

## COMMON INTEREST COMMUNITY BOARD

### MINUTES OF MEETING

The Common Interest Community Board met on Thursday, September 22, 2011, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2<sup>nd</sup> Floor, Board Room 4, Richmond, Virginia 23233.

The following members were present:

F. James Ahlberg  
Pamela Coerse (arrived at 9:54 a.m.)  
Ronda S. DeSplinter  
Kimberly B. Kacani, Vice Chair  
Milton W. Matthews  
Christiaan Melson  
Douglas Rogers  
Lucia Anna Trigiani, Chair  
Katherine Waddell

Board member Miyun Sung was not in attendance.

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

Gordon Dixon, Director  
Mark N. Courtney, Deputy Director of LRD  
Nick Christner, Deputy Director of CID  
Trisha L. Henshaw, Executive Director  
Heather Gillespie, Ombudsman  
Ann-Marie Brigil, Hearing Officer  
Thomas K. Perry, Property Registration Administrator  
Betty C. Jones, Administrative Assistant

Steven Jack from the Office of the Attorney General was present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the meeting to order at 9:43 a.m. **Call to Order**

Mr. Rogers moved to approve the revised agenda. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell. **Approval of Agenda**

Ms. Kacani moved that the Board approve the minutes of the June 9, 2011, meeting as amended. Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, **Approval of Minutes**

Matthews, Melson, Rogers, Trigiani, and Waddell.

Ms. Waddell moved that the Board approve the minutes of the following meetings:

- o July 28, 2011, Condominium Regulatory Review Committee Meeting
- o September 13, 2011, Condominium Regulatory Review Committee Meeting

Mr. Melson seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

Ms. Trigiani opened the floor for public comment. Mr. Steven Parker, President, Red Rock Financial Services, addressed the Board during the Public Comment Period. Mr. Parker asked the Board to reconsider a matter from the June 9, 2011 Board meeting. Specifically, he requested clarification of whether a debt collection services company that operates in the Commonwealth of Virginia is required to have a common interest community manager license.

**Public Comment Period**

The Board considered a proposal for a temporary cease and desist order pursuant to § 55-79.100.B against Channel Breeze Condominium.

**Consideration of Temporary Cease and Desist Order Regarding Condominium Registration Number 06-199, Channel Breeze Condominium**

Ms. Coerse arrived at 9:54 a.m.

**Arrival of Board Member**

The four issues being presented to the Board for consideration are:

1. the declarant has neither a current assessment bond nor a current letter of credit on file with the Board as required by § 55-79.84:1 of the Code of Virginia;
2. the declarant has never filed an annual report with the Board as required by § 55-79.93 of the Code of Virginia and Regulation 18 VAC 48-20-720;

**Consideration of Temporary Cease and Desist Order Regarding Condominium Registration Number 06-199, Channel Breeze Condominium**

3. the declarant has never updated the Public Offering Statement to reflect changes to the condominium as required by Regulation 18 VAC 48-20-670; and

4. the declarant has failed to report any material changes to the Board as required under Regulation 18 VAC 48-20-680 and § 55-79.89(C) of the Code of Virginia.

After discussion, Mr. Matthews made a motion to issue a temporary cease and desist order pursuant to § 55-79.100(b) as the public interest will be irreparably harmed by delay in issuing a temporary cease and desist order based on the following facts: the alleged violations of the Condominium Act involve inadequacy of disclosures in the public offering statement; the potential exposure to harm in any sales authorized as a result of condominium registration; the public offering statement is inaccurate and incomplete; and the inability of current owners to get a resale certificate, thus affecting resales. Further, the declarant must take the affirmative action necessary to correct the deficiencies in the registration for Channel Breeze Condominium. The order will remain in effect until the declarant submits acceptable documentation to the Board that it has taken the affirmative actions necessary to correct the deficiencies in one through four above or the matter is adjudicated, whichever is later. Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

Ms. Henshaw gave an update on the current status of the regulatory review processes for several of the Board's regulatory packages.

- The Common Interest Community Ombudsman Regulations are currently undergoing review by the Governor's office.
- The Common Interest Community Manager Regulations containing the employee certification provisions are currently undergoing review by the Secretary's office.
- The Common Interest Community Condominium Regulations are in the Notice of Intended Regulatory Action (NOIRA) stage and undergoing review by the Condominium Regulatory Review Committee selected by the Board.

Mr. Melson, as Chair of the Condominium Regulatory Review Committee, provided an update on the progress of the Committee. After Mr. Melson's report, Ms. Trigiani expressed concern that the current timeline for review and presentation of a recommendation to the Board

**Update on  
Regulatory Review  
Process**

**Report from  
Condominium  
Regulatory Review  
Committee**

would not allow adequate time for the Committee to fully review the draft. In addition, due to the volume of material to consider, one meeting would not provide enough time for the Board to fully review all of the Committee's proposals. Mr. Courtney suggested that the Board withdraw the current Notice of Intended Regulatory Action (NOIRA) and refile a new NOIRA to allow additional time for the Committee to develop the regulations. The Board concurred with the suggestion.

Ms. Henshaw informed the Board that Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia require the Board to conduct a periodic review of its regulations. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form. Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable. There will be a 21-day public comment period and, after the end of the comment period, the result will be prepared for consideration by the Board at the December 1, 2011, Board meeting.

**Required Periodic  
Review of  
Regulations for  
Small Business  
Impact**

The Board recessed for a break at 10:50 a.m. and reconvened at 11:14 a.m.

**Break**

Ms. Henshaw opened the floor for nominations of Chair and Vice Chair. Ms. DeSplinter made a motion to nominate Ms. Trigiani as Chair and Ms. Kacani as Vice Chair. Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell. Ms. Coerse made a motion to close the nomination. Mr. Rogers seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell. By acclamation, Ms. Trigiani was elected Chair and Ms. Kacani was elected Vice Chair.

**Election of Officers**

The Board discussed the Training Program Review Committee membership. The Board agreed by consensus that Ms. Coerse serve as Chair of the Committee and Ms. Waddell will serve as a member.

**Discussion of  
Training Program  
Review Committee  
Membership**

The following resolution was presented for consideration by the Board.

**Resolution for  
Scott E. Sterling**

**Consideration of  
Resolution for  
Service**

WHEREAS, **Scott E. Sterling**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2008 to 2011;

WHEREAS, **Scott E. Sterling**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **Scott E. Sterling**, 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 Virginia 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 Virginia Common Interest Community Board this twenty-second day of September 2011 that **Scott E. Sterling**, 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. DeSplinter made a motion to adopt the resolution. Ms. Kacani seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

As requested at the June 9, 2011, Board meeting, the Board discussed a memorandum from Ms. Henshaw regarding a request for interpretation of statutes, specifically as regarding whether a common interest community manager license is required for a company that is responsible for the collection of past-due assessments on behalf of an association. The Board deferred this item to later in the meeting.

**Review**  
**Correspondence**  
**Regarding**  
**Interpretation on**  
**Manager License**  
**Requirements**

Ms. Henshaw provided a copy of statistical information regarding licensing and registration processing activities for August 2011. Specific information included:

**Licensing/**  
**Registration**  
**Statistics and**  
**Update**

- The number of new applications processed;
- The number of annual reports and renewals processed;
- The number of phone calls and emails handled; and,

- The current regulant population segregated by program.

In addition to the most recent month available, data from one year ago was provided for comparison purposes.

Ms. Henshaw informed the Board that the use of the Board member secure site portion of our website will be discontinued in the near future.

Ms. Henshaw provided an update on time-share and condominium registration annual report filings. Staff is continuing to address issues related to invalid bonds and letters of credit on file. As part of an on-going process improvement, the annual report form will be revised to require verification of bonds or letters of credit to be provided by the issuer.

The Board previously requested that staff compile a calendar of the common interest community-related events and dates that staff and the Ombudsman attends. The requested information was provided to the Board with the agenda package for information purposes only.

**Staff Event  
Calendar**

Ms. Henshaw provided the Board a copy of the most recent financial statement for informational purposes. Also, a copy of the financial statement for the Common Interest Community Management Recovery Fund for the month ended on July 31, 2011 was provided. Ms. Henshaw advised that the statutory mandate that requires a minimum of \$150,000 in the Recovery Fund by July 1, 2011 has been met.

**Board Financial  
Statements**

The Board continued its review of the correspondence requesting clarification and reconsideration of the discussion regarding interpretation of statutes, specifically regarding whether a debt collection services company that operates in the Commonwealth of Virginia is required to have a common interest community manager license.

**Review  
Correspondence  
Regarding  
Interpretation on  
Manager License  
Requirements**

At 11:35 a.m., Ms. Kacani moved that the Board meeting be recessed and that the Board immediately reconvene in closed meeting for the purpose of consultation with legal counsel pertaining to legal matters within the jurisdiction of the Board as permitted by § 2.2-3711.A.7 of the Code of Virginia. The following non-members were in attendance to reasonably aid the consideration of the topic: Gordon Dixon, Mark Courtney, Steven Jack, and Trisha Henshaw.

**Closed Meeting**

The motion was made with respect to the matter identified as agenda item: VIII.b., Review Correspondence Regarding Interpretation on Manager License Requirements. Mr. Matthews seconded the motion

which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

At 12:21 p.m., Ms. Kacani moved that the Board adjourn the closed meeting and immediately reconvene in open session. Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

**Open Meeting**

### **CERTIFICATION OF CLOSED MEETING**

**WHEREAS**, the Common Interest Community Board has convened a closed meeting on this date pursuant to an affirmative recorded vote in accordance with the provisions of the Virginia Freedom of Information Act; and

**WHEREAS**, § 2.2-3712 of the *Code of Virginia* requires a certification by this Common Interest Community Board that such closed meeting was conducted in conformity with Virginia law;

**NOW, THEREFORE, BE IT RESOLVED** that the Common Interest Community Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Common Interest Community Board.

**VOTE:** 9-0-0-1

**AYES:** Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Melson, Rogers, Trigiani, and Waddell.

**NAYS:** None.

**ABSENT DURING THE VOTE:** None.

**ABSENT DURING THE MEETING:** Sung

The Board stated that it has not, and did not, make a determination of whether a common interest community manager license with the Board is required in this issue for any particular entity. In its prior statement, the Board was merely restating the requirements of the statute. It is left to individuals to determine whether their entity's business practices

**Review**  
**Correspondence**  
**Regarding**  
**Interpretation on**  
**Manager License**

necessitate licensure.

**Requirements**

Ms. Gillespie provided a handout on the activities of the Office of the Common Interest Community Ombudsman, including statistical information on complaints filed with the Ombudsman's office. Specific information included:

**Ombudsman's Report**

- The number of complaints filed.
- The number of phone calls received.
- The number of emails received.
- The types of complaints received, including:
  - Board actions – access to books and records, no method of communication, non-compliance with law;
  - Misrepresentation during time-share sales presentation;
  - Time-share mortgage fraud;
  - Management company out of business without notice; and
  - Architectural guidelines.

Ms. Gillespie also shared with the Board some examples of the types of cases she is currently dealing with.

The Board recessed for lunch from 12:30 p.m. to 12:48 p.m.

**Lunch**

Ms. Coerse departed at 12:51 p.m.

**Departure of Board Member**

The Board members participated in the Conflict of Interest Act training as it is required of all board members. All Board members present signed certificates verifying that they had completed the training course.

**Conflict of Interest Training**

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

**Conflict of Interest and Travel Voucher Forms**

There being no further business, the meeting was adjourned at 1:45 p.m.

**Adjourn**

---

Lucia Anna Trigiani, Chair

---

Gordon N. Dixon, Secretary