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Final Regulation Agency Background Document

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) citation(s)	18 VAC 48-70-40
Regulation title(s)	Common Interest Community Ombudsman Regulations
Action title	Timeframe for Establishing Complaint Process
Date this document prepared	December 29, 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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 an internal association complaint process. The proposed regulation amends 18 VAC 48-70-40 by removing the provision applicable to associations registered with the Common Interest Community Board before July 1, 2012, as the subsection is no longer relevant.

In addition, the proposed regulation requires associations filing for registration pursuant to the Condominium Act, Real Estate Cooperative Act, or Property Owners' Association Act to certify a complaint procedure has been established and adopted at the date when registered, or will be established and adopted within 90 days of registering; and requires any associations delinquent in registering with the Board or filing required annual reports to have a written complaint procedure and certify at the time of filing that a procedure has been established and adopted.

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.

Statement of final agency action

Please 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.

At its meeting on December 1, 2016, the Common Interest Community Board adopted as final the amended text for 18 VAC 48-70-40 of the Ombudsman Regulations, to revise language pertaining to the timeframe for establishing the complaint process.

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 (“the Board”).

Section 55-530(I) of the Code of Virginia 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) of the Code of Virginia 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(A)(5) of the Code of Virginia states, in part, that regulatory boards shall have the power and duty to promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competency, 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 protect homeowners by ensuring that associations establish a complaint process, regardless of whether the association is in compliance with annual report filing and registration requirements.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

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 requires associations filing for registration pursuant to the Condominium Act, Real Estate Cooperative Act, or Property Owners' Association Act to certify a complaint procedure has been established and adopted at the date when registered, or will be established and adopted within 90 days of registration. Finally, the regulation clarifies that an association that has been delinquent in registering the association and filing its annual reports is still required to have the association complaint procedure in place.

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 regulatory action will improve clarity concerning the requirement for associations to establish the complaint process and provide additional homeowner protection, regardless of whether the association has complied with the annual report filing and registration requirements. There are no disadvantages to the public or the Commonwealth, nor other pertinent matters of interest identified.

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 regulatory amendment.

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 or family stability has been identified as resulting from the regulatory amendment.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No public comments were received.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
48-70-40.A		Requires associations registered with the board prior to July 1, 2012 to establish a complaint process within 90 days of 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 complaint procedure has been or will be established within 90 days of filing	Language added referencing statutory provisions related to initial registration of association. Language revised to require that associations certify a complaint procedure has been established and adopted when association files an initial application for registration with the Board, or within 90 days of registering with the Board.
	48-70-40.B		This new section requires that any association that has been delinquent in registering with the Board and filing required annual reports must have a written complaint procedure, and must certify at the time of filing for registration that a complaint procedure has been established and adopted. The rationale for the new language is to ensure that <i>existing</i> associations that have failed to register with the Board have a complaint procedure.