components are not statute or regulation, and are simply guidelines for conducting reserve studies.

Ms. Lindsey advised the Board that the Governor's emergency declaration order (Executive Order 51) in response to COVID-19 will expire on June 30, 2021. Accordingly, all waivers authorized by the Director will also be expiring. Ms. Lindsey advised the Board of temporary waivers of certain regulations pursuant to Executive Order 51 in response to COVID-19, particularly the validity of licenses, certifications, registrations, and other authorizations issued by the Board that would otherwise (i) expire during the state of emergency and (ii) be eligible for renewal or reinstatement during the state of emergency under applicable regulations, will be extended until the 30th day after the date by which the state of emergency is lifted. The Department is working to communicate these updates to those who may be impacted. In addition, regulations that prohibit or limit online, electronic, or distance learning have also been waived until the 30th day after the date by which the state of emergency is lifted.

**DPOR Updates as it
Relates to COVID-
19 Response**

Ms. Henshaw advised the Board that in order to comply with public health emergency recommendations, the agency remains closed to the public and staff scheduling adjustments have been made, including telework for those employees who are eligible.

Mr. Mulhare commended the legal community for the way in which it navigated the pandemic by offering online training courses, thereby increasing attendance for continuing professional education courses.

Ms. Broz-Vaughan advised the Board that the expiration of Executive Order 51 also ends the department's authority to hold Board meetings without a quorum physically present in one location. Board meetings will be held in person beginning in July.

Ms. Lindsey provided the Board with the most recent financial statements. There have been no claims from the Recovery Fund.

Board Financial Statements

Board members considered the following resolution for former Board member Tom Burrell:

Consideration of Resolution for Service

Tom Burrell

WHEREAS, **Tom Burrell**, did faithfully and diligently serve the Common Interest Community Board from 2018 to 2021;

WHEREAS, **Tom Burrell**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **Tom Burrell**, did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Common Interest Community Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Common Interest Community Board this third day of June 2021, that **Tom Burrell** be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens;

and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

Ms. Waddell moved to adopt the resolution as written. Ms. Jonas seconded the motion which was unanimously approved by: Baker, Foley, Greenberg, Jonas, Mercer, Mulhare, Overholt, Sheehan, Sterling, and Waddell.

Ms. Lindsey presented the Board with tentative Board meeting dates for 2022 for consideration. After review and discussion, Mr. Foley moved to accept the following meeting dates:

Consider 2022 Meeting Dates

- March 3, 2022
- June 9, 2022
- September 22, 2022
- December 8, 2022

Ms. Sheehan seconded the motion which was unanimously approved by: Baker, Foley, Greenberg, Jonas, Mercer, Mulhare, Overholt, Sheehan, Sterling, and Waddell.

Discussion was held on whether a Board response to Mr. Catlett was required. Ms. Lindsey and Ms. Broz-Vaughan advised the Board that Mr. Catlett was provided communications on several occasions regarding the appropriate process for appeal pursuant to the Administrative Process Act. In addition, he had spoken directly with Board counsel regarding his due process rights in this matter.

Other Business

There being no further business, the meeting was adjourned at 10:41 a.m.

Adjourn

Drew Mulhare, Chair

Mary Broz-Vaughan, Secretary

CIC MANAGER REGULATORY REVIEW COMMITTEE
OF THE
COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The CIC Manager Regulatory Review Committee of the Common Interest Community Board (Board) met on August 4, 2021 at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 4, Richmond, Virginia 23233.

The following members were present:

Lucia Anna (Pia) Trigiani, Chair
Matt Durham
Amanda Jonas
Chris Melson
Drew Mulhare (Ex-officio)
Paul Orlando
Nan Piland
Anne Sheehan

Committee members Jim Foley and Bonnie Herring were not present at the meeting.

DPOR staff present for all or part of the meeting included:

Trisha L. Lindsey, Executive Director
Heather Gillespie, Ombudsman
Joseph C. Haughwout, Jr., Board and Regulatory Administrator
Tanya M. Pettus, Board Administrator

Ms. Trigiani, Chair, called the meeting to order at 10:07 a.m.

Call to Order

Members of the Committee and Board staff introduced themselves.

**Introduction of
Committee
Members and Staff**

Ms. Lindsey advised the Committee of the emergency evacuation procedures.

**Emergency
Evacuation
Procedures**

Ms. Jonas moved to approve the agenda as presented. Ms. Sheehan seconded the motion which was unanimously approved by: Durham, Jonas, Melson, Mulhare, Orlando, Piland, Sheehan, and Trigiani.

Approval of Agenda

There were no members of the public present who wished to address the Committee.

Public Comment Period

Ms. Lindsey and Ms. Trigiani provided an overview of the responsibilities before the Committee.

Overview

Ms. Lindsey provided the Committee with an overview of the regulatory review timeline. The Notice of Intended Regulatory Action (NOIRA) for the review of the CIC Manager regulations will be published on August 16, 2021, at which time a 30-day public comment period will commence. Committee recommendations for amendments to the regulations are expected to be presented to the Board for review at its March 2022 Board meeting.

The Committee was provided with current versions of applicable laws and regulations, as well as community manager licensing requirements from other states for informational purposes.

Resources and Information

Ms. Lindsey presented the Committee with an overview of the regulatory review process, as well as guidelines for drafting regulations.

Overview of Regulatory Review Process

Mr. Mulhare left the meeting at 11:15 a.m.

Departure of Committee Member

The Committee recessed from 11:54 a.m. to 12:40 p.m.

Recess

Mr. Mulhare returned to the meeting at 12:40 p.m.

Return of Committee Member

Mr. Haughwout presented the Committee with proposed regulatory review topics.

Regulatory Review Topics

Discussion was held on entry requirements, renewal and reinstatement, standards of practice and conduct, training program requirements, Property Owners' Association (POA) disclosure packets, and current continuing professional education (CPE) requirements.

Consider Necessary Regulatory Changes

The Committee reviewed community manager licensing requirements from other states.

The Committee agreed by consensus to further examine entry requirements, renewal and reinstatement, and CPE at its next meeting.

Discuss Topics for Next Meeting

Ms. Lindsey advised the Committee that staff will provide dates for consideration by Committee members for the next meeting; which is tentatively planned for the fall. The Committee will be notified of the date when it has been confirmed.

**Set Next Meeting
Date**

Ms. Trigiani reminded the Committee members to complete their conflict of interest forms and travel vouchers.

**Complete Conflict
of Interest Forms
and Travel
Vouchers**

There being no further business, the meeting was adjourned at 2:05 p.m.

Adjourn

Drew Mulhare, Chair

Mary Broz-Vaughan, Secretary

PUBLIC COMMENT PERIOD

Five minute public comment, per person, with the exception of any open disciplinary or application files.

DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board position
DRAFT AGENDA



Haughwout, Joseph <joseph.haughwout@dpor.virginia.gov>

Consumer Protection & NCR

1 message

Harry Campbell

Tue, Aug 17, 2021 at 5:09 PM

Reply-To:

To: "joseph.haughwout@dpor.virginia.gov" <joseph.haughwout@dpor.virginia.gov>

Hi Joseph,

Thanks for your timely response to my earlier inquiry. I found the material you sent on CIC Reserve Studies very enlightening as I sought to help homeowners learn more of what they can expect from their HOA's. Unfortunately, despite what I may have thought, it did not have the intended effect - at least within one group and, presumably, others.

That group had what I'm now calling a bad case of NCR (Non-Compliance Resolve). You might say I ran into a well-oiled machine that had so conditioned members against reserve studies that no matter what might have been said or presented, a strong bias prevailed. Because of the experience, I sense a broader problem and feel obliged to inform you as Administrator of the Common Interest Community (CIC) Board.

While this seems very odd to me, you may or may not find it so. If this is not odd to you, I'm disappointed in the system - and those who believe it to be adequately serving the needs of CIC homeowners. With that, I'll get on with this.

In trying to educate a broader swath of consumers, those affected by two distinct industries (both under the auspices of DPOR): CIC's and Time-Shares (as referred to therein), I'm looking for ways to enhance consumer protection. As you might imagine, there is abundant need for it within the timeshare industry, as I've addressed elsewhere. But, strangely, I'm sensing a parallel with CIC's. But maybe it's not so strange.

Now as full disclosure, I've recently completed a book soon to be released on timeshares, which, among other things, critiques their lack of meaningful "consumer protection" and suggests certain corrections. While related, it is independent of my CIC concerns. Along the way, as a real estate investor, I've been an advocate for those CIC's having no Reserve Fund Study (there are many), to put one in place ASAP - as required by Virginia law.

But, as cited above, I've encountered some troubling feedback that seems counterproductive to the very purpose of reserve funds, and Reserve Fund Studies in particular. Please allow me to explain.

In the book, I recognize that while the states (no doubt aided by the industry) lay out exacting standards for businesses to operate as timeshares within their jurisdiction, they appear to make no attempt to supervise those operations, especially that of sales, once in place. Thus, one is left to conclude there is no real supervision of timeshare operations within their jurisdictions; and the industry is effectively self-regulated.

And so it seems that with CIC supervision of Reserve Fund Studies, a similar laissez-faire attitude prevails. Like timeshares, DPOR sets out exacting standards for individual CIC performance regarding reserve studies with no real operational supervision or enforcement. But unlike timeshares, it makes the distinction between "professional compliance" and, presumably, "non-professional compliance." So, it seems, the need to uphold professional compliance applies to timeshares, but not CIC's, which are largely led by volunteer board members. Therein, in my opinion, lies a problem. I'll now describe.

But beforehand, here's another similarity with timeshares, the only recourse for individual consumers of both timeshares and CIC's is to submit a formal complaint. With CIC's it's through their association complaint procedure (somewhat slow and awkward) and then, as warranted, the homeowner must appeal the outcome to the CIC Ombudsman. Only then, as I understand it, if an association does not have a reserve study in place, would DPOR "require them to adopt one." And one might ask, what exactly does that mean? Aren't they already so required?

Now back to upholding CIC compliance with state law, DPOR / CIC has, it seems, chosen to apply the law with a very soft-touch. By that I mean to intentionally avoid any meaningful enforcement. That's not necessarily bad, just the way it is. But because of this, I'm reporting impressions that seem obvious to me, a large cohort of CIC board members and their members. I believe it to be large, but have made no attempt to quantify it. Has DPOR or the CIC Board? Here it is.

In trying to encourage the most recent CIC and its members to either have a professional reserve study done or create one themselves (they've never had one) using DPOR guidelines, the board silence was stunning. It's not a topic open

for civil discussion there. And this CIC it has been silent on the subject for many years. Why might this be? Probably because there's been little to no threat of a challenge.

In the past, and once educated on the law, most CIC's would respond favorably to compliance. Why not? It's the law and it's in the homeowners' interest. That's been my experience. But to many others, as recently discovered, it's not logical. Again, why is this? Probably because there's a growing realization that there is little to no threat of a challenge.

Please excuse a rather crude analogy, but this may provide an answer. It's often asked, "Why has the city of Chicago experienced so many more murders over the years than other, comparable cities?" And, depending on who's asked, the answer will vary, but usually turns on the absence of enforcement - or cops on the street. And so it is with anything in life.

Without any real concern about penalties, many otherwise "law abiding" citizens rationalize to the extent of finding it more virtuous to ignore existing laws and, instead, use funds for the "higher good" of their communities. Yes, board members will do what they see as rational for their CIC at the time, with little thought to long-term consequences. And so anyone within or without those communities suggesting compliance with reserve study laws is seen as an agitator, trying to tear apart community harmony. Rather strange, but true. Why is this? Probably because there's been little to no threat of challenge. In view of other pressures they face, can anyone blame them??

That's just human nature. To believe otherwise is naive and leads to the situation described herein. Like the timeshare industry, you can **NOT** rely on rather lame "customer complaint lines" or the like to enforce compliance. In my opinion, they're useless. Moreover, within CIC's, I believe there's strong resistance to being (or perceived to be) a snitch. That's part of my takeaway over the past couple of weeks.

As I've observed, it usually works this way. Boards conceive or somehow divine a reasonable reserve funding level they believe to be about right. There's no hard analysis, just instinct. Thoughts of formal reserve studies are shunned for several reasons: (1) cost of doing so considered prohibitive and certainly not an "investment"; (2) board loses control over what the findings may say; (3) if undertaken by board itself, the collective cost in terms of lost time is too much to bear; and (4) back to #1, if a costly, independent study were to show the reserve fund under-funded, that's double jeopardy! And where does that leave the board? Thus, with so much to lose and nothing to gain in their eyes, is it worth the time, expense and effort? Their answer is a resounding NO.

With reluctant boards, those afflicted with NCR, it seems to be all about fear of the unknown and a loss of control. As I've learned, there are other such CIC's - and they use each other as added justification for their "more enlightened" approach to non-compliance.

Yes, without the messy business of having to comply, life is simple and the board can get on with serving members in a way it prefers. They like it and they have convinced members to like it. As an example, boards can adjust the desired reserve funding level each year as they please when circumstances suggest a better use of money. Or they can justify decisions about adding funds to it (or not) going forward. And, as seen recently, they can justify taking money out of a reserve fund and spending it as they please to respond to a demand they support, like a pet project. All the while, for many, there is no standard - either at present or sought - for reserve funding levels. But the unintended consequence of a lack of DPOR oversight goes further than that.

In at least one CIC, there are practicing attorneys (one a board member) within its members who have acquiesced with routine non-compliance. Perhaps they're in a fog or just unaware, but clear evidence of non-compliance doesn't bother them. Where's the law? You see, like many others, they give highest priority to community harmony. Thus, they, too, see nothing to gain (but much to lose) if they pay for a study and then learn that the game's up. And it only makes sense when there's little to no chance of getting caught. Am I missing something? If not, what kind of quasi-legality is this? An unenforced law is not really a law. But then, back to the volunteer CIC boards, can you blame them??

If what I'm describing is real, and I believe it is, it's of DPOR's making. Is this the objective? If so, I believe it is having corrosive effects and weakening any healthy pursuit of building truly adequate reserve funds around the many CIC's within the Commonwealth. Yes, it's up to individual CIC's and their members to act like adults. But when so little expectation is placed upon them, it's more fun to act like children.

Now, I don't do this to put any particular CIC on report. I would not do that until knowing that the organization legally requiring their compliance was serious about it and had the resolve to effectively enforce it. But I don't see it; as compliance seems to be largely voluntary which, in and of itself, can be divisive.

This is what an absence of any meaningful enforcement will do. While it doesn't cause bad behavior, it does contribute to otherwise honest people getting lured into a distorted view of life where "bad is good and good is bad" and to the ultimate abdication of their fiduciary duty.

As we used to say during my Navy career, " You get what you **INSPECT**, not what you expect. A casual reader of this so far may logically conclude that since timeshares are considered a "professional" operation, they're subject to a higher standard. But they're not.

So here's my bottom line. In order for those like me who support the cause, those who would like to feel somewhat better about trying to do what's right by millions of CIC homeowners, the Commonwealth of Virginia and, by extension, DPOR / CIC should do the following:

DON'T JUST ADOPT IMPRESSIVE-LOOKING STANDARDS AND PROCEDURES, THEN MANAGE THEM AT THE MARGIN AND CREATE A "COMPLAINT LINE"; ACTUALLY HAVE A SYSTEM IN PLACE TO MEASURE (INSPECT) AND ENFORCE COMPLIANCE AGAINST STATE LAW AND REGULATIONS. If it makes some feel better, just call it "tough love."

As final thoughts, if it were important enough, this cause, at least for CIC's, would get proper recognition and funding. And if so, I believe it would have the following effects: (1) Volunteer board members feeling better about the integrity of a system that works as it should (not as hoped for); (2) a state government engaging itself in the financial challenges volunteer CIC boards face each day with the practical aspects of compliance (perhaps meaningful subsidies for initial studies / cost offsets for others, etc.); (3) far more CIC's responsibly facing their members in person and through their financial reports each year with the assurance that they are, indeed, looking out for the long-term financial interests of individual CIC homeowners.

My prediction is that after the initial shock, doing so will raise the morale of CIC board members and their homeowners!

It would be worth the investment in credibility, if nothing else. Should it be desired and necessary, I am available to further discuss my observations.

Harry Campbell

P. S. I suspect the root cause of little to no meaningful enforcement is that age-old problem of limited resources. Nonetheless, it can't be ignored (like reserve fund studies can't be ignored) because governmental authority and credibility is at stake. In addition, it's causing a good deal of interpersonal tension for those caring about government integrity.



Haughwout, Joseph <joseph.haughwout@dpor.virginia.gov>

Re: Consumer Protection & NCR

1 message

Harry Campbell

To: "joseph.haughwout@dpor.virginia.gov" <joseph.haughwout@dpor.virginia.gov>

Good morning, Mr. Haughwout!

In response to your question about my attending the next Board meeting on September 23, I responded earlier that I would be unable. But with surgery complete, and my surgeon's clearance for limited travel, I'm reconsidering. Is the invitation still open? If so, and assuming the Board will have had an opportunity to review my input, would I be permitted to ask some questions of them?

If permitted, I would like to ask the Board:

1. Do you rely on the private sector for much of the guidance provided to the public (e.g., Guidelines for the Development of Reserve Studies for Capital Components) and suggested legislation? If so, that's perfectly understandable.
2. In so doing, am I safe to assume it implies the Board has a high degree of confidence in it? It should. I would be surprised if not.
3. If so, does this confidence extend to the necessity of, as stated in the law, the requirement for CIC's to "Conduct at least every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components"? I would hope so.
4. If so, and in the interest of public safety, does the Board have any system for tracking compliance?
5. Finally, is the Board aware of any longitudinal studies that have been done to determine the accuracy of professional reserve fund studies against actual experience over time by the CIC's hiring them?

I ask these questions to try to help communities appreciate the value and public safety that results from complying with the law, as opposed to doing what many are now, saving what money they can by (1) ignoring the law altogether because they feel no one really cares; (2) avoiding the cost of a professional reserve fund study by attempting to do it themselves; and, thus (3) freeing themselves of the need to build reserves up to the point specified in the study.

In other words, how much confidence do you place on your stated requirements? If there's a high degree, and it's truly in the public interest, why are we not get serious about enforcing it in some meaningful way? I ask because at the present time it appears to me that you don't have that confidence; and if you don't it erodes confidence at all levels.

If we have time, I can go briefly go into a live case playing out now. If so, I'll provide members with a one-page outline.

That's what I'd like to explore with them. As a talented group, I expect they will be engaged and ready. I won't waste their time. Please advise. Thanks.

Harry

Common Interest Community Board

Update on Regulatory Actions

(as of September 10, 2021)

Action: CIC Management Information Fund – General Review

Current Stage: Final

- Board adopted final amendments on 3/12/20.
- Submitted for Executive Branch review on 5/14/20.
- Executive Branch review completed on 6/22/21.
- Submitted to Registrar on 6/23/21.
- Published in Virginia Register on 7/19/21. Final public comment period concluded 8/18/21.
- Final regulation became effective on 9/1/21.

Next Step: N/A

Action: CIC Manager Regulations – General Review

Current Stage: NOIRA

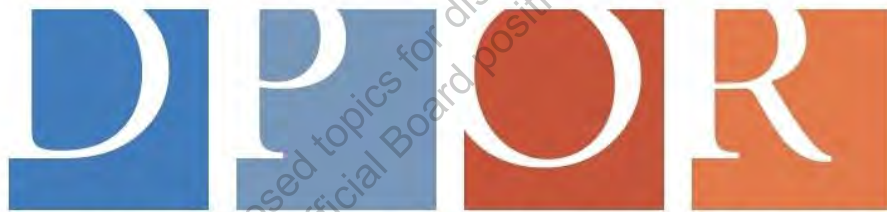
- Board authorized filing of NOIRA and formation of regulatory review committee on 3/4/21.
- Regulatory review committee formed. First meeting held on 8/4/21. Next meeting scheduled for 10/27/21.
- NOIRA submitted for Executive Branch review on 6/11/21.
- Executive Branch review completed on 7/22/21.
- Submitted to Registrar on 7/22/21.
- Published in Virginia Register on 8/16/21. Public comment period concludes 9/15/21.

Next Step: Proposed Stage

- Regulatory review committee completes review; submits recommended amendments to Board.
- Board reviews committee recommendations and adopts proposed regulation.
- Submission of proposed regulation for Executive Branch review.

UPDATE ON CIC MANAGER
REGULATORY REVIEW COMMITTEE

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and are not to be construed as regulation or official Board position
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Department of Professional and Occupational Regulation

Common Interest Community Board

Guidance Document: Common Interest Community Association Registration – Interpretive Guidance for 18VAC48-60-60

Adopted September 23, 2021

I. Background

Section 18VAC48-60-60 of the Common Interest Community Association Registration Regulations establishes the application fee schedule for initial registration of a common interest community association and for renewal of a registration. The section provides:

The following fee schedule is based upon the number of lots or units subject to the declaration for each association. Each association filing its first annual report shall also pay the assessment required by § 54.1-2354.5(B) of the Code of Virginia.

Number of Lots or Units	Registration Fee	Renewal Fee
1 - 50	\$45	\$30
51 - 100	\$65	\$50
101 - 200	\$100	\$80
201 - 500	\$135	\$115
501 - 1000	\$145	\$130
1001 - 5000	\$165	\$150
5001+	\$180	\$170

II. Issues/Concerns

The Board has received inquiries seeking clarification as to the meaning of the phrase “lots or units subject to the declaration.” Those filing an annual report on behalf of an association may need clarification on the meaning of “lots or units subject to the declaration” in order to (i) ensure the annual report is accurate regarding the number of lots or units in the community, and (ii) pay the appropriate registration or renewal fee.

Section 54.1-2345 of the Code of Virginia states, in part:

"Common interest community" means real estate subject to a declaration containing lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses... (emphasis added)

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual assessment in connection with the provision of maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative.

Section 55.1-1800 of the Code of Virginia states, in part:

"Development" means real property located within the Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

Section 55.1-1900 of the Code of Virginia states, in part:

"Condominium" means real property, and any incidents to or interests in such real property, lawfully subject to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter.

"Unit" means a portion of the condominium designed and intended for individual ownership and use.

Section 55.1-2100 of the Code of Virginia states, in part:

"Cooperative" means real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.

"Unit" means a physical portion of the cooperative designated for separate occupancy under a proprietary lease.

During development of the regulation, the Board responded to public comment it received on this issue by indicating the phrase refers to "...lots or units that have been incorporated into the community by way of the recorded governing documents for the community, or any recorded amendments to such governing documents."

Based on the above, it appears that the terms "lot" and "unit" refer to the real estate in a development that is designated for individual ownership and use. Once the provisions of the declaration become applicable to a lot or unit and any owner of the lot or unit, through recording of the declaration or an amendment to the recorded declaration, the lot or unit becomes subject to the declaration.

III. Board Guidance

The Board provides the following interpretative guidance:

The phrase “lots or units subject to the declaration” as used in 18VAC48-60-60 means any lots or units in a development to which the provisions of the recorded declaration, as amended, for the common interest community are applicable.

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OMBUDSMAN REPORT

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Department of Professional and Occupational Regulation
Statement of Financial Activity

**Common Interest Community Board
954520**

2020-2022 Biennium

July 2021

	July 2021 Activity	Biennium-to-Date Comparison	
		July 2018 - July 2019	July 2020 - July 2021
Cash/Revenue Balance Brought Forward			15,716
Revenues	32,240	1,061,642	640,619
Cumulative Revenues			656,335
Cost Categories:			
Board Expenditures	46,119	481,234	469,828
Board Administration	0	0	0
Administration of Exams	0	0	0
Enforcement	17,870	148,896	156,472
Legal Services	0	636	2,092
Information Systems	4,085	95,765	82,522
Facilities and Support Services	7,930	82,782	82,740
Agency Administration	6,142	54,865	54,710
Other / Transfers	0	8,513	5,023
Total Expenses	82,146	872,690	853,388
Transfer To/(From) Cash Reserves	(13,788)	0	(199,669)
Ending Cash/Revenue Balance			2,617

Cash Reserve Beginning Balance	2,955,592	0	3,141,474
Change in Cash Reserve	(13,788)	0	(199,669)
Ending Cash Reserve Balance	2,941,805	0	2,941,805

Number of Regulants

Current Month	7,676
Previous Biennium-to-Date	7,410

DEPARTMENT OF PROFESSIONAL
& OCCUPATIONAL REGULATION

**VIRGINIA COMMON INTEREST
COMMUNITY MANAGEMENT
RECOVERY FUND**

FINANCIAL STATEMENTS

Cash Basis

FOR THE MONTH ENDED 04/30/2021

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
VIRGINIA COMMON INTEREST COMMUNITY MANAGEMENT RECOVERY FUND
BALANCE SHEET
GOVERNMENTAL FUNDS
April 30, 2021

	Special Revenue Funds		
	Principal	Interest	Totals
ASSETS			
Cash and Cash Equivalents	\$ 218,772	\$ 11,361	\$ 230,133
Total Assets	<u>\$ 218,772</u>	<u>\$ 11,361</u>	<u>\$ 230,133</u>
FUND BALANCES			
Reserved for Payment of Future Claims	\$ 218,772	\$ -	\$ 218,772
Reserved for Administration of Recovery Act	-	11,361	11,361
Total Fund Balances	<u>\$ 218,772</u>	<u>\$ 11,361</u>	<u>\$ 230,133</u>

The accompanying notes are an integral part of this statement.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
VIRGINIA COMMON INTEREST COMMUNITY MANAGEMENT RECOVERY FUND
STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES
GOVERNMENTAL FUNDS
FOR THE MONTH ENDED 04/30/2021

	CURRENT MONTH			YEAR TO DATE		
	Principal Fund	Interest Fund	Totals	Principal Fund	Interest Fund	Totals
REVENUES:						
Assessments	\$ 550	\$ -	\$ 550	\$ 5,175	\$ -	\$ 5,175
Investment Income		12	12		228	228
Total Revenues:	<u>550</u>	<u>12</u>	<u>562</u>	<u>5,175</u>	<u>228</u>	<u>5,403</u>
EXPENDITURES:						
Administrative Expenses	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total Expenses:	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Net Change in Fund Balances	<u>550</u>	<u>12</u>	<u>562</u>	<u>5,175</u>	<u>228</u>	<u>5,403</u>
Beginning Fund Balance	<u>218,222</u>	<u>11,350</u>	<u>229,572</u>	<u>213,597</u>	<u>11,133</u>	<u>224,730</u>
Ending Fund Balance	<u>\$ 218,772</u>	<u>\$ 11,361</u>	<u>\$ 230,133</u>	<u>\$ 218,772</u>	<u>\$ 11,361</u>	<u>\$ 230,133</u>

The accompanying notes are an integral part of this statement.

**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
VIRGINIA COMMON INTEREST COMMUNITY MANAGEMENT RECOVERY FUNDS
NOTES TO FINANCIAL STATEMENTS**

4/30/2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The following is a summary of certain significant accounting policies employed by the Department of Professional and Occupational Regulation in administering the Virginia Common Interest Community Management Recovery Fund.

A. Basis of Presentation

The accompanying financial statements have been prepared using governmental fund accounting as prescribed by the Governmental Accounting Standards Board (GASB). The financial statements are prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than generally accepted accounting principles.

B. Reporting Entity

These financial statements report the financial activity of the Virginia Common Interest Community Management Recovery Fund, which is administered by the Department of Professional and Occupational Regulation. The Department exercises oversight authority over other funds which are not included in these financial statements.

C. Financial Statement Presentation

Special Revenue Funds account for transactions related to resources received and used for restricted or specific purposes. The Virginia Common Interest Community Management Recovery Fund, which is reported as a special revenue fund, is established under Section 55-530.1 of the *Code of Virginia* to reimburse associations for losses that occur when their community manager fails to perform his or her fiduciary responsibilities.

D. Measurement Focus and Basis of Accounting

The governmental fund financial statements are reported using the current financial resources measurement focus and the cash basis of accounting. Revenues are recognized when cash is received and expenditures are recorded when paid. The Department uses the cash basis of accounting during the year and prepares financial statements in accordance with generally accepted accounting principles at year end.

E. Cash and Cash Equivalents

Cash and cash equivalents consist of cash on hand, demand deposits, and investments in the Local Government Investment Pool (LGIP). Investments in the Local Government Investment Pool are reported as cash equivalents since they are readily convertible to cash.

2. RESTRICTED FUND BALANCES

Assets held in the Virginia Common Interest Community Management Recovery Funds are restricted to the payment of claims in accordance with Section 55.530.1H of the *Code of Virginia*. Interest earned on the deposits are used to pay the expenses of administering the fund, to pay claims, or may be transferred to the Common Interest Community Management Information Fund.

3. ASSESSMENTS

The Common Interest Community Management Recovery Fund is financed through assessments. Each new common interest community manager pays a \$25 assessment into the Recovery Fund at the time of application. Each association pays \$25 into the Recovery Fund at the time of filing its first annual report. After July 1, 2011, the *Code of Virginia* requires the Board to transfer funds from the Common Interest Community Management Information Fund and/or assess each association and each common interest community manager additional fees whenever the principal balance of the Recovery Fund is less than \$150,000. If the principal balance of the fund exceeds \$5,000,000 on June 30 of any year, the Board must transfer the excess to the Virginia Housing Partnership Revolving Fund.

*

These financial statements are prepared by Jordan Perryman, Fund Accountant. Please call 804-367-4003 if you have questions.

STAFF EVENT CALENDAR

October 25, 2021	ZOOM Presentation: Your Community Your Call, Fairfax, VA	Heather
October 26, 2021	ZOOM Presentation: Rees Broome	Heather

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BIENNIAL CONFLICT OF INTEREST **TRAINING**

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OTHER BUSINESS

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COMPLETE CONFLICT OF INTEREST
FORMS AND TRAVEL VOUCHERS

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ADJOURN

Please return your document folders to Tanya Pettus.

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