



## Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | Common Interest Community Board                                 |
| <b>Virginia Administrative Code (VAC) citation</b> | 18 VAC 48 -20   |
| <b>Regulation title</b>                            | Condominium Regulations   |
| <b>Action title</b>                                | Initial Common Interest Community Board Condominium Regulations |
| <b>Date this document prepared</b>                 | February 23, 2009   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This is a new regulation that establishes the registration requirements for condominium projects and conversion condominium projects in the Commonwealth. The regulation will ultimately replace emergency regulations that were implemented as a result of the enactment of Chapters 851 and 871 of the Acts of the 2008 General Assembly, which were the result of HB 516 and SB 301. These Acts required regulations to be effective within 280 days of enactment, thus the implementation of emergency regulations on November 13, 2008. These regulations were previously under the Real Estate Board and are being transferred to the Common Interest Community Board as a result of these statutory changes. The regulations had to be adopted through the emergency process because Chapter 4.1 of Title 55, the Horizontal Property Act, was not amended to define "board" as the "Common Interest Community Board." Because this statute still defines "board" as the "Real Estate Board" all provisions related to horizontal property regimes were removed from the regulations and will be maintained by the Real Estate Board until such time as the statute is amended. In the interim, the language being proposed is the same as the language previously in effect under the Real Estate Board with the exception of the removal of the section pertaining to horizontal property regimes and the replacement of "Real Estate Board" with "Common Interest Community Board."

### 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.*

None.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 54.1-2349 states in part that the Board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 23.3 of Title 54.1 of the Code of Virginia. In addition, Clause 2 of Chapters 851 and 871 of the Acts of the 2008 General Assembly states that the Common Interest Community Board is successor in interest to the Real Estate Board to the extent that the law transfers powers and duties. Further, Clause 4 states that the Board shall promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment. § 54.1-201(E) states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulation is mandatory to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly.

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

The new regulation establishes the registration requirements for condominium projects and conversion condominium projects in the Commonwealth. In addition, the regulation provides annual reporting requirements, information regarding implementation and amendment of public offering statements, and marketing standards. The new regulation is necessary to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly, which were the result of HB 516 and SB 301. The goal of the regulation is to ensure the proper registration of condominium projects in the Commonwealth.

### Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

In transferring the regulation from the Real Estate Board to the Common Interest Community Board, the only substantive changes are:

- All references to "Real Estate Board" have been changed to "Common Interest Community Board."
- All references to the Horizontal Property Act and related provisions have been removed. These provisions will be maintained in regulations to be promulgated by the Real Estate Board.

**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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The primary advantage to the public is regulation of condominium projects and conversion condominium projects to provide protection to the health, safety, and welfare of the public. The declarant must have filed specific documents with the Board to ensure the proper representation of the property to potential and actual purchasers and the declarant must meet specific fiduciary responsibilities to ensure that the public is protected.

The primary advantage to the Commonwealth is that the regulation of condominium projects reflects the importance that Virginia places on ensuring that consumers who consider purchasing condominiums that are under construction and/or under declarant control are protected through the developers having met specific minimum requirements for registration and must maintain certain requirements in order to meet all statutory and regulatory requirements.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal, which are 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 proposed regulation.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Trisha L. Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, fax to (804) 527-4297, or email to [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

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| <p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>                    | <p>All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.</p> <p>One-Time:        There are no new one-time costs associated with the regulations.</p> <p>Ongoing:         There are no new ongoing costs associated with the regulations.</p> |
| <p><b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b></p>  | <p>No change anticipated.</p>  |
| <p><b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b></p>  | <p>The regulations will affect condominiums required to register with the Board.</p>   |
| <p><b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity,</b></p> | <p>There are currently 634 active condominium registrations that would be minimally affected by the regulatory change.</p>   |

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| <p>including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>  |  |
| <p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p> | <p>No change in the cost of condominium registration is anticipated.</p>   |
| <p><b>Beneficial impact the regulation is designed to produce.</b></p>   | <p>The regulation is a result of a legislative mandate from the 2008 General Assembly Session but includes no changes that will impact current or potential regulants, purchasers, or the public. The registration of condominium projects and conversion condominium projects was determined to be necessary and beneficial to protect the health, safety, and welfare of the public.</p> |

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

Chapters 851 and 871 of the Acts of the 2008 General Assembly and the Code of Virginia mandate the establishment of the regulation. Therefore, no alternatives exist to evaluate.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulations were developed with consideration that the affected industries consist of small businesses. The Board considers that the regulatory methods implemented were promulgated to

accomplish the applicable law while minimizing the adverse impact on small businesses and are consistent with the regulation of small businesses of other professions.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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No public comments were received following publication of the NOIRA.

### Family impact

*Please assess the impact of the proposed 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.*

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No impact on families in Virginia has been identified as resulting from the proposed regulation.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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The regulations being proposed were previously under the Real Estate Board and are being transferred to the Common Interest Community Board as a result of these statutory changes. The regulations could not be transferred through an exempt action and had to be adopted through the emergency process because Chapter 4.1 of Title 55, the Horizontal Property Act, was not amended to define "board" as the "Common Interest Community Board." Because this statute still defines "board" as the "Real Estate Board" all provisions related to horizontal property regimes were removed from the regulations and will be maintained by the Real Estate Board until such time as the statute is amended. In the interim, the language being proposed is the same language previously in effect under the Real Estate Board with the exception of the removal of the section pertaining to horizontal property regimes and the replacement of "Real Estate Board" with "Common Interest Community Board."