

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

COMMON INTEREST COMMUNITY BOARD

Tentative AGENDA

THURSDAY, SEPTEMBER 5, 2019, 10:00 A.M.
2nd FLOOR, BOARD ROOM 4

- I. CALL TO ORDER**
- II. EMERGENCY EVACUATION PROCEDURES**
- III. APPROVAL OF AGENDA**
a. Board Agenda, September 5, 2019
- IV. APPROVAL OF MINUTES**
a. Board Meeting, June 6, 2019
b. Reserve Study Guidelines Committee Meeting, June 20, 2019
- V. PUBLIC COMMENT PERIOD***
- VI. REVIEW FILES AND DISCIPLINARY MATTERS ****
a. File Number 2019-00817, FirstService Residential DC Metro LLC Consent Order (Baker)
b. Motion to Vacate Order in File Number 2018-02143, Dominion Properties Virginia LLC
c. Consider Temporary Cease and Desist Orders Regarding Condominium Registrations
d. Update on Temporary Cease and Desist Order Actions from June 6, 2019
- VII. BOARD BUSINESS**
a. Update on Regulatory Actions
b. Periodic Review
 1. Condominium Regulations
c. Review Bank of Nova Scotia Letter of Credit
d. Consideration and Approval of Draft Reserve Study Guidelines (HB 2030/SB 1538)
e. Closed Meeting for the Purpose of Consultation with Legal Counsel Pursuant to 2.2-3711.A.7 of the Code of Virginia
- VIII. OTHER BUSINESS**
a. Ombudsman Report
b. Board Financial Statements
c. Staff Event Calendar
d. Other Board Business
- IX. COMPLETE CONFLICT OF INTEREST FORMS AND TRAVEL VOUCHERS**
- X. ADJOURN**

NEXT MEETING SCHEDULED FOR DECEMBER 5, 2019, 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.

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Materials contained in this agenda are proposed topics for discussion and are not to be construed as regulation or official Board position.
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PERIMETER CENTER CONFERENCE CENTER
EMERGENCY EVACUATION OF BOARD AND TRAINING ROOMS
(Script to be read at the beginning of each meeting.)

PLEASE LISTEN TO THE FOLLOWING INSTRUCTIONS ABOUT EXITING THE PREMISES IN THE EVENT OF AN EMERGENCY.

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.

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.

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 on June 6, 2019, 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 Trigiani, Chair
Maureen A. Baker
Tom Burrell
Amanda Jonas
Drew R. Mulhare
Paul Orlando, Vice-Chair
Lori Overholt
Katherine E. Waddell

Board members Eugenia Lockett Reese and Scott Sterling were not in attendance at the meeting.

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

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

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

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the meeting to order at 9:36 a.m. **Call to Order**

Ms. Trigiani advised the Board of the emergency evacuation procedures. **Emergency Evacuation Procedures**

Ms. Jonas moved to approve the agenda as presented. Ms. Waddell seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Orlando, Overholt, Sterling, Trigiani, and Waddell. **Approval of Agenda**

Ms. Jonas moved to approve the March 14, 2019, Board meeting minutes as presented. Ms. Overholt seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Orlando, Overholt, **Approval of Minutes**

Sterling, Trigiani, and Waddell.

Mr. Mulhare joined the meeting at 9:39 a.m.

**Arrival of Board
Member**

Bob Sledzaus of Reston, Virginia was present to address the Board. Mr. Sledzaus voiced his concerns over the complaint process and the way in which complaints against common interest community management companies are handled. Mr. Sledzaus disagrees with the fact that a complaint to DPOR against a management company is often referred back to the association board and that board's internal complaint procedure. Mr. Sledzaus also stated that he was disappointed in the outcome of a previous complaint in which he felt the Board and the Ombudsman disregarded the fact that the same regulation was violated more than once by the respondent.

**Public Comment
Period**

Ms. Gillespie stated that often the contract between an association's board and its management company is what determines the way in which a complaint is processed, as well as the onus of any violations of statutes and regulations.

Discussion was held on whether there is guidance on the handling of complaints in which a statute or regulation has been violated multiple times by the same respondent.

Ms. Henshaw presented the Board with a letter from Judith English requesting interpretive guidance on the qualifications for a common interest community manager license. Ms. English requested the Board to provide interpretive guidance regarding the requirements for manager licensure under 18 VAC 48-50-30 and reevaluate the regulation so that it does not require an applicant have a minimum of three years of experience providing management services to an association in order to be eligible for licensure. Ms. English indicated that in the alternative of the Board granting her request, that the Board consider a flexibility analysis pursuant to § 2.2-4007.1 of the Code of Virginia, that will accomplish the objectives of the law while minimizing adverse impact on small businesses. After discussion, staff advised the Board that the Common Interest Community Manager Regulations are scheduled for periodic review, in accordance with §2.2-4007.1 of the Code of Virginia, later this year, and provided a schedule for that periodic review process. After several minutes of discussion, including discussion with the Board's counsel, the Board elected not to take any further action. The Board also agreed by consensus that specific experience cannot be considered unless there is an application for licensure before the Board. The Board thanks Ms. English for her

comments and invites her to make a public comment during the periodic review of Board regulations scheduled for September 2019. The Board directed staff to send a response to Ms. English.

Ms. Henshaw introduced to the Board Kevin Richeson, who is interning with DPOR for the summer.

Introduction of Staff

Ms. Trigiani recused herself from the meeting for discussion and deliberations on File Number 2019-00076 and File Number 2019-00703.

Recusal of Board Members

Mr. Orlando recused himself from the meeting for discussion and deliberations on File Number 2019-00076, File Number 2019-00703, and File Number 2018-02143.

Mr. Burrell assumed Chair of the Board.

In the matter of **File Number 2019-00076, Cardinal Management Group Inc.**, the Board members reviewed the Consent Order. Cardinal Management Group Inc. neither admits nor denies a violation of 18 VAC 48-50-190.17 as outlined in Count 1, but agrees to the imposition of Board costs of \$150.00. In addition, Cardinal Management Group Inc. agrees to develop procedures for the preparation of resale documents to ensure all attachments required by § 55-79.97 of the Code of Virginia are included as part of the disclosure (whether resale certificate or association disclosure package) to unit owners or to lot owners. Cardinal Management Group Inc. shall provide the Board with a copy of the procedure as well as a sample disclosure document within 30 days of the effective date of the Consent Order.

File Number 2018-01894, Cardinal Management Group Inc.

Mr. Mulhare moved to accept the Consent Order as presented. Ms. Overholt seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Overholt, Sterling, and Waddell.

In the matter of **File Number 2019-00703, Purple Sage Cluster Inc.**, the Board members reviewed the Consent Order. Purple Sage Cluster, Inc. admits to a violation of 18 VAC 48-70-50.4 as outlined in Count 1, and agrees to the imposition of a monetary penalty of \$250.00 and Board costs of \$150.00, for a total of \$400.00, to be paid within 30 days of the effective date of the Consent Order.

File Number 2019-00703, Purple Sage Cluster Inc.

Mr. Mulhare moved to accept the Consent Order as presented. Ms. Baker seconded the motion. After discussion, the motion was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Overholt, Sterling, and Waddell.

Ms. Trigiani returned to the meeting and resumed as Chair of the Board.

Return of Board Member

In the matter of **File Number 2018-02143, Dominion Properties Virginia LLC**, the Board members reviewed the Consent Order. Dominion Properties Virginia LLC admits to a violation of 18 VAC 48-50-190.1 as outlined in Count 1, and agrees to the imposition of a monetary penalty of \$750.00 and Board costs of \$150.00, for a total of \$900.00, to be paid within 30 days of the effective date of the Consent Order.

File Number 2018-02143, Dominion Properties Virginia LLC

Mr. Mulhare moved to accept the Consent Order as presented. Mr. Burrell seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Overholt, Sterling, Trigiani and Waddell.

Discussion was held on sanctioning guidelines for statutory and regulatory violations.

Mr. Orlando returned to the meeting.

Return of Board Member

Mr. Haughwout asked the Board to consider issuance of a temporary cease and desist order against the condominium project registration of Harbor Heights Condominium, for failure of the declarant, Harbor Heights Residential, L.C., to submit a complete annual report with evidence of a bond or letter of credit from a financial institution as required by § 55-79.93 of the Code of Virginia, and Board Regulation 18 VAC 48-30-540. Mr. Haughwout noted that the letter of credit on file for Harbor Heights Residential, L.C. is valid through September 2019.

Consider Temporary Cease and Desist Orders Regarding Condominium Registrations

Discussion was held on circumstances in which staff would contact a declarant's attorney on file, as well as the process for updating contact information for declarants and associations.

Mr. Orlando moved to authorize staff to issue a temporary cease and desist order against the project registration of Harbor Heights Condominium as failure to file an annual report would cause irreparable harm to the public. Ms. Waddell seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani and Waddell.

The Board recessed from 10:30 a.m. to 10:58 a.m.

Recess

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

**Update on
Regulatory Actions**

An exempt action to make a technical correction to 18 VAC 48-30-560 of the Condominium Regulations was published in the Virginia Register on April 15, 2019, and became effective on May 15, 2019.

An exempt action to amend the CIC Manager Regulations to eliminate annual assessments was published in the Virginia Register on May 13, 2019, and will become effective on July 1, 2019.

Exempt actions to amend the CIC Management Information Fund Regulations to eliminate annual assessments and to extend the current temporary application fee reduction were published in the Virginia Register on May 13, 2019, and will become effective on July 1, 2019.

The Board's general review of the CIC Management Information Fund Regulations is at the proposed stage and is currently undergoing Executive Branch review.

A Periodic Review Notice was filed on May 17, 2019 for the periodic review of the Condominium Regulations. A public comment period will be held from June 10, 2019, to July 1, 2019. Public comments received during the public comment period will be presented to the Board at its September 5, 2019 meeting.

Ms. Henshaw asked the Board to consider several exempt actions to amend chapters 30, 45, 50, 60, and 70 of the Board's regulations in connection with the recodification of Title 55 of the Code of Virginia as outlined in SB 1080, passed during the 2019 General Assembly Session. The amendments will conform the regulations to the new Title 55.1 that will become effective October 1, 2019.

**Title 55
Recodification
Regulatory Actions**

After review and discussion Ms. Baker moved to authorize staff to file an exempt action to amend the Condominium Regulations (Chapter 30). Ms. Jonas seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani and Waddell.

Discussion was held on whether association documents will need to be revised to reflect the new Title 55.1 code sections.

After review and discussion Ms. Overholt moved to authorize staff to file an exempt action to amend the Time-Share Regulations (Chapter

45). Mr. Orlando seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani and Waddell.

After review and discussion Ms. Jonas moved to authorize staff to file an exempt action to amend the CIC Manager Regulations (Chapter 50). Ms. Baker seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani and Waddell.

After review and discussion Mr. Mulhare moved to authorize staff to file an exempt action to amend the CIC Management Information Fund Regulations (Chapter 60). Mr. Orlando seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani and Waddell.

After review and discussion Ms. Waddell moved to authorize staff to file an exempt action to amend the Ombudsman Regulations (Chapter 70). Ms. Jonas seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani and Waddell.

Ms. Henshaw presented the Board with three draft legislative proposals to be submitted for consideration during the 2020 General Assembly session.

**2020 Legislative
Items for
Consideration**

Discussion was held on the recovery fund and the process in which funds are awarded to claimants. Discussion was held on the definition of "claimant" as defined in § 55-528 of the Code of Virginia. Ms. Broz-Vaughan explained that, unlike the Department's other recovery funds, only a court-appointed receiver can make a claim against the CIC Management Recovery Fund. After discussion, the Board agreed by consensus to authorize staff to research recovery fund programs of other DPOR boards and similar programs in other states to conform the Board's recovery fund process with others in the Department and, if applicable, other states, and to determine an appropriate monetary threshold for the recovery fund, taking into consideration the current balance of the CIC management information fund, and the elimination of annual assessments. In addition, staff may draft proposed amendments to legislative proposal item #1 based upon the results of the review. Proposed amendments to the proposal item will be presented to the Board at its September 5, 2019 meeting for review.

After discussion and review of the draft legislative items, Ms. Waddell moved to approve the proposals for submission as presented. Mr.

Orlando seconded the motion which was unanimously approved by:
Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani
and Waddell.

Ms. Trigiani updated the Board on the Reserve Study Guidelines
Committee. The committee will meet on June 20, 2019.

**Update on Reserve
Study Guidelines
Committee (HB
2030/SB 1538)**

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

**Board Financial
Statements**

Ms. Trigiani asked the Board to consider tentative Board meeting dates
for 2020. Ms. Jonas moved to approve the following meeting dates:

**Consider Future
Meeting Dates**

- March 12, 2020
- June 4, 2020
- September 3, 2020
- December 3, 2020

Ms. Baker seconded the motion which was unanimously approved by:
Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani
and Waddell.

Board members considered the following resolution for former Board
member Mary Elizabeth Johnson:

**Consideration of
Resolution for
Service**

Mary Elizabeth Johnson

WHEREAS, **Beth Johnson**, did faithfully and diligently serve the
Common Interest Community Board from 2014 to 2019;

WHEREAS, **Beth Johnson**, did devote generously of her time, talent
and leadership to the Board;

WHEREAS, **Beth Johnson**, 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 sixth day of June 2019, that **Beth Johnson** be
given all honors and respect due her for her outstanding service to the
Commonwealth and its citizens;

and

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

Mr. Orlando moved to adopt the resolution as written. Ms. Waddell seconded the motion which was unanimously approved by: Baker, Burrell, Jonas, Mulhare, Orlando, Overholt, Sterling, Trigiani and Waddell.

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

**Conflict of Interest
Forms and Travel
Vouchers**

Ms. Gillespie provided the Board with a summary of current complaint and file statistics as of May 31, 2019.

Ombudsman Report

Mr. Mulhare stated he would like to correct a piece of information published in the Spring 2019 CIC Newsletter, and advised the Board that he has not served as a member of the Real Estate Board.

Other Business

Discussion was held on whether an association may charge a fee for closing information requested by lenders, brokers, or title companies during a real estate transaction.

Ms. Overholt thanked Ms. Trigiani for her service to the Board.

Ms. Trigiani thanked the Board members and staff for their support and service to the Board.

Ms. Waddell commended Board members and staff, and stated that the Board could not have accomplished many of its feats without Ms. Trigiani's work.

Mr. Orlando also thanked the Board members and staff for their dedication.

There being no further business, the meeting was adjourned at 12:26p.m.

Adjourn

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Lucia Anna Trigiani, Chair

Mary Broz-Vaughan, Acting Secretary

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RESERVE STUDY GUIDELINES COMMITTEE
OF THE
COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Reserve Study Guidelines Committee of the Common Interest Community Board (Board) met on June 20, 2019, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 3, Richmond, Virginia 23233.

The following members were present:

Drew Mulhare, Chair
Michelle Baldry
Eileen Greenberg
Doug Greene
Peter Miller
Doug White
Lucia Anna (Pia) Trigiani (Ex-Officio)

Committee members Tom Burrell and Howard Goldklang were not present at the meeting.

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

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

Mr. Mulhare, Chair, called the meeting to order at 9:42 a.m.

Call to Order

Mr. Haughwout advised the Committee of the emergency evacuation procedures.

**Emergency
Evacuation
Procedures**

Members of the Committee and Board staff introduced themselves.

**Introduction of
Committee
Members**

Ms. Henshaw introduced to the Committee Conner Eads, a Fellow from the Virginia Management Fellows Program, who will be training at DPOR for eight months as part of his fellowship. Ms. Henshaw also introduced Kevin Richeson, who is interning with DPOR for the summer.

Mr. Miller moved to approve the agenda as presented. Mr. Greene

Approval of Agenda

seconded the motion which was unanimously approved by: Baldry, Greenberg, Greene, Miller, Mulhare, and Trigiani.

Michael Blivess, a member of the Potomac Green Community Association, was present to address the Committee with his personal thoughts. Mr. Blivess stated he believes that replacement cost should be clearly defined within reserve studies and that inflation should be considered when determining replacement cost. Mr. Blivess also proposed that reserve studies should include a fully funded balance based on estimated replacement cost at the time of replacement, as well as the difference between the reserve balance and the fully funded balance. He also stated the reserve study should clearly state the funding goal underlying the basis for the funding recommendation. Mr. Blivess provided the Committee members with a handout that further explained his position.

**Public Comment
Period**

Mr. White arrived at 9:49 a.m.

**Arrival of
Committee Member**

Lynda Thompson, President of the Chickahominy Woods Townhouses Association, was present to address the Board. Ms. Thompson expressed her concern for older associations that struggle to simultaneously maintain expensive property repairs and keep up with changes to statutory and regulatory requirements. Ms. Thompson stated there is often pushback from homeowners when there is a need for an increase in assessments, and asked that any new or amended fees be kept to a minimum when considering future legislation.

**Public Comment
Period Continued**

Discussion was held on determining the cost of inflation and the consumer price index versus the producer price index.

Doug White introduced himself to the Committee and staff.

**Introduction of
Committee Member**

Mr. Haughwout presented the Committee with an overview of the purpose of the Committee, including legislation passed during the 2019 General Assembly Session directing the Board to develop guidelines for the development of reserve studies of capital components. Mr. Haughwout explained that the Committee's purpose did not include establishing requirements as to how reserve studies must be developed or conducted.

Overview

Mr. Haughwout provided an overview of the resources available to the Committee and which were relied upon to develop the draft reserve

study guidelines document. These included applicable statutes, reserve study standards and best practices developed by other organizations, and reserve study guidelines documents from other states.

Mr. Haughwout advised the Committee that Mr. Burrell and Mr. Goldklang submitted comments on the proposed draft Reserve Study Guidelines in writing as they were unable to attend the meeting.

The Committee reviewed draft text of proposed Reserve Study Guidelines.

**Discussion of Draft
Proposed Reserve
Study Guidelines**

Discussion was held on the following topics:

- Providing additional information in the introductory section of the document to clarify the meaning of terms, expand on the benefits of reserve studies to associations and members, and to address associations in which there is only one or a few common elements, such as main entrance with signage and landscaping;
- The addition of a fourth type reserve study described in the most recent Community Associations Institute (CAI) National Reserve Study Standards. This type of reserve study is conducted using design documents and is prepared prior to construction;
- The meaning of terms “adequate” and “sufficient” as they relate to association reserves; and
- Identification of components to be included in a reserve study

The Committee recessed from 11:07 a.m. to 11:20 a.m.

Recess

The Committee continued review of the draft text of proposed Reserve Study Guidelines.

**Continue Discussion
of Draft Proposed
Reserve Study
Guidelines**

Discussion was held regarding established funding models for association reserves. Discussion focused on the distinction between the component method for funding reserves and cash flow methods for funding reserves.

Mr. Miller provided the Committee with a comparison of a fully funded reserve using the component method versus the cash flow method. After discussion, the Committee agreed by consensus that Mr. Miller will draft proposed revisions comparing the two models to the proposed Reserve Study Guidelines to be distributed to Committee members for

review.

Ms. Trigiani departed the meeting at 11:51 a.m.

Departure of Board Member

Discussion was held on the possibility of adding links to additional resources for reserve studies to the guidelines document.

Continue Discussion of Draft Proposed Reserve Study Guidelines

Discussion was held on the average homeowner's access to and understanding of their association's reserve study. After discussion, the Committee agreed by consensus that Mr. White will draft a document explaining the purpose and requirements of reserve studies to serve as a resource for homeowners. The document will be distributed to Committee members for review.

Mr. Haughwout provided the proposed timeframe for consideration of the draft proposed Reserve Study Guidelines. Committee members will need to submit any proposed changes by July 10, 2019. A revised document will be submitted to committee members for review, and, once accepted, will be published for a 30-day public comment period. Following conclusion of the comment period, the draft Reserve Study Guidelines and any public comments received will be presented to the Board for consideration at its September meeting. Mr. White moved to adopt the proposed draft Reserve Study Guidelines as amended for recommendation to the Board, subject to final review of the amended draft text, addenda, and resource documents by the Committee. In addition, staff will work with the Committee Chair to finalize any amendments to the draft text prior to Board review. Mr. Miller seconded the motion which was unanimously approved by: Baldry, Greenberg, Greene, Miller, Mulhare, Trigiani, and White.

Mr. Mulhare reminded Committee members who serve on the Board 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 12:37 p.m.

Adjourn

Lucia Anna Trigiani, Chair

Mary Broz-Vaughan, Acting Secretary

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PUBLIC COMMENT PERIOD

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

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CIC Mandates

1 message

Cathy M. <[REDACTED]>
To: CIC@dpor.virginia.gov

Tue, Jul 16, 2019 at 12:01 PM

To Whom It May Concern:

I'm not sure which authority addresses concerns regarding changes that need to be made regarding CIC mandates that have come into play in the past 11 years.

I was a credentialed Community Association Manager (AMS, CMCA) for many years. I understand the workings of CIC, and it's governing entity. I was more of a homeowner advocate and worked as a mediator between Boards and Homeowners under the philosophy that homeowners' hard earned money supports the mission of the CIC. My methods worked.

I removed myself from the industry in 2008 because I didn't agree with the financial burdens placed on homeowners due to changes in the laws. The financial burdens placed on members of CIC's are becoming more evident as time passes.

One of my biggest concerns is the bulk of budgets are being eaten up by contracts with Professional Management Companies (PMC). I see no justification for this -- truly. I worked for a couple PMC. Each manager has a portfolio of four to eight properties. Every manager with that many properties has no time to service their Boards and Homeowners in the manner they deserve. I've known managers to slide by -- just show up for meetings to appease ignorant Board members. By ignorant, I mean those who are unclear on CIC operations.

PCM full service managing contracts are running about \$15,000 upwards to \$30,000 a year and higher. Multiply that by the number of portfolios managed by one manager and you'll see highway robbery. As an aside, a landscaping contract runs about the same. A homeowner sees results from a landscape contractor, who is working to uphold the CIC property value.

Current mandates for CICs employing professional managers, which typically comes via a PCM are costing far too much for average homeowners. No homeowner should have to maintain their home and pay a hefty payroll. Our current economy does not support this gross injustice.

Next, I looked at the current costs of disclosure packages with prices to an exact penny. I can tell you from experience that it doesn't cost exactly \$117.37 to inspect a property. I walked my properties. It takes at most 10 minutes to see if a property is in compliance with the documents. Some managers don't go in backyards, some just sit in their cars. A good manager inspects his/her properties at least seasonally, sends violation letters and then reinspects. If anything, we managers find we have the same issues with the same homeowners. If a problem homeowner needs a disclosure package, the final inspection will cost him \$117.37 when he was never charged for an inspection during his entire residency?? I managed a community with 3100 homes. CIC law says I should charge each home \$117.37 for what purpose?

The cost of disclosure packages is exorbitant. The boilerplate pages are stored on a computer. Pages are updated over the course of time to reflect changes in CIC reserve studies, budget changes, etc. At most, for

a new disclosure package, names and addresses are filled in, noted violations are mentioned, and whatever mundane fact needs to be included for disclosure are typed in on a computer. I can make no sense of the prices. \$146.07 for electronic delivery -- to push a button on a computer? We're not talking high-tech here. The cost of a paper copy is questionable. How many pages are included in exactly \$176.05, and what's the delivery area coverage? If someone picks up the package, is there a discount? When you say exactly \$59.69 for rush expediting does that include buying lunch for the expeditor, because they are after all in a hurry? Then exactly \$58.69 for post closing when the job entails looking at a form, changing ownership names in a computer and filing the paper. The rates are too high. In the end, the average homeowner cannot afford a disclosure package. Just because they're selling a home doesn't mean they have money to spare to cover excessive costs.

My real concern is CIC dues are too high in many communities. Developers begin with low tickler dues that climb ever higher because of the demands on the community to comply the documents while faced with rising costs, including greedy PCM's.

What I'm seeing now are aging homeowners who were once able to pay dues. With many retiring, their retirement incomes make it difficult to pay dues that keep increasing, and in part it's due to stringent mandates that put the financial strain of CIC compliance on individual homeowners. With the passing of time and the rising cost of goods and services, I wonder what will happen when homeowners can't pay dues -- because it will ultimately affect individual CIC operations. Something needs to be done now. Changes need to be made before we see the domino effect set in motion by these inexplicable financially burdensome mandates.

Thank you for your time.

Cathy Merendino



DPOR Common Interest Community Board, rr <cic@dpor.virginia.gov>

Feedback Regarding Payment for Resale Disclosure Packages

1 message

POA Management <poa@poa-management.com>

Tue, Aug 27, 2019 at 5:32 PM

To: CIC@dpor.virginia.gov

Dear Common Interest Community Board Members:

The purpose of this email is to provide feedback with respect to Section 55-509.6 D. and E. of the POA Act. This provision states that fees for disclosure packages may not be collected in advance but shall be collected at the time of settlement.

This provision is adversely impacting my income as a small business owner. Although we provide information to settlement agents on how much to collect, they routinely fail to do so or make errors in the amounts collected.

Today I was following up with a settlement company regarding a disbursement we've never received and their response was: "We represented the seller side of this closing so we did not handle the disbursement of funds. It looks like Logan Title was responsible for disbursement. Below is their contact info."

So although we provided the details for disbursements to Champion Title, it turns out there was another settlement company involved who never contacted us for that information. My guess is they did not escrow the amount for a resale package and the new account set up charge.

Why should the management agent be expected to chase down this information?

This leaves me with 3 options:

1. Write-off a loss of \$322. Why should I have to do that? I spent hours of work inspecting the exterior of this home and preparing the documents.
2. Make the HOA pay me, and let them absorb the loss. Why should they have to absorb the loss? This is not their error.
3. Pursue the brand new homeowner for the unpaid fee. That would be a lovely introduction to a new homeowner. Of course the code has some strange language which states in part: "...all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure package against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectable as any other assessment in accordance with the provisions of the declaration..."

Related questions to that language are; since the cost for the resale package is not typically the responsibility of the purchaser does this mean we are out of luck with regard to collection? And, what fees are the responsibility of the settlement agent that we would be trying to collect from the purchaser? I'm not aware of any. Please tell me what they are.

In summary, whatever the wording of this section was trying to accomplish (I assume it was to "protect" a seller from having to pay in advance for services); it is so poorly worded it is misleading and confusing. And, the bottom line is that it puts a burden on me to collect for my services; services that I have no choice but to provide. Should I send a bill to the general assembly for my uncompensated services? Because the settlement agents making these mistakes completely wash their hands of the errors. Whoops; sorry we didn't collect the fees and there are no escrows to cover our error. So, back to you.

Additionally, just about every real estate agent I've ever spoken with is completely unaware of the fact that their clients do not have to pay for these packages in advance so I must be in the rare minority who abides by that law.

Terri Hillaert, CMCA, AMS

POA Management Associates LLC

Phone (703) 938-8761

Fax (703) 272-7730

MOTION TO VACATE ORDER IN FILE

NUMBER 2018-02143,

DOMINION PROPERTIES VIRGINIA LLC

DRAFT AGENDA
Materials contained in this agenda
DRAFT AGENDA

are proposed topics for discussion and are not to be construed as regulation or official Board position.

Common Interest Community Board

Update on Regulatory Actions

(as of August 29, 2019)

Action: CIC Manager Regulations – Elimination of Annual Assessments

Current Stage: Final (Exempt)

- Final amendment adopted by Board on 3/14/19.
- Regulatory action submitted on 4/13/19.
- Published in Virginia Register on 5/13/19.
- Became effective on 7/1/19.

Next Step: N/A

Action: CIC Management Information Fund Regulations – Elimination of Annual Assessments and Extend Temporary Fee Reduction

Current Stage: Final (Exempt)

- Final amendments adopted by Board on 3/14/19.
- Regulatory action submitted on 4/13/19.
- Published in Virginia Register on 5/13/19.
- Became effective on 7/1/19.

Next Step: N/A

Action: Title 55 Recodification – Condominium Regulations

Current Stage: Adopted (Exempt)

- Final amendments adopted by Board on 6/6/19.
- Submission of regulatory action pending.

Next Step: Final

- Publication in Virginia Register.
- Amended regulation to become effective 30 days after publication.

Action: Title 55 Recodification – Time-Share Regulations

Current Stage: Adopted (Exempt)

- Final amendments adopted by Board on 6/6/19.
- Submission of regulatory action pending.

Common Interest Community Board

Next Step: Final

- Publication in Virginia Register.
- Amended regulation to become effective 30 days after publication.

Action: Title 55 Recodification – Common Interest Community Manager Regulations

Current Stage: Adopted (Exempt)

- Final amendments adopted by Board on 6/6/19.
- Submission of regulatory action pending.

Next Step: Final

- Publication in Virginia Register.
- Amended regulation to become effective 30 days after publication.

Action: Title 55 Recodification – Common Interest Community Management Information Fund Regulations

Current Stage: Adopted (Exempt)

- Final amendments adopted by Board on 6/6/19.
- Submission of regulatory action pending.

Next Step: Final

- Publication in Virginia Register.
- Amended regulation to become effective 30 days after publication.

Action: Title 55 Recodification – Common Interest Community Ombudsman Regulations

Current Stage: Adopted (Exempt)

- Final amendments adopted by Board on 6/6/19.
- Submission of regulatory action pending.

Next Step: Final

- Publication in Virginia Register.
- Amended regulation to become effective 30 days after publication.

position.

Common Interest Community Board

Action: CIC Management Information Fund – General Review

Current Status: Proposed

- Board adopted proposed amendments on 11/29/18.
- Regulatory package submitted for Executive Branch review on 2/22/19; currently under review.

Next Step: Publication/Public Comment

- Completion of Executive Branch review.
- Publication in Virginia Register.
- Sixty-day public comment period; public hearing to be held.

Action: Condominium Regulations – Periodic Review

- Periodic Review Notice filed on 5/17/19.
- Notice published in Register on 6/10/19.
- Public comment period held from 6/10/19 to 7/1/19. No comments received.

Action: Public Participation Guidelines – Periodic Review

- Periodic Review Notice to be filed by 9/11/19.
- Notice to be published in Register on 9/30/19.
- Public comment period from 9/30/19 to 10/21/19.
- Results of public comment to be presented to Board at 12/5/19 meeting.

Action: Time-Share Regulations – Periodic Review

- Periodic Review Notice to be filed by 9/11/19.
- Notice to be published in Register on 9/30/19.
- Public comment period from 9/30/19 to 10/21/19.
- Results of public comment to be presented to Board at 12/5/19 meeting.

Action: Common Interest Community Manager Regulations – Periodic Review

- Periodic Review Notice to be filed by 9/11/19.
- Notice to be published in Register on 9/30/19.
- Public comment period from 9/30/19 to 10/21/19.
- Results of public comment to be presented to Board at 12/5/19 meeting.

Position.

Common Interest Community Board

Action: Common Interest Community Management Information Fund Regulations – Periodic Review

- Periodic Review Notice to be filed by 9/11/19.
- Notice to be published in Register on 9/30/19.
- Public comment period from 9/30/19 to 10/21/19.
- Results of public comment to be presented to Board at 12/5/19 meeting.

Action: Common Interest Community Ombudsman Regulations – Periodic Review

- Periodic Review Notice to be filed by 9/11/19.
- Notice to be published in Register on 9/30/19.
- Public comment period from 9/30/19 to 10/21/19.
- Results of public comment to be presented to Board at 12/5/19 meeting.

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Material
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Agency Department of Professional and Occupational Regulation

Board Common Interest Community Board

Chapter Condominium Regulations [18 VAC 48 – 30]

Review 1804

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 5/17/2019**Short Title**

Common Interest Community Board Condominium Regulations Period Review

Review Announcement

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Common Interest Community Board is conducting a periodic review and small business impact review of VAC citation: 18 VAC 48-30, title of regulation: Condominium Regulations.

The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018). <http://TownHall.Virginia.Gov/EO-14.pdf>

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins June 10, 2019, and ends on July 1, 2019.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Name: Trisha Henshaw, Title: Executive Director, Address: DPOR, 9960 Mayland Drive, Suite 400, City: Richmond, State: Virginia, Zip: 23233, Telephone: (804)367-8510, FAX: (866)490-2723, email address: CIC@dpor.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Public Comment Period

Begin Date: 6/10/2019 End Date: 7/1/2019

Comments Received: 0

Review Result

Pending

Attorney General Certification

Result of Review: Certified

 **Review Memo** 5/21/2019

Commonwealth of Virginia
COMMON INTEREST COMMUNITY BOARD



CONDOMINIUM REGULATIONS

Last Updated May 15, 2019

STATUTES
Title 55, Chapter 4.2



Department of Professional and Occupational Regulation

9960 Mayland Drive, Suite 400
Richmond, VA 23233
(804) 367-8500
www.dpor.virginia.gov

DRAFT A
Materials
DRAFT AG

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SUMMARY OF SIGNIFICANT CHANGES

Included in this document are relevant excerpts from the Virginia Administrative Code. Please note that the Common Interest Community Board is responsible for promulgating regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), and the Virginia Code Commission is responsible for compiling and codifying all of the administration regulations of state agencies into the Virginia Administrative Code.

It is your responsibility to stay informed and follow all regulations and statutes governing condominium projects. As a regulant of the Board, you should read and become familiar with all regulations applicable to condominium projects. You can stay informed of regulatory actions that may result in changes to the regulations at Virginia Regulatory Town Hall (www.townhall.virginia.gov).

This document is a complete, edited (unofficial) copy of the Condominium Regulations (18 VAC 48-30). Please refer to the Virginia Administrative Code for an official copy of the regulations applicable to your profession or occupation. You can access the Virginia Administrative Code online at <http://law.lis.virginia.gov/admincode>.

The regulations were amended to make a technical correction to 18 VAC 48-30-560.

STATEMENT OF PURPOSE

This booklet contains the information you will need to complete the registration of your condominium project with the Common Interest Community Board. The law that governs the registration process is found in **Title 55, Chapter 4.2 of the Code of Virginia**. That law permits the board to issue regulations that explain to you, in greater detail, what is expected of the condominium declarant, the condominium instruments, and other aspects of the Condominium Act. This booklet contains a copy of the regulations that you will need to know and obey in order to initially file and maintain your registration.

BE SURE YOU READ AND UNDERSTAND THE REQUIREMENTS SET FORTH IN THESE REGULATIONS. FAILURE TO COMPLY WITH THESE REQUIREMENTS COULD RESULT IN THE REVOCATION OF YOUR REGISTRATION.

It is the goal of the Department of Professional and Occupational Regulation to provide the information you need to comply with the law and regulations. If you have a question and cannot find the answer in this booklet, please write to:

Common Interest Community Board
Department of Professional and Occupational Regulation
9960 Mayland Drive
Richmond, VA 23233

Or call the Agency at (804) 367-8500.

Or e-mail at cic@dpor.virginia.gov.

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PART I
GENERAL

18VAC48-30-10. Purpose.

This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia) as the act pertains to the registration of condominiums.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-20. Definitions.

A. Section 54.1-2345 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Association"

"Board"

B. Section 55-79.41 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Common elements"

"Common expenses"

"Condominium"

"Condominium instruments"

"Condominium unit"

"Conversion condominium"

"Convertible land"

"Convertible space"

"Declarant"

"Dispose" or "disposition"

"Executive organ"

"Expandable condominium"

"Identifying number"

"Land"

"Leasehold condominium"

"Limited common element"

"Nonbinding reservation agreement"

"Offer"

"Person"

"Purchaser"

"Special declarant rights"

"Unit"

"Unit owner"

C. The following words, terms, and phrases when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Annual report" means a completed, board-prescribed form and required documentation submitted in compliance with § 55-79.93 of the Code of Virginia.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation in compliance with § 55-79.89 of the Code of Virginia.

"Class of physical assets" means two or more physical assets that are substantially alike in function, manufacture, date of construction or installation, and history of use and maintenance.

"Condominium Act" means Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia.

"Department" means the Department of Professional and Occupational Regulation.

"Expected useful life" means the estimated number of years from the date on which such estimate is made until the date when, because of the effects of time, weather, stress, or wear, a physical asset will become incapable of performing its intended function and will have to be replaced.

"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia.

"Full and fair disclosure" means the degree of disclosure necessary to ensure reasonably complete and materially accurate representation of the condominium in order to protect the interests of purchasers.

"Limited common expense" means any common expense against one or more, but less than all, of the units.

"Major utility installation" means a utility installation or portion thereof that is a common element or serves more than one unit.

"Material change" means a change in any information or document disclosed in the application for registration, including the public offering statement or an attachment thereto, that renders inaccurate, incomplete, or misleading any information or document in such a way as to affect substantially a purchaser's rights or obligations or the nature of a unit or appurtenant limited common element or the amenities of the project available for the purchaser's use as described in the public offering statement.

"Offering" means the continuing act of the declarant in making condominium units owned by the declarant within a particular condominium available for acquisition by purchasers or, where appropriate, to the aggregate of the condominium units thus made available.

"Offering literature" means any written promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity mailed or delivered directly to a specific prospective purchaser, except that information printed in a publication shall not be deemed offering literature solely by virtue of the fact that the publication is mailed or delivered directly to a prospective purchaser.

"Personal communication" means a communication directed to a particular prospective purchaser that has not been and is not intended to be directed to any other prospective purchaser.

"Physical asset" means either a structural component or a major utility installation.

"Present condition" means condition as of the date of the inspection by means of which condition is determined.

"Registration file" means the application for registration, supporting materials, annual reports, and amendments that constitute all information submitted and reviewed pertaining to a particular condominium registration. A document that has not been accepted for filing by the board is not part of the registration file.

"Regular common expense" means a common expense apportioned among and assessed to all of the condominium units pursuant to subsection D of § 55-79.83 of the Code of Virginia or similar law or condominium instrument provision.

"Replacement cost" means the expenditure that would be necessary to replace a physical asset with an identical or substantially equivalent physical asset as of the date on which replacement cost is determined and includes all costs of (i) removing the physical asset to be replaced, (ii) obtaining its replacement, and (iii) erecting or installing the replacement.

"Structural component" means a component constituting any portion of the structure of a unit or common element.

"Structural defect" shall have the meaning given in subsection B of § 55-79.79 of the Code of Virginia.

"Substituted public offering statement" means a document originally prepared in compliance with the laws of another jurisdiction and modified in accordance with the provisions of this chapter to fulfill the disclosure requirements established for public offering statements by subsection A of § 55-79.90 of the Code of Virginia and, if applicable, subsection A of § 55-79.94 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-30. Explanation of terms.

Each reference in this chapter to a "declarant," "purchaser," and "unit owner" or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to natural persons and organizations. The term "declarant" shall refer to any successors to the persons referred to in § 55-79.41 of the Code of Virginia who come to stand in the same relation to the condominium as their predecessors in that they assumed rights

reserved for the benefit of a declarant that (i) offers to dispose of his interest in a condominium unit not previously disposed of, (ii) reserves or succeeds to any special declarant right, or (iii) applies for registration of the condominium.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-40. Condominiums located outside of Virginia.

- A. In any case involving a condominium located outside of Virginia in which the laws or practices of the jurisdiction in which such condominium is located prevent compliance with a provision of this chapter, the board shall prescribe, by order, a substitute provision to be applicable in such case that is as nearly equivalent to the original provision as is reasonable under the circumstances.
- B. The words "declaration," "bylaws," "plats," and "plans," when used in this chapter with reference to a condominium located outside of Virginia, shall refer to documents, portions of documents, or combinations thereof, by whatever name denominated, that have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.
- C. The words "recording" or "recordation," when used with reference to condominium instruments of a condominium located outside of Virginia, shall refer to a procedure that, in the jurisdiction in which such condominium is located, causes the condominium instruments to become legally effective.
- D. This chapter shall apply to a contract for the disposition of a condominium unit located outside of Virginia only to the extent permissible under the provisions of subsection B of § 55-79.40 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-50. Exemptions from registration.

- A. The exemption from registration of condominiums in which all units are restricted to nonresidential use provided in subsection B of § 55-79.87 of the Code of Virginia shall not be deemed to apply to any condominium as to which there is a substantial possibility that a unit therein other than a unit owned by the declarant or the unit owners' association will be used as permanent or temporary living quarters or as a site upon which vehicular or other portable living quarters will be placed and occupied. Residential use for the purposes of this chapter includes transient occupancy.
- B. Nothing in this chapter shall apply in the case of a condominium exempted from registration by § 55-79.87 of the Code of Virginia or condominiums located outside of

Virginia as provided in subsection B of § 55-79.40 of the Code of Virginia for which no contracts are to be signed in Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-60. Preregistration offers prohibited.

No condominium marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits, or encourages a prospective purchaser to execute a contract of sale of the condominium unit or lease of a leasehold condominium unit or perform some other act that would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

Part II

Marketing

18VAC48-30-70. Condominium marketing activities.

Condominium marketing activities shall include every contact for the purpose of promoting disposition of a condominium unit. Such contacts may be personal, by telephone, by mail, by electronic means including, but not limited to, social media, or by advertisement. A promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity may be oral, written, or graphic.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-80. Offering literature.

- A. Offering literature mailed or delivered prior to the registration of the condominium that is the subject of the offering literature shall bear a conspicuous legend containing the substance of the following language:

"The condominium has not been registered by the Common Interest Community Board. A condominium unit may be reserved on a nonbinding reservation agreement, but no contract of sale or lease may be entered into prior to registration."

- B. Offering literature or marketing activities violative of the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia) and subsection C of § 55-79.52 of the Code of Virginia is prohibited.
- C. Offering literature shall indicate that the property being offered is under the condominium form of ownership. The requirement of this subsection is satisfied by including the full name of the condominium in all offering literature.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

Part III

Application for Registration

18VAC48-30-90. Application procedures.

A declarant seeking registration of a condominium pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia shall submit an application on the appropriate form provided by the board, along with the appropriate fee specified in 18VAC48-30-100.

By submitting the application to the board, the declarant certifies that the declarant has read and understands the applicable statutes and the board's regulations.

The receipt of an application and the deposit of fees by the board do not indicate approval or acceptance of the application by the board.

The board may make further inquiries and investigations to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained in this section and on the application. Applications will not be considered complete until all required documents are received by the board.

Applications that are not approved within 12 months after receipt of the application in the board's office will be purged and a new application and fee must be submitted in order to be reconsidered for registration.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-100. Fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the board or its agent will determine whether the fee is timely. Checks or money orders shall be made payable to the Treasurer of Virginia.

1. Each application for registration of a condominium shall be accompanied by a fee in an amount equal to \$35 per unit, except that the fee shall not be less than \$1,750 or more than \$3,500.
2. Each phase filing application shall be accompanied by a fee in an amount equal to \$35 per unit, except that the fee for each phase filing shall not be less than \$875 or more than \$3,500.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-110. Review of application for registration.

- A. Upon receipt of an application for registration, the board shall issue the notice of filing required by subsection A of § 55-79.92 of the Code of Virginia.
- B. Upon the review of the application for registration, if the requirements of §§ 55-79.89 and 55-79.91 of the Code of Virginia have not been met, the board shall notify the applicant as required by subsection C of § 55-79.92 of the Code of Virginia.
- C. A request for an extension of the 60-day application review period described in § 55-79.92 of the Code of Virginia shall be in writing and shall be delivered to the board prior to the expiration of the period being extended. The request shall be for an extension of definite duration. The board may grant in writing a request for an extension of the application review period, and it may limit the extension to a period not longer than is reasonably necessary to permit correction of the application. An additional extension of the application review period may be obtained, subject to the conditions applicable to the initial request. A request for an extension of the application review period shall be deemed a consent to delay within the meaning of subsection A of § 55-79.92 of the Code of Virginia.
- D. If the requirements for registration are not met within the application review period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting the registration as required by subsection C of § 55-79.92 of the Code of Virginia.
- E. An applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia at any time between receipt of a notification pursuant to subsection B of this section and the effective date of the order of rejection entered pursuant to subsection D of this section. A request for such proceeding shall be deemed a consent to delay within the meaning of subsection A of § 55-79.92 of the Code of Virginia.
- F. The board shall receive and act upon corrections to the application for registration at any time prior to the effective date of an order rejecting the registration. If the board determines after review of the corrections that the requirements for registration have not been met, the board may proceed with an informal conference in accordance with § 2.2-4019 of the Code of Virginia to allow reconsideration of whether the requirements for registration are met. If the board does not opt to proceed with an informal conference, the applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia to reconsider whether the requirements for registration are met. If the board does not proceed with an informal conference and no request for an informal conference is received from the applicant, an amended order of rejection stating the factual basis for the rejection shall be issued. A new 20-day period for the order of rejection to become effective shall commence.

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- G. At such time as the board affirmatively determines that the requirements of §§ 55-79.89 and 55-79.91 of the Code of Virginia have been met, the board shall enter an order registering the condominium and shall designate the form, content, and effective date of the public offering statement, substituted public offering statement, or prospectus to be used.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-120. Prerequisites for registration.

The following provisions are prerequisites for registration and are supplementary to the provisions of § 55-79.91 of the Code of Virginia.

- A. The declarant shall own or have the right to acquire an estate in the land constituting or to constitute the condominium that is of at least as great a degree and duration as the estate to be conveyed in the condominium units.
- B. The condominium instruments must be adequate to bring a condominium into existence upon recordation except that the certification requirements of § 55-79.58 of the Code of Virginia need not be complied with as a prerequisite for registration. This subsection does not apply to condominium instruments that may be recorded after the condominium has been created.
- C. The declarant shall have filed with the board reasonable evidence of its financial ability to complete all proposed improvements on the condominium. Such evidence may include (i) financial statements and a signed affidavit attesting that the declarant has sufficient funds to complete all proposed improvements on the condominium and that the funds will be used for completion of the proposed improvements or (ii) proof of a commitment of an institutional lender to advance construction funds to the declarant and, to the extent that any such commitments will not furnish all the necessary funds, other evidence, satisfactory to the board, of the availability to the declarant of necessary funds. A lender's commitment may be subject to such conditions, including registration of the condominium units and presale requirements, as are normal for loans of the type and as to which nothing appears to indicate that the conditions will not be complied with or fulfilled.
1. In the case of a condominium located in Virginia, "proposed improvements" are improvements that are not yet begun or not yet complete and that the declarant is affirmatively and unconditionally obligated to complete under §§ 55-79.58 and 55-79.67 (a1) of the Code of Virginia and applicable provisions of the condominium instruments or that the declarant would be so obligated to complete if plats and plans filed with the board in accordance with 18VAC48-30-140 A were recorded.
- DRAFT AGENDA
Materials controlled by this agenda
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proposed for discussion and approval by the board in its official Board position.

2. In the case of a condominium located outside of Virginia, "proposed improvements" are improvements that are not yet begun or not yet complete and that the declarant represents, without condition or limitation, will be built or placed in the condominium.

- D. The current and planned condominium marketing activities of the declarant shall comply with § 18.2-216 of the Code of Virginia, 18VAC48-30-80, and 18VAC48-30-660.
- E. The declarant shall have filed with the board (i) a proposed public offering statement that complies with this chapter and subsection A of § 55-79.90 of the Code of Virginia and, if applicable, subsection A of § 55-79.94 of the Code of Virginia; (ii) a substituted public offering statement that complies with this chapter; or (iii) a prospectus that complies with this chapter.
- F. Declarants may be organized as individuals or firms. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission or the clerk of court in the jurisdiction where the business is to be conducted in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia before submitting an application to the board.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-130. Minimum requirements for registration.

Applications for registration shall include the following:

1. The documents and information contained in § 55-79.89 of the Code of Virginia.
2. The application fee specified in 18VAC48-30-100.
3. The following documents shall be included as exhibits. All exhibits shall be labeled as indicated and submitted in hardcopy form and electronically in a format acceptable to the board.
 - a. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission or other entity formation documents.
 - b. Exhibit B: A copy of the title opinion, title policy, or a statement of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title company or licensed attorney who is not a salaried employee, officer, or director of the

declarant or owner, in accordance with subdivision A 5 of § 55-79.89 of the Code of Virginia.

c. Exhibit C: A copy of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the unit and of the contracts and other agreements that a purchaser will be required to agree to or sign.

d. Exhibit D: A narrative description of the promotional plan for the disposition of the condominium units.

e. Exhibit E: A copy of documentation demonstrating the declarant's financial ability to complete the project in accordance with 18VAC48-30-120.

f. Exhibit F: A copy of the proposed public offering statement that complies with subsection A of § 55-79.90 and subsection A of § 55-79.94 of the Code of Virginia, as applicable, and this chapter. A substitute public offering statement or a prospectus pursuant to 18VAC48-30-370 and 18VAC48-30-380 respectively may be submitted for a condominium formed in another jurisdiction.

g. Exhibit G: Copies of bonds required by §§ 55-79.58:1, 55.79.84:1, and 55-79.95 of the Code of Virginia, as applicable.

h. Exhibit H: A list with the name of every officer of the declarant who is directly responsible for the project or person occupying a similar status within, or performing similar functions for, the declarant. The list must include each individual's address, principal occupation for the past five years, and extent and nature of the individual's interest in the condominium as of a specified date within 30 days of the filing of the application.

i. Exhibit I: Plats and plans of the condominium that (i) comply with the provisions of § 55-79.58 of the Code of Virginia and 18VAC48-30-140 other than the certification requirements and (ii) show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands. Hardcopy submittals of plats and plans must be no larger than 11 inches by 17 inches.

j. Exhibit J: Conversion condominiums must attach (i) a copy of the general notice provided to tenants of the condominium at the time of application pursuant to subsection B of § 55-79.94 of the Code of Virginia, (ii) a copy of the formal notice to be sent at the time of registration to the tenants, if any, of the building or buildings, and (iii) the certified statement required in accordance with subsection C of § 55-79.94 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-140. Requirements for plats and plans.

- A. Except as provided in subsection C of this section, all plats and plans submitted with the application for registration shall comply with § 55-79.58 of the Code of Virginia but the certification need not be signed until recordation. The plats and plans filed with the application for registration shall be the same as the plats and plans the declarant intends to record. A material change to the plats and plans shall be submitted to the board in accordance with Part VI (18VAC48-30-460 et seq.) of this chapter. Once recorded, copies of plats and plans as recorded shall be filed with the board in accordance with Part VI of this chapter.
- B. In the case of units that are substantially identical, the requirement to show the location and dimensions (within normal construction tolerances) of the boundaries of each unit pursuant to subsection B of § 55-79.58 of the Code of Virginia may be deemed satisfied by depiction of the location and dimensions of the vertical boundaries and horizontal boundaries, if any, of one such unit. The identifying numbers of all units represented by such depiction shall be indicated. Each structure within which any such units are located shall be depicted so as to indicate the exact location of each such unit within the structure.
- C. In the case of a condominium located outside Virginia, certain materials may be filed with the application for registration in lieu of plats and plans complying with the provisions of § 55-79.58 of the Code of Virginia. Such materials shall contain, as a minimum, (i) a plat of survey depicting all existing improvements, and all improvements that the declarant represents, without condition or limitation, will be built or placed in the condominium; and (ii) legally sufficient descriptions of each unit. Any improvements whose completion is subject to conditions or limitations shall be appropriately labeled to indicate that such improvements may not be completed. Unit descriptions may be written or graphic, shall demarcate each unit vertically and, if appropriate, horizontally, and shall indicate each unit's location relative to established points or datum.
- D. The plats and plans must bear the form of the certification statement required by subsections A and B § 55-79.58 of the Code of Virginia. However, as stated in subsection A of this section, the statement need not be executed prior to recordation. The certification statement may appear in a separate document that is recorded, or to be recorded.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-150. Application for registration of expandable condominium.

The declarant may include in the application for registration all units for which development rights have been reserved.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

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Part IV

Public Offering Statement

18VAC48-30-160. Public offering statement requirements, generally.

In addition to the provisions of § 55-79.90 of the Code of Virginia, the following will be considered, as applicable, during review of the public offering statement.

1. The public offering statement shall provide full and fair disclosure in accordance with 18VAC48-30-170.
2. The public offering statement shall pertain to a single offering and to the entire condominium in which the condominium units being offered are located.
3. The public offering statement shall be clear, organized, and legible.
4. Except for brief excerpts, the public offering statement may refer to, but should not incorporate verbatim, portions of the condominium instruments, the Condominium Act, or this chapter. This does not preclude compliance with 18VAC48-30-180.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-170. Full and fair disclosure.

- A. The provisions of § 55-79.90 and subsection A of § 55-79.94 of the Code of Virginia and this chapter shall be strictly construed to promote full and fair disclosure in the public offering statement. In addition, the following will be considered, as applicable, during review to assure full and fair disclosure:
 1. The information shall be presented in a manner that is clear and understandable to a reasonably informed consumer, while maintaining consistency with the requirements of this chapter and the Condominium Act.
 2. In addition to specific information required by this chapter and the Condominium Act, the public offering statement shall disclose any other information necessary for full and fair disclosure.
 3. No information shall be incorporated by reference to an outside source that is not reasonably available to a prospective purchaser.
 4. If required information is not known or not reasonably available, such fact shall be stated and explained in the public offering statement.

- B. The board has the sole discretion to require additional information or amendment of existing information as it finds necessary to ensure full and fair disclosure.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-180. Contents of public offering statement.

- A. A cover, if used, must be blank or bear identification information only.
- B. The first page of the public offering statement shall be substantially as follows.

PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S PROTECTION

PUBLIC OFFERING STATEMENT

NAME OF
CONDOMINIUM:

LOCATION OF
CONDOMINIUM:

NAME OF
DECLARANT:

ADDRESS OF
DECLARANT:

EFFECTIVE
DATE OF PUBLIC
OFFERING
STATEMENT:

REVISED:

THE PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S OWN PROTECTION. Living in a common interest community carries with it certain rights, responsibilities, and benefits, including certain financial obligations, rights, and restrictions concerning the use and maintenance of units and common elements, and decision-making authority vested in the unit owners' association. The purchaser will be bound by the provisions of the condominium instruments and should review the Public Offering Statement, the condominium instruments, and other exhibits carefully prior to purchase.

This Public Offering Statement presents information regarding condominium units being offered for sale by the declarant. Virginia law requires that a Public Offering Statement be given to every Purchaser in order to provide full and fair disclosure of the significant features of the condominium units being offered. The Public Offering Statement is not intended, however, to be all-inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the declarant to the Virginia Common Interest Community Board. The Board has carefully reviewed the Public Offering Statement to ensure that it contains required disclosures, but the Board does not guarantee the accuracy or completeness of the Public Offering Statement. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the latter will control.

Under Virginia law a purchaser of a condominium unit is afforded a 5-day period during which the purchaser may cancel the purchase contract of sale and obtain a full refund of any sums deposited in connection with the purchase contract. The 5-day period begins on the purchase contract date or the date of delivery of a Public Offering Statement, whichever is later. The purchaser may, if practicable, inspect the condominium unit and the common elements and obtain professional advice. If the purchaser elects to cancel, the purchaser must deliver notice of cancellation to the declarant pursuant to § 55-79.88 of the Code of Virginia.

Allegations of violation of any law or regulation contained in the Condominium Act or the Condominium Regulations should be reported to the Virginia Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233.

- C. A summary of important considerations shall immediately follow the first page for the purpose of reinforcing the disclosure of significant information. The summary shall be titled as such and shall be introduced by the following statement:

"Following are important matters to be considered in acquiring a condominium unit. They are highlights only. The Public Offering Statement should be examined in its entirety to obtain detailed information."

Appropriate modifications shall be made to reflect facts and circumstances that may vary. The summary shall consist of, but not be limited to, the following, as applicable:

1. A statement on the governance of the condominium wherein unit owners are allocated votes for certain decisions of the association. In addition, the statement shall include that all unit owners will be bound by the decisions made by the association, even if the individual unit owner disagrees.

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2. A statement concerning the decision-making authority of the executive organ of the unit owners' association.
 3. A statement regarding the payment of expenses of the association on the basis of a periodic budget, to include a disclosure of any provision for reserves, including a statement if there are no reserves.
 4. A statement detailing the requirement for each unit owner to pay a periodic assessment and the inability to reduce the amount of an assessment by refraining from the use of the common elements.
 5. A statement of the unit owner's responsibility to pay additional assessments, if any.
 6. A statement regarding the consequences for failure to pay an assessment when due. The statement shall include reference to the enforcement mechanisms available to the association, including obtaining a lien against the condominium unit, pursuing civil action against the unit owner, and certain other penalties.
 7. A statement that the declarant must pay assessments on unsold condominium units.
 8. A statement indicating whether the declarant, its predecessors, or principal officer have undergone a debtor's relief proceeding.
 9. A statement that the declarant will retain control of the unit owners' association for an initial period.
 10. A statement indicating whether a managing agent will perform the routine operations of the unit owners' association. The statement shall include whether the managing agent is related to the declarant, director, or officer of the unit owners' association.
 11. A statement indicating whether the declarant may lease unsold condominium units and a statement indicating whether the right of a unit owner to lease that owner's unit to another is subject to restrictions.
 12. A statement indicating whether the declarant may expand or contract the condominium or convert convertible land or space without the consent of any unit owner.
 13. A statement indicating whether the right of the unit owner to resell the owner's condominium unit is subject to restrictions.

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14. A statement indicating whether the units are restricted to residential use and whether the units may be utilized for commercial, retail, or professional use. The statement shall provide detail if units have different voting rights. Further, the statement shall also detail whether the allocation of rights and responsibilities among commercial, retail, professional, or residential use units are the same.
 15. A statement indicating whether approval of the declarant or unit owners' association is necessary in order for a unit owner to alter the structure of the unit or modify the exterior of the unit.
 16. A statement regarding the obligation of the unit owners' association to obtain certain insurance benefiting the unit owner, along with the necessity for a unit owner to obtain other insurance.
 17. A statement regarding the unit owner's obligation to pay real estate taxes.
 18. A statement regarding any limits the declarant asserts on the association or the unit owner's right to bring legal action against the declarant. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.
 19. A statement that the association or unit owners are members of another association or obligated to perform duties or pay fees or charges to that association or entity.
 20. A statement indicating whether the condominium is subject to development as a time-share.
 21. A statement affirming that marketing and sale of condominium units will be conducted in accordance with the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia) and the Condominium Act (Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia).
- D.
- The content after the summary of important considerations shall include the narrative sections in 18VAC48-30-190 through 18VAC48-30-360. Supplementary sections may be included as necessary.
- E.
- Clear and legible copies of the following documents shall be attached as exhibits to the public offering statement:
1. The declaration;
 2. The bylaws;
 3. The projected budget;

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4. Rules and regulations of the unit owners' association, if available;
 5. Master association documents, if applicable;
 6. Any management contract, along with the license number of the common interest community manager, if applicable;
 7. Depiction of unit layouts;
 8. Any lease of recreational areas;
 9. Any contract or agreement affecting the use, maintenance, or access of all or any portion of the condominium, the nature, duration, or expense of which has a material impact on the operation and administration of the condominium;
 10. Warranty information, if applicable; and
 11. Other documents obligating the association or unit owner to perform duties or obligations or pay charges or fees.
- F. Other information and documentation may be included as necessary to ensure full and fair disclosure. The board may also require additional information as necessary to ensure full and fair disclosure.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-190. Narrative sections; condominium concept.

The public offering statement shall contain a section captioned "The Condominium Concept." The section shall consist of a brief discussion of the condominium form of ownership. The section shall discuss the distinction among units, common elements and limited common elements, if any, and shall explain ownership of an undivided interest in the common elements. Attention shall be directed to any features of ownership of the condominium units being offered that are different from typical condominium unit ownership.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-200. Narrative sections; creation of condominium.

The public offering statement shall contain a section captioned "Creation of the Condominium." The section shall briefly explain the manner in which the condominium was or will be created,

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the locality wherein the condominium instruments will be or have been recorded, and each of the condominium instruments, their functions, and the procedure for their amendment. The section shall indicate where each of the condominium instruments or copies thereof may be found. In the case of a condominium located in Virginia or in a jurisdiction having a law similar to § 55-79.96 of the Code of Virginia, the section shall indicate that the purchaser will receive copies of the recorded declaration and bylaws, including amendments, as appropriate, within the time provided in the applicable statute.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-210. Narrative sections; description of condominium.

- A. The public offering statement shall contain a section captioned "Description of the Condominium." The description shall include statements of (i) the land area of the condominium to include either the square footage or the acreage, (ii) the number of units in the condominium, (iii) the number of units in the offering, (iv) the number of units in the condominium planned to be rented, and (v) the percentage of units the declarant intends to sell to persons who do not intend to occupy the units as their primary residence.
- B. If the condominium is contractable, expandable, or includes convertible land or space, the section shall contain a brief description of each such feature, including the land area to include either the square footage or acreage, and the maximum number of units or maximum number of units per acre that may be added, withdrawn, or converted, as applicable, together with a statement of the declarant's plans for the implementation of each such feature. In the case of a contractable or expandable condominium, the section shall contain the substance of the following statement:

"At the declarant's option, the construction and development of the condominium may be abandoned or altered prior to completion, and land or buildings originally intended for condominium development may be put to other uses or sold."

In the case of a condominium including convertible land, the section shall contain the substance of the following statements:

"Until such time as the declarant converts the convertible land into units or limited common elements, the declarant is required by the Virginia Condominium Act to pay for the upkeep of the convertible land. Once the convertible land has been converted, maintenance and other financial responsibilities associated with the land so designated become the responsibility of the unit owners and, therefore, may be reflected in the periodic assessment for the condominium."

If the common expense assessments are expected to increase should convertible land be converted, this section shall also disclose an estimate of the approximate percentage by which such assessments are expected to increase as a result of such conversion.

The section shall state whether the units are restricted solely to residential use and shall identify where use and occupancy restrictions are found in the condominium instruments. If nonresidential use is permitted, the section shall identify the types of units and proportion of each, if known or reasonably anticipated.

- D. The section shall state whether the project, as of the effective date of the public offering statement, is intended to comply with the underwriting guidelines of the secondary mortgage market agencies, including but not limited to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Virginia Housing Development Authority.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-220. Narrative sections; individual units.

The public offering statement shall contain a section captioned "Individual Units." The section shall contain a general description of the various types of units being offered to include the square footage, or number of bedrooms, or both, together with the dates on which substantial completion of unfinished units is anticipated. The section shall state any restrictions regarding changes unit owners may make to the structure or exterior of the units, regardless of whether the exterior is a portion of the common elements.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-230. Narrative sections; common elements.

- A. The public offering statement shall contain a section captioned "Common Elements." The section shall contain a general description of the common elements.
- B. For any common elements that are not completed or not expected to be substantially complete when the units are complete, a statement of the anticipated completion dates of unfinished common elements shall be included.
- C. In the case of a condominium located in Virginia, if common elements are not expected to be substantially complete when the units are completed, the section shall state the nature, source, and extent of the obligation to complete such common elements that the declarant has incurred or intends to incur upon recordation of the condominium instruments pursuant to §§ 55-79.58 A and 55-79.67 (a1) of the Code of Virginia and

applicable provisions of the condominium instruments. In addition the section shall state that pursuant to § 55-79.58:1 of the Code of Virginia, the declarant has filed with the board a bond to insure completion of improvements to the common elements that the declarant is obligated as stated in the declaration.

- D. In the case of a condominium located outside of Virginia, a description of the nature, source, and extent of the obligation to complete such common elements that the declarant has incurred or intends to incur under the law of the jurisdiction in which the condominium is located shall be included.
- E. The section shall describe any limited common elements that are assigned or that may be assigned and shall indicate the reservation of exclusive use. In the case of limited common elements that may be assigned, the section shall state the manner of such assignment or reassignment.
- F. The section shall indicate the availability of vehicular parking spaces including the number of spaces available per unit and restrictions on or charges for the use of spaces.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-240. Narrative sections; maintenance, repair, and replacement responsibilities.

The public offering statement shall contain a section captioned "Maintenance, Repair, and Replacement Responsibilities." The section shall describe the basic allocation of maintenance, repair, and replacement responsibilities between the unit owner and the association as well as any unusual items to be maintained by the unit owner. The section shall refer to the location of the maintenance, repair, and replacement responsibility requirements in the condominium instruments.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-250. Narrative sections; declarant.

- A. The public offering statement shall contain a section captioned "The Declarant." The section shall contain a brief history of the declarant with emphasis on its experience in condominium development.
- B. The following information shall be stated with regard to persons immediately responsible for the development of the condominium: (i) name, (ii) length of time associated with the declarant, (iii) role in the development of the condominium, and (iv) experience in real estate development. If different from the persons immediately responsible for the

development of the condominium, the principal officers of the declarant shall also be identified.

- C. The section shall describe the type of legal entity of the declarant and explain if any other entities have any obligation to satisfy the financial obligations of the declarant.
- D. If the declarant or its parent or predecessor organization has, during the preceding 10 years, been adjudicated as bankrupt or has undergone any proceeding for the relief of debtors, such fact or facts shall be stated. If any of the persons identified pursuant to subsection B of this section has, during the preceding three years, been adjudicated a bankrupt or undergone any proceeding for the relief of debtors, such fact or facts shall be stated.
- E. The section shall indicate any final action taken against the declarant, its principals, or the condominium by an administrative agency, civil court, or criminal court where the action reflected adversely upon the performance of the declarant as a developer of real estate projects. The section shall also indicate any current or past proceedings brought against the declarant by any condominium unit owners' association or by its executive organ or any managing agent on behalf of such association or that has been certified as a class action on behalf of some or all of the unit owners. For the purposes of the previous sentence with respect to past proceedings, if the ultimate disposition of those proceedings was one that reflected adversely upon the performance of the declarant, that disposition shall be disclosed. If the ultimate disposition was resolved favorably towards the declarant, its principals, or the condominium, the final action does not need to be disclosed. The board has the sole discretion to require additional disclosure of any proceedings where it finds such disclosure necessary to assure full and fair disclosure.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-260. Narrative sections; terms of the offering.

- A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a condominium unit and present information regarding the settlement of purchase contracts as provided in subsections B through H of this section.
- B. The section shall indicate the offering prices for condominium units or a price range for condominium units, if either is established.
- C. The section shall set forth the significant terms of any financing offered by or through the declarant to purchasers. Such discussion shall include the substance of the following statement:

"Financing is subject to additional terms and conditions stated in the loan commitment or instruments."

- D. The section shall discuss in detail any costs collected by or paid to the declarant, association, or master association that are not normal for residential real estate transactions including, without limitation, any contribution to the initial or working capital of the unit owners' association, including any master association, to be paid by a purchaser.
- E. The section shall discuss any penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase contract that are not normal for residential real estate transactions. Penalties or forfeitures to be discussed include, without limitation, the declarant's right to retain sums deposited in connection with a purchase contract in the event of a refusal by a lending institution to provide financing to a purchaser who has made proper application for same.
- F. The section shall discuss the right of the declarant to cancel a purchase contract upon failure of the declarant to obtain purchase contracts on a given number or percentage of condominium units being offered or upon failure of the declarant to meet other conditions precedent to obtaining necessary financing.
- G. The section shall discuss the process for cancellation of a purchase contract by a purchaser in accordance with subdivision 2 of § 55-79.88 of the Code of Virginia. The section shall include a statement as to whether deposits will be held in an escrow fund or if a bond or letter of credit will be filed with the board in lieu of escrowing deposits, all in accordance with § 55-79.95 of the Code of Virginia.
- H. The section shall set forth any restrictions in the purchase contract that limit the unit owner's right to bring legal action against the declarant or the association. The section shall set forth the paragraph or section and page number of the purchase contract where such provision is located. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-270. Narrative sections; encumbrances.

- A. The public offering statement shall contain a section captioned "Encumbrances" that shall include the significant terms of any encumbrances, easements, liens, and matters of title affecting the condominium other than those contained in the condominium instruments and disclosed elsewhere in the public offering statement, as provided in subsections B through J of this section.

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- B. Except to the extent that such encumbrances are required to be satisfied or released by subsection A of § 55-79.46 of the Code of Virginia, or a similar law, the section shall describe every mortgage, deed of trust, other perfected lien, or choate mechanics' or materialmen's lien affecting all or any portion of the condominium other than those placed on condominium units by their purchasers or owners. Such description shall (i) identify the lender secured or the lienholder, (ii) state the nature and original amount of the obligation secured, (iii) identify the party having primary responsibility for performance of the obligation secured, and (iv) indicate the practical effect upon unit owners of failure of the party to perform the obligation.
 - C. Normal easements for utilities, municipal rights-of-way, and emergency access shall be described only as such, without reference to ownership, location, or other details.
 - D. Easements reserved to the declarant to facilitate conversion, expansion, or sales shall be briefly described.
 - E. Easements reserved to the declarant or to the unit owners' association or to either entity's representatives or agents for access to units shall be briefly described. In the event that access to a unit may be had without notice to the unit owner, such fact shall be stated.
 - F. Easements across the condominium reserved to the owners or occupants of land located in the vicinity of the condominium, or across adjacent land benefitting the condominium including, without limitation, easements for the use of recreational areas shall be briefly described.
 - G. Covenants, servitudes, or other devices that create an actual restriction on the right of any unit owner to use and enjoy the unit or any portion of the common elements other than limited common elements shall be briefly described.
 - H. Any matter of title that is not otherwise required to be disclosed by the provisions of this section and that has or may have a substantial adverse impact upon unit owners' interests in the condominium shall be described. Under normal circumstances, normal and customary utility easements, easements for encroachments, and easements running in favor of unit owners for ingress and egress across the common elements shall be deemed not to have a substantial adverse impact upon unit owners' interest in the condominium.
 - I. The section need not include any information required to be disclosed by 18VAC48-30-210 C, 18VAC48-30-220, or 18VAC48-30-280.
 - J. In addition to the description of easements required in this section, pertinent easements that can be located shall be shown on the condominium plats and plans.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-280. Narrative sections; restrictions on transfer.

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain any rights of first refusal, preemptive rights, limitations on leasing, or other restraints on free alienability created by the condominium instruments or the rules and regulations of the unit owners' association that affect the unit owners' right to resell, lease, or otherwise transfer an interest in the condominium unit.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-290. Narrative sections; unit owners' association.

- A. The public offering statement shall contain a section captioned "Unit Owners' Association." The section shall discuss the manner in which the condominium is governed and administered and shall include the information required by subsections B through K of this section.
- B. The section shall summarize the functions of the unit owners' association.
- C. The section shall describe the organizational structure of the unit owners' association. Such description shall indicate (i) the existence of or provision for an executive organ, officers, and managing agent, if any; (ii) the relationships between such persons or bodies; (iii) the manner of election or appointment of such persons or bodies; and (iv) the assignment or delegation of responsibility for the performance of the functions of the unit owners' association.
- D. The section shall describe the method of allocating votes among the unit owners.
- E. The section shall describe any retention by the declarant of control over the unit owners' association, including the time period of declarant control. The section shall state that the association shall register with the Common Interest Community Board upon transition of declarant control by filing the required annual report in accordance with § 55-79.93:1 of the Code of Virginia.
- F. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the declarant or a member of the executive organ or an officer of the unit owners' association. The duration of any management agreement shall be stated.
- G. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance, or access of all or any part of the condominium

shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

- H. Rules and regulations of the unit owners' association and the authority to promulgate rules and regulations shall be discussed. Particular provisions of the rules and regulations need not be discussed except as required by other provisions of this chapter. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.
- I. Any standing committees established or to be established to perform functions of the unit owners' association shall be discussed. Such committees include, without limitation, architectural control committees and committees having the authority to interpret condominium instruments, rules, and regulations or other operative provisions.
- J. Unless required to be disclosed by 18VAC48-30-270 E, any power of the declarant or of the unit owners' association or its representatives or agents to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated (i) a unit may be entered without notice to the unit owner, (ii) the declarant or the unit owners' association or its representatives or agents are empowered to take actions or perform work in a unit without the consent of the unit owner, and (iii) the unit owner may be required to bear the costs of actions so taken or work so performed.
- K. The section shall state whether the condominium is part of a master or other association and briefly describe such relationship and the responsibilities of and obligations to the master association, including any charges for which the unit owner or the unit owners' association may be responsible. The disclosures required by this subsection may be contained in this narrative section or another narrative section. The section shall also describe any other obligation of the association or unit owners arising out of any agreements, easements, deed restrictions, or proffers, including the obligation to pay fees or other charges.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-300. Narrative sections; display of flag.

The public offering statement shall include a section captioned "Display of Flag." This section shall describe any restrictions, limitations, or prohibitions on the right of a unit owner to display the flag of the United States in accordance with § 55-79.75:2 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-310. Narrative sections; surrounding area.

The public offering statement shall contain a section captioned "Surrounding Area." The section shall briefly describe the zoning of the immediate neighborhood of the condominium and the current uses.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-320. Narrative sections; financial matters.

- A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a condominium unit, excluding certain taxes, in the manner provided in subsections B through I of this section.
- B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair, and replacement of various portions of the condominium:
 - (i) common expenses apportioned among and assessed to all of the condominium units pursuant to subsection C of § 55-79.83 of the Code of Virginia or similar law or condominium instrument provision; (ii) common expenses, if any, apportioned among and assessed to less than all of the condominium units pursuant to subsections A and B of § 55-79.83 of the Code of Virginia or similar law or condominium instrument provisions; and (iii) costs borne directly by individual unit owners. The section need not discuss taxes assessed against individual condominium units and payable directly by the unit owners.
- C. A budget shall show projected common expenses for the first year of the condominium's operation or, if different, the latest year for which a budget is available. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention to such exhibit. The section shall describe the manner in which the projected budget is established. If the condominium is phased, the budget shall project future years until all phases are projected to be developed and all common elements that must be built have been completed. The budget shall include an initial working capital budget showing sources and uses of initial working capital and a reserve table showing amounts to be collected to fund those reserves. The budget shall show regular individual assessments by unit type. The budget shall note that the figures are not guaranteed and may vary.
- D. The section shall describe the manner in which regular common expenses are apportioned among and assessed to the condominium units. The section shall include the substance of the following statement, if applicable:

"A unit owner cannot obtain a reduction of the regular common expenses assessed against the unit by refraining from use of any of the common elements."

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- E. The section shall describe budget provisions for reserves for capital expenditures in accordance with § 55-79.83:1 of the Code of Virginia and for contingencies, if any. If there are no reserves, the section shall so state.
 - F. The section shall describe provisions for additional assessments to be levied in accordance with subsection E of § 55-79.83 of the Code of Virginia in the event that budgeted assessments provide insufficient funds for operation of the unit owners' association. The section shall also describe the provisions for an assessment against an individual unit owner.
 - G. The section shall discuss any common expenses actually planned to be specially assessed pursuant to subsections A and B of § 55-79.83 of the Code of Virginia or similar law or condominium instrument provisions.
 - H. The section shall indicate any fee, rent, or other charge to be payable by unit owners other than through common expense assessments to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the condominium. As an exception to the provisions of this subsection, the section need not discuss any fees provided for in subsection H of § 55-79.84 and § 55-79.85 of the Code of Virginia, or similar laws or condominium instrument provisions or any costs for certificates for resale.
 - I. The section shall discuss the effect of failure of a unit owner to pay the assessments levied against the condominium unit. Such discussion shall indicate provisions for charges or other remedies that may be imposed to be applied in the case of overdue assessments and for acceleration of unpaid assessments. The section shall indicate the existence of a lien for unpaid assessments and where applicable the bond or letter of credit conditioned on the payment of assessments filed with the board in accordance with § 55-79.84:1 of the Code of Virginia. The section shall include, to the extent applicable, the substance of the following statement:

"The unit owners' association may obtain payment of overdue assessments by bringing legal action against the unit owner or by foreclosure of the lien resulting in a forced sale of the condominium unit."

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-330. Narrative sections; insurance.

- A. The public offering statement shall contain a section captioned "Insurance." The section shall describe generally the insurance on the condominium to be maintained by the unit owners' association. The section shall state, with respect to such insurance, each of the following circumstances, to the extent applicable: (i) property damage coverage will not insure personal property belonging to unit owners; (ii) property damage coverage will not insure improvements to a unit that increase its value beyond the limits of coverage provided in the unit owners' association's policy, and (iii) liability coverage will not insure against liability arising from an accident or injury occurring within a unit or as a result of the act or negligence of a unit owner. The section shall include a statement whether the unit owner is obligated to obtain coverage for any or all of the coverages described. The section shall also include a statement that the unit owner should consult with an insurance professional to determine the appropriate coverage.
- B. The section shall indicate any conditions imposed by the condominium instruments or the rules and regulations to which insurance obtained directly by unit owners will be subject. Such indication may be made by reference to pertinent provisions of the condominium instruments or the rules and regulations.
- C. The section shall explain that the association is the only party that can make a claim under the master policy and is the sole decision-maker as to whether to make a claim, including a statement as to the circumstances under which a unit owner could be responsible for payment of the deductible.
- D. The section shall state that the unit owners' association is required to obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy in accordance with subsection B of § 55-79.81 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-340. Narrative sections; taxes.

- A. The public offering statement shall contain a section captioned "Taxes." The section shall describe all existing or pending taxes to be levied against condominium units individually including, without limitation, real property taxes, sewer connection charges, and other special assessments.
- B. With respect to real property taxes, the section shall state the current tax rate or provide information for obtaining the current tax rate. The section shall also state a procedure or formula by means of which the taxes may be estimated.

- C. With respect to other taxes, the section shall describe each tax in sufficient detail as to indicate the time at which the tax will be levied and the actual or estimated amount to be levied, or a procedure or formula by means of which the taxes may be estimated.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-350. Narrative sections; governmental reviews.

The public offering statement shall contain a section captioned "Governmental Reviews." The section shall discuss governmental reviews applicable to the condominium property and the status of any governmental approvals required for the development of the condominium. In addition, the section shall discuss approval of the zoning application and site plan and issuance of building permits by appropriate governmental authorities. The section shall state the current zoning classification for the condominium property. The section shall also include a statement regarding any zoning, subdivision, or land use obligations or proffers that would be imposed on the unit owner or the association, but need not disclose any zoning, subdivision, or land use obligations or proffers that do not impose any obligation on the association.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-360. Narrative sections; warranties.

The public offering statement shall contain a section captioned "Warranties." The section shall describe any warranties provided by or through the declarant on the units or the common elements and a summary of the process for commencement of an action for breach of warranty in accordance with subsection C of § 55-79.79 of the Code of Virginia. The section shall describe the structural defect warranty required by and described in subsection B of § 55-79.79 of the Code of Virginia. The section shall also include the substance of the following statement:

"Nothing contained in the warranty provided by the declarant shall limit the protection afforded by the statutory warranty."

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-370. Documents from other jurisdictions.

- A. A substituted public offering statement shall only be permitted for a condominium located outside of Virginia.
- B. The substituted public offering statement shall be prepared by deleting from the original disclosure document (i) references to any governmental agency of another jurisdiction to

which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the condominium; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgment of receipt, or related events involving the disclosure document; (iv) the effective date or dates in another jurisdiction of the disclosure document; and (v) all other information that is untrue, inaccurate, or misleading with respect to marketing, offers, or disposition of condominium units in Virginia.

- C. The substituted public offering statement shall incorporate all information not otherwise included that is necessary to effect fully and accurately the disclosures required by subsection A of § 55-79.90 of the Code of Virginia and, if applicable, subsection A of § 55-79.94 of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature that is different from the definitions provided in § 55-79.41 of the Code of Virginia.
- D. The substituted public offering statement shall include as the first item of the summary of important considerations a statement that includes the following information: (i) the designation by which the original disclosure document is identified in the original jurisdiction, (ii) the governmental agency of such other jurisdiction where the original disclosure document is or will be filed, and (iii) the jurisdiction of such filing.
- E. The provisions of subdivision 2 of § 55-79.88, § 55-79.90, and subsection A of § 55-79.94 of the Code of Virginia and 18VAC48-30-160, 18VAC48-30-170, and 18VAC48-30-180 shall apply to substituted public offering statements in the same manner and to the same extent that they apply to public offering statements.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-380. Condominium securities.

A prospectus filed in compliance with the securities laws of a state or federal agency used in lieu of a public offering statement shall contain or have attached thereto copies of documents, other than the projected budget required to be attached to a public offering statement by subsection E of 18VAC48-30-180. Such prospectus shall be deemed to satisfy all of the disclosure requirements of subsections C and D of 18VAC48-30-180 and 18VAC48-30-190 through 18VAC48-30-360. In the case of a conversion condominium, the prospectus shall have attached thereto, in suitable form, the information required by 18VAC48-30-420, subsections C and D of 18VAC48-30-430, and 18VAC48-30-440 to be disclosed in public offering statements for conversion condominiums. The provisions of subdivision 2 of § 55-79.88 of the Code of Virginia shall apply to the delivery of the prospectus in the same manner and to the same extent that they apply to the delivery of a public offering statement.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-390. Board oversight of public offering statement.

The board at any time may require a declarant to alter or amend the public offering statement to assure full and fair disclosure to prospective purchasers and to ensure compliance with the Condominium Act and this chapter.

In accordance with subsection B of § 55-79.90 of the Code of Virginia, the board does not approve or recommend the condominium or disposition thereof. The board's issuance of an effective date for a public offering statement shall not be construed to (i) constitute approval of the condominium, (ii) represent that the board asserts that either all facts or material changes or both concerning the condominium have been fully or adequately disclosed, or (iii) indicate that the board has made judgment on the value or merits of the condominium.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

Part V

Conversion Condominiums

18VAC48-30-400. Public offering statement for conversion condominium; general instructions.

The public offering statement for a conversion condominium shall conform in all respects to the requirements of 18VAC48-30-160 through 18VAC48-30-380. In addition, the public offering statement for a conversion condominium shall (i) contain special disclosures in the narrative sections captioned "Description of the Condominium," "Terms of the Offering," and "Financial Matters"; and (ii) incorporate narrative sections captioned "Present Condition of the Condominium" and "Replacement Requirements." Provisions for such additional disclosure are set forth in 18VAC48-30-410 through 18VAC48-30-440.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-410. Description of conversion condominium.

In addition to the information required by 18VAC48-30-210, the section captioned "Description of the Condominium" shall indicate that the condominium is a conversion condominium. The term conversion condominium shall be defined and the particular circumstances that bring the condominium within the definition shall be stated. The nature and inception date of prior occupancy of the property being converted shall be stated.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-420. Financial matters, conversion condominium.

- A. The provisions for capital reserves described in the section captioned "Financial Matters" shall conform with 18VAC48-30-320 and shall be supplemented by the information set forth in subsections B and C of this section.
- B. The section shall state the aggregate replacement cost of all physical assets whose replacement costs will constitute regular common expenses and whose expected useful lives are 10 years or less. For the purposes of this subsection, an expected useful life that is stated as being within a range of years pursuant to subsection E of 18VAC48-30-440 shall be deemed to be 10 years or less, if the lower limit of such range is 10 years or less. The total common expense assessments per unit that would be necessary in order to accumulate an amount of capital reserves equal to such aggregate replacement cost shall be stated.

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- C. The section shall state the amount of capital reserves that will be accumulated by the unit owners' association during the period of declarant control together with any provisions of the condominium instruments specifying the rate at which reserves are to be accumulated thereafter. If any part of the capital reserves will or may be obtained other than through regular common expense and limited common expense assessments, such fact shall be stated.
 - D. The actual expenditures made over a three-year period on operation, maintenance, repair, or other upkeep of the property prior to its conversion to condominium shall be set forth in tabular form as an exhibit immediately preceding or following the budget attached to the public offering statement pursuant to subsection C of 18VAC48-30-320, and shall be presented in a manner that is not misleading. Distinction shall be made between expenditures that would have constituted regular common expenses and limited common expenses, and expenditures that would have been borne by unit owners individually if the property had been converted to a condominium prior to the commencement of the three-year period. To the extent that it is impossible or impracticable to so distinguish the expenditures it shall be assumed that they would have constituted regular common expenses or limited common expenses.

Both types of expenditures shall be cumulatively broken down on a per unit basis in the same proportion that common expenses are or will actually be assessed against the condominium units. The three-year period to which this subsection refers shall be the most recent three-year period prior to application for registration during which the property was occupied and for which expenditure information is available. The expenditure information shall indicate the years for which expenditures are stated. If any portion of the property being converted to condominium was not occupied for the full three-year period, expenditure information shall be set forth only for the entire time period that portion of the property was occupied. The "Financial Matters" section shall direct the purchaser's attention to the expenditure information.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-430. Present condition of conversion condominium.

- A. The section captioned "Present Condition of the Condominium" shall contain a statement of the approximate dates of original construction or installation of all physical assets in the condominium. A single construction or installation date may be stated for all of the physical assets (i) in the condominium, (ii) within a distinctly identifiable portion of the condominium, or (iii) within a distinctly identifiable category of physical assets. A statement made pursuant to the preceding sentence shall include a separate reference to the construction or installation date of any physical asset within a stated group of physical assets that was constructed or installed significantly earlier than the construction or installation date indicated for the group generally. No statement shall be made that a

physical asset or portion thereof has been repaired, altered, improved, or replaced subsequent to its construction or installation unless the approximate date, nature, and extent of such repair, alteration, improvement, or replacement is also stated.

- B. Subject to the exceptions provided in subsections D, E, and F of this section, the section captioned "Present Condition of the Condominium" shall contain a description of the present condition of all physical assets within the condominium. The description of present condition shall disclose all structural defects and incapacities of major utility installations to perform their intended functions as would be observable, detectable, or deducible by means of standard inspection and investigative techniques employed by architects or professional engineers, as the case may be.
- C. The section shall indicate the dates of inspection by means of which the described present condition was determined; provided, however, that such inspections shall have been conducted not more than one year prior to the date of filing the application for registration. The section shall identify the party or parties by whom present condition was ascertained and shall indicate the relationship of such party or parties to the declarant.
- D. A single statement of the present condition of a class of physical assets shall suffice to disclose the present condition of each physical asset within the class; provided, however, that, unless subsection F of this section applies, such statement shall include a separate reference to the present condition of any physical asset within the class that is significantly different from the present condition indicated for the class generally.
- E. The description of present condition may include a statement that all structural components in the condominium or in a distinctly identifiable portion thereof are in sound condition except those for which structural defects are noted.
- F. In a case in which there are numerous physical assets within a class of physical assets and inspection of each such physical asset is impracticable, the description of present condition of all the physical assets within the class may be based upon an inspection of a number of them selected at random, provided that the number selected is large enough to yield a reasonably reliable sample and that the total number of physical assets within the class and the number selected are disclosed.
- G. The section shall include statements disclosing any environmental issues pertaining to the building and the surrounding area, to include but not be limited to:
1. The presence of any asbestos-containing material following an inspection of each building completed prior to July 1, 1978, as well as whether any response actions have been or will need to be taken as required by § 55-79.94 A 5 of the Code of Virginia;

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2. Any known information on lead-based paint and lead-based paint hazards in each building constructed prior to 1978 pursuant to the Residential Lead-Based Paint Hazard Reduction Act of 1992 - Title X (42 USC § 4851 et seq.); and
 3. Any obligations related to the declarant's participation in voluntary or nonvoluntary remediation activities.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-440. Replacement requirements in conversion condominium.

- A. Subject to the exceptions provided in subsections B and H of this section, the section captioned "Replacement Requirements" shall state the expected useful lives of all physical assets in the condominium. The section shall state that expected useful lives run from the date of the inspection by means of which the expected useful lives were determined. Such inspection date shall be stated.
- B. A single statement of the expected useful life of a class of physical assets shall suffice to disclose the expected useful life of each physical asset within the class; provided, however, that such statement shall include a separate reference to the expected useful life of any physical asset within such class that is significantly shorter than the expected useful life indicated for the class generally.
- C. An expected useful life may be qualified. A qualified expected useful life is an expected useful life expressly conditioned upon a given use or level of maintenance or other factor affecting longevity. No use, level of maintenance, or other factor affecting longevity shall be stated as a qualification unless such use, level of maintenance, or factor affecting longevity is normal or reasonably anticipated for the physical asset involved. If appropriate, an expected useful life may be stated as being indefinite, subject to the stated qualification that the physical asset involved must be properly used and maintained. An expected useful life may be stated as being within a range of years, provided that the range is not so broad as to render the statement meaningless. In no event shall the number of years constituting the lower limit of such range be less than two-thirds of the number of years constituting the upper limit.
- D. Subject to the exceptions provided in subsections E and H of this section, the section captioned "Replacement Requirements" shall state the replacement costs of all physical assets in the condominium including those whose expected useful lives are stated as being indefinite.
- E. A statement of the replacement cost of a representative member of a class of physical assets shall suffice to disclose the replacement cost of each physical asset within the class; provided, however, that such statement shall include a separate reference to the

replacement cost of any physical asset within the class that is significantly greater than the replacement cost indicated for the representative member of the class.

- F. Distinction shall be made between replacement costs that will be common expenses and replacement costs that will be borne by unit owners individually. The latter type of replacement costs shall be broken down on a per unit basis. The purchaser's attention shall be directed to the "Financial Matters" section for an indication of the amount of the former type of replacement costs.
- G. In any case in which the replacement cost of a physical asset may vary depending upon the circumstances surrounding its replacement, the stated replacement cost shall reflect the circumstances under which replacement will most probably be undertaken.
- H. A single expected useful life and an aggregate replacement cost may be stated for all of the structural components of a building or structure that have both (i) the same expected useful lives and (ii) replacement costs that will constitute regular common expenses. A statement made pursuant to the preceding sentence shall be accompanied by statements of the expected useful lives and replacement costs, stated on a per unit basis, of all of the structural components of the building or structure whose expected useful lives differ from the general expected useful life or whose replacement costs will be borne by unit owners individually.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-450. Notice to tenants.

No notice to terminate tenancy of a unit provided for by subsection B of § 55-79.94 of the Code of Virginia shall be given prior to the registration of the condominium including such unit as to which the tenancy is to be terminated.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

Part VI

Post-Registration Provisions

18VAC48-30-460. Minimum post-registration reporting requirements.

A. Subsequent to the issuance of a registration for a condominium by the board, the declarant of a condominium shall:

1. File an annual report in accordance with § 55-79.93 of the Code of Virginia and this chapter.
2. File a copy of the formal notice to the tenants of a conversion condominium upon delivery or no later than 15 days after delivery to such tenants in accordance with subsection B of § 55-79.94.
3. Upon the occurrence of a material or nonmaterial change, file an amended public offering statement or substituted public offering statement in accordance with the provisions of 18VAC48-30-480 or 18VAC48-30-490, as applicable.
4. Notify the board of a change in the bond or letter of credit, as applicable, required by §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia.
5. File a complete application for registration of unregistered additional units upon the expansion of the condominium or the formation of units out of additional land. Notwithstanding the preceding, nonresidential units created out of convertible space need not be registered. Documents on file with the board and not changed with the creation of additional units need not be refiled provided that the application indicates that such documents are unchanged.
6. Notify the board of transition of control of the unit owners' association.
7. Notify the board upon the transfer of special declarant rights to a successor declarant.
8. Submit appropriate documentation to the board once the registration is eligible for termination.
9. Submit to the board any other document or information that may include information or documents that have been amended or may not have existed previously that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.

10. Submit to the board any document or information to make the registration file accurate and complete.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require a declarant to provide information or documents, or amendments thereof, to assure full and fair disclosure to prospective purchasers and to ensure compliance with the Condominium Act and this chapter.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-470. Amendment of public offering statement.

Any amendment of the public offering statement or substituted public offering statement shall comply with this chapter.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-480. Nonmaterial changes to the public offering statement.

A. Changes to the public offering statement that are not material shall be filed with the board but shall not be deemed an amendment of the public offering statement for the purposes of this chapter and shall not give rise to a renewed right of rescission in any purchase. Nonmaterial changes to the public offering statement include, but may not be limited to, the following:

1. Correction of spelling, grammar, omission, or other similar errors not affecting the substance of the public offering statement;
2. Changes in presentation or format;
3. Substitution of an executed, filed, or recorded copy of a document for the otherwise substantially identical unexecuted, unfiled, or unrecorded copy of the document that was previously submitted;
4. Inclusion of updated information such as identification or description of the current officers and directors of the declarant;
5. Disclosure of completion of improvements for improvements that were previously proposed or not complete;
6. Changes in real estate tax assessment or rate or modifications related to those changes;

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Materials contained in this agenda are proposed for inclusion and are to be considered for regulation or official Board position.
7. Changes in utility charges or rates or modifications related to those changes;
 8. Adoption of a new budget that does not result in a significant change in the common expense assessment or significantly impact the rights or obligations of the prospective purchasers;
 9. Modifications related to changes in insurance company or financial institution, policy, or amount for bonds or letters of credit required pursuant to §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia;
 10. Changes in management agent or common interest community manager; and
 11. Any change that is the result of orderly development of the condominium in accordance with the condominium instruments as described in the public offering statement.

B. Nonmaterial changes to the public offering statement shall be submitted with the effective date of the changes detailed. All changes shall be clearly represented in the documentation presented. The additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted, and any documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strike-throughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided. In addition, the declarant shall include a statement with the submission of the declarant's plans, if any, to deliver the public offering statement to purchasers pursuant to subdivision 2 of § 55-79.88 of the Code of Virginia.

C. The board has the sole discretion for determining whether a change is nonmaterial. The declarant will be notified in writing within 15 days of receipt by the board if the submitted changes are determined to be material. Should a change be submitted as nonmaterial but determined to be a material change during review, the requirements contained in 18VAC48-30-470 and 18VAC48-30-490 shall be applicable.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-490. Filing of amended public offering statement.

A. The declarant shall promptly file with the board for review a copy of the amended public offering statement or substituted public offering statement together with a copy of a summary of proposed amendments that shall be distributed to purchasers during the board review period. The summary of proposed amendments shall enumerate the amendments to the public offering statement submitted for board review and include a

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statement that the amendments to the public offering statement have been filed with the board but have not yet been accepted. The form of the submission is at the discretion of the declarant provided, however, that (i) all amendments are clearly represented in the documentation presented, (ii) the additions and deletions of text in the public offering statement and exhibits shall be identified by underlining and striking through text to be added and deleted, and (iii) any documents being added to or deleted from the contents of the public offering statement shall be clearly and accurately reflected in the table of contents utilizing underlines and strike-throughs for additions and deletions. In addition to the copies showing edits to the text, a clean copy of all new and amended documents shall be provided.

- B. The amended public offering statement submitted to the board for review shall include the effective date of the amendments.
- C. The board shall issue a notice of filing within five business days following receipt of the amended public offering statement.
- D. Within 30 days of the issuance of the notice of filing required by subsection C of this section, the board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines that the amended public offering statement complies with this chapter, it shall notify the declarant in writing and confirm the new effective date of the public offering statement.
- E. If the board's review determines that the amended public offering statement does not comply with this chapter, it shall immediately notify the declarant in writing that the review has determined the amended public offering statement is not in compliance and shall specify the particulars of such noncompliance. The declarant shall then have 20 days in which to correct the particulars of noncompliance identified by the board. The declarant may, prior to the completion of the 20-day correction period, request an extension in writing of the 20-day correction period. Upon expiration of the 20-day correction period, if requested corrections have not been made or a request for extension properly received, the board may issue a temporary cease and desist order in accordance with § 55-79.100 (b) of the Code of Virginia to require the cessation of sales until such time as affirmative action as directed by the board is taken. Use of the noncompliant public offering statement may result in further action by the board pursuant to §§ 55-79.100, 55-79.101, and 55-79.103 of the Code of Virginia.
- F. Notwithstanding an extension of the 30-day period for review agreed to in writing by the board and declarant, if the board does not perform the required review of the public offering statement in accordance with subsection D of this section, the amendment shall be deemed to comply with 18VAC48-30-160 through 18VAC48-30-380, and the new effective date shall be the effective date of the amendment provided pursuant to subsection B of this section.

- G. In each case in which an amended document is filed pursuant to this section and the manner of its amendment is not apparent on the face of the document, the declarant shall provide an indication of the manner and extent of amendment.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-500. Current public offering statement.

- A. Upon issuance of an effective date by the board, any purchasers who received a public offering statement and summary of proposed amendments during the board review period pursuant to subsection A of 18VAC48-30-490 shall be provided with the public offering statement as accepted by the board. A public offering statement remains current until such time as the occurrence of a material change requires amendment of the public offering statement pursuant to this chapter and a new effective date is issued by the board.
- B. Upon issuance of an effective date by the board, a public offering statement remains current until such time as a new effective date is established pursuant to this chapter.
- C. Notwithstanding the board's authority to issue a cease and desist order pursuant to § 55-79.100 of the Code of Virginia, the filing of an amended public offering statement shall not require the declarant to cease sales provided that the declarant provides to purchasers the summary of proposed amendments pursuant to subsection A of 18VAC48-30-490 pending the issuance of a new effective date by the board.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-510. Public offering statement not current; notification of purchasers.

- A. A purchaser who has been delivered a public offering statement that is not current due to a material change and was not provided with the summary of proposed amendments containing the proposed changes to the amended public offering statement pursuant to subsection A of 18VAC48-30-490 pending the issuance of a new effective date by the board shall be notified of such fact by the declarant.
- B. A purchaser who has been delivered a public offering statement and summary of proposed amendments pursuant to subsection A of 18VAC48-30-490, but the amended public offering statement is determined to be noncompliant in accordance with subsection E of 18VAC48-30-490 shall be notified of such fact by the declarant.
1. The notification shall indicate that any contract for disposition of a condominium unit may be canceled by the purchaser pursuant to subdivision 2 of § 55-79.88 of the Code of Virginia.

2. The declarant shall file a copy of the notification with the board and provide proof that such notification has been delivered to all purchasers under contract.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-520. Provisions applicable to substituted public offering statement and prospectus.

- A. The provisions of 18VAC48-30-470 through 18VAC48-30-510 shall apply to a substituted public offering statement in the same manner and to the same extent that they apply to public offering statements.
- B. The provisions of 18VAC48-30-470 through 18VAC48-30-510 shall apply to a prospectus only to the extent that amendment of the information or documents attached to the prospectus pursuant to 18VAC48-30-380 is required or permitted. The body of the prospectus shall be amended only as provided in applicable securities law. The declarant shall immediately file with the board any amendments to the body of the prospectus and, upon receipt thereof, the board shall notify the declarant in writing and confirm the new effective date for use of the prospectus. A prospectus is current so long as it is effective under applicable securities law and the information and attached documents are current under the provisions of 18VAC48-30-490. The declarant shall immediately notify the board if the prospectus ceases being effective. If no prospectus is effective and the declarant proposes to continue offering condominium units, the declarant shall file a public offering statement with the board pursuant to 18VAC48-30-490.
- C. The provisions of 18VAC48-30-510 shall apply to a prospectus in the same manner and to the same extent that they apply to a public offering statement.
- D. In an annual report involving a prospectus, the declarant shall comply with all of the provisions of 18VAC48-30-540 applicable to public offering statements and, in addition, shall certify that an effective prospectus is available for delivery to purchasers and shall indicate the declarant's plans or expectations regarding the continuing effectiveness of the prospectus.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-530. Filing of phase amendment application.

- A. A phase amendment application shall be filed when adding land to or converting land in the condominium, provided that no such application need be filed for units previously registered. Such phase amendment application shall be accompanied by the fee provided for in 18VAC48-30-100 and shall be subject to all of the provisions of 18VAC48-30-90 through 18VAC48-30-150. Documents on file with the board that have not changed in

connection with the additional units need not be refiled, provided that the phase amendment application indicates that such documents are unchanged.

B. The application shall include a new or amended bond or letter of credit required pursuant to § 55-79.84:1 of the Code of Virginia for the additional units.

C. The board shall review the phase amendment application and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines the phase amendment application complies with this chapter, it shall issue an amended order of registration for the condominium and shall provide that any previous orders and designations of the form, content, and effective date of the public offering statement, substituted public offering statement, or prospectus to be used are superseded. If the board's review determines that the phase amendment application is not complete, the board shall correspond with the declarant to specify the particulars that must be completed to obtain compliance with this chapter.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-540. Annual report by declarant.

- A. A declarant shall file an annual report on a form provided by the board to update the material contained in the registration file at least 30 days prior to the anniversary date of the order registering the condominium. Prior to filing the annual report required by § 55-79.93 of the Code of Virginia, the declarant shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the declarant shall so certify in the annual report. If such public offering statement is not current, the declarant shall amend the public offering statement, and the annual report shall, in that event, include a filing in accordance with 18VAC48-30-490.
- B. The annual report shall contain, but may not be limited to, the following:
1. Current contact information for the declarant;
 2. Current contact information for the declarant's attorney, if applicable;
 3. Date of the public offering statement currently being delivered to purchasers;
 4. Date the condominium instruments were recorded and locality wherein recorded;
 5. Number of phases registered with the board, if applicable;
 6. Number of phases recorded, if applicable;
 7. Number of units recorded;

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8. Number of units conveyed;
 9. Status of completion of all common elements within the condominium;
 10. Status of declarant control;
 11. Whether the declarant is current in the payment of assessments; and
 12. Current evidence from the surety or financial institution of any bond or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant to §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia. Such verification shall provide the following:
 - a. Principal of bond or letter of credit;
 - b. Beneficiary of bond or letter of credit;
 - c. Name of the surety or financial institution that issued the bond or letter of credit;
 - d. Bond or letter of credit number as assigned by the issuer;
 - e. The dollar amount; and
 - f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-550. Board review of annual report.

- A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.
- B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to § 55-79.100, 55-79.101, or 55-79.103 of the Code of Virginia for failing to file an annual report as required by § 55-79.93 of the Code of Virginia.
- C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be deemed to comply with § 55-79.93 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-560. Transition of control of unit owners' association.

Upon transition of control of the association to the unit owners following the period of declarant control, the declarant shall, in addition to the requirements contained in subsection H of § 55-79.74 of the Code of Virginia, notify the board in writing of the date of such transition and provide the name and contact information for members of the board of directors of the unit owners' association or the association's common interest community manager.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015; amended Virginia Register Volume 35, Issue 17, eff. May 15, 2019.

18VAC48-30-570. Return of assessment bond or letter of credit to declarant.

- A. The declarant of a condominium required to post a bond or letter of credit pursuant to § 55-79.84:1 of the Code of Virginia shall maintain such bond or letter of credit for all units registered with the board until the declarant owns less than 10% of the units in the condominium and is current in the payment of assessments. For condominiums containing less than 10 units, the bond or letter of credit shall be maintained until the declarant owns only one unit.
- B. The declarant shall submit a written request to the board for the return of the bond or letter of credit. The written request shall attest that the declarant (i) owns less than 10% of the units or for condominiums containing less than 10 units, that the declarant owns only one unit and (ii) is current in the payment of assessments. The written request shall provide contact information for the unit owners' association.
- C. Upon receipt of the written request from the declarant, the board shall send a request to the unit owners' association to confirm the information supplied by the declarant. The person certifying the information on behalf of the unit owners' association must not be affiliated with the declarant. The managing agent may confirm the information supplied by the declarant.
- D. The board shall return the bond or letter of credit to the declarant if (i) the unit owners' association confirms that the declarant is current in the payment of assessments and owns less than 10% of the units in the condominium or (ii) no response is received from the unit owners' association within 90 days. The 90-day time frame in clause (ii) of this subsection may be extended at the discretion of the board.
- E. If the unit owners' association attests the declarant is not current in the payment of assessments, the board shall retain the bond or letter of credit until evidence is received satisfactory to the board that the declarant is current in the payment of assessments.

- F. The board may ask for additional information from the unit owners' association or the declarant as needed to confirm compliance with § 55-79.84:1 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-580. Return of completion bond or letter of credit to declarant.

A bond on file with the board pursuant to § 55-79.58:1 of the Code of Virginia may be returned to the declarant upon written request. Such request shall include a copy of the recorded plat or plan showing completion or documentation acceptable to the board that the improvements to the common elements for which the bond was submitted is completed to the extent of the declarant's obligation.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-590. Return of bond or letter of credit upon termination of registration.

Upon issuance of an order of termination of the condominium registration pursuant to 18VAC48-30-610 and if the bond or letter of credit on file with the board has not been returned to the declarant or the declarant's agent previously, it will be considered for return in accordance with 18VAC48-30-570 or 18VAC48-30-580.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-600. Maintenance of bond or letter of credit.

- A. The declarant shall report the extension, cancellation, amendment, expiration, termination, or any other change of any bond or letter of credit submitted in accordance with §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia within five days of the change.
- B. The board at any time may request verification from the declarant of the status of a bond or letter of credit on file with the board. Such verification shall comply with the provisions of subdivision B 12 of 18VAC48-30-540.
- C. Failure to report a change in the bond or letter of credit in accordance with this section shall result in further action by the board pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-610. Termination of condominium registration.

- A. The condominium registration shall be terminated upon receipt of documentation of one of the following:
1. In accordance with § 55-79.93 of the Code of Virginia, an annual report filed pursuant to 18VAC48-30-540 indicates that all units in the condominium have been disposed of and all periods for conversion or expansion have expired.
 2. Written notification is received from the declarant attesting that all units have been disposed of and that all periods for conversion or expansion have expired and all common elements have been completed.
 3. Written notification is received from the declarant requesting termination pursuant to § 55-79.72:1 of the Code of Virginia. Should the declarant later choose to offer condominium units in a condominium for which the registration has been terminated in accordance with this subsection, prior to offering a condominium unit, the declarant must submit a new application for registration of the condominium, meet all requirements in effect at the time of application, and be issued an order of registration for the condominium by the board.
- B. Upon receipt and review of documentation pursuant to subsection A of this section, the board shall issue an order of termination for the condominium registration. The board may request additional information as necessary during the review of the submitted documentation to ensure that the condominium registration is eligible for termination.
- C. The board shall send a copy of the order of termination for the condominium registration to the association.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-620. Administrative termination of condominium registration.

In accordance with subsection B of § 55-79.93:2 of the Code of Virginia, the board may administratively terminate the registration of a condominium. Prior to the administrative termination of the registration, the board shall send written notice of its intent to terminate the registration to all known parties associated with the condominium, including, but not limited to, the registered agent, officer or officers of the unit owners' association, declarant's and association's attorneys, and principal or principals of the declarant. Such written notice shall be given to the parties by mail or otherwise if acknowledged by them in writing.

The board shall issue an order of termination for the condominium registration if (i) a response is not received within 30 days after sending the written notice or (ii) the response received does not indicate termination of the registration is inappropriate in accordance with Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia and this chapter.

Nothing contained in this section shall prevent the board from taking further action as allowed by law including issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-630. Notification of successor declarant and transfer of special declarant rights.

- A. In the event the special declarant rights of a condominium are transferred to a successor in accordance with § 55-79.74:3 of the Code of Virginia, the successor declarant shall notify the board within 30 days. Before units may be offered for sale, the successor declarant shall submit the following to the board:
1. Completed application for the successor declarant;
 2. Copy of the recorded document evidencing the transfer;
 3. Copies of all condominium instruments that were amended to reflect the successor or transfer of special declarant rights;
 4. A public offering statement amended in accordance with this chapter;
 5. All bonds or letters of credit required pursuant to §§ 55-79.58:1, 55-79.84:1, and 55-79.95 of the Code of Virginia; and
 6. Other documents that may be required to ensure compliance with Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia and this chapter.
- B. Documents on file with the board that have not changed in connection with the transfer need not be refiled, provided that the application for successor declarant indicates that such documents are unchanged.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-640. Reporting of other changes to the condominium project.

Any other change made or known by the declarant that may affect the accuracy or completeness of the condominium registration file shall be promptly reported to the board. Such change may include but is not limited to the name of the declarant, name of the condominium project, or any other changes in information submitted in accordance with § 55-79.89 of the Code of Virginia. The board may request additional information as necessary to ensure compliance with Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia and this chapter.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

Part VII

Board Authority and Standards of Conduct

18VAC48-30-650. Grounds for disciplinary action.

The board may revoke a registration upon a finding that the registration is not in compliance with, or the declarant has violated, any provision of the regulations of the board or Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia. Additional action may include issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-660. Registration of condominium required.

No declarant or individual or entity acting on behalf of the declarant shall offer a condominium unit prior to the registration of the condominium including such unit.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-670. Condominium advertising standards.

- A. No promise, assertion, representation, or statement of fact or opinion in connection with a condominium marketing activity shall be made that is false, inaccurate, or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances, or features of the condominium or a condominium unit.
- B. No promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity shall indicate that an improvement will be built or placed on the condominium unless the improvement is a proposed improvement within the meaning of subsection C of 18VAC48-30-120.
- C. No promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity and relating to a condominium unit not registered shall, by its express terms, induce, solicit, or encourage a prospective purchaser to leave Virginia for the purpose of executing a contract for sale or lease of the condominium unit or performing some other act that would create or purport to create a legal or equitable

interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-680. Response to inquiry and provision of records.

- A. The declarant must respond within 15 days to a request by the board or any of its agents regarding any complaint filed with the department. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.
- B. Unless otherwise specified by the board, the declarant shall produce to the board or any of its agents within 15 days of the request any document, book, or record concerning any transaction in which the declarant was involved, or for which the declarant is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 15-day period.
- C. A declarant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.
- D. With the exception of the requirements of subsections A and B of this section, a declarant must respond to an inquiry by the board or its agent within 21 days.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

18VAC48-30-690. Prohibited acts.

The following acts are prohibited and any violation may result in action by the board, including but not limited to issuance of a temporary cease and desist order in accordance with § 55-79.100 (b) of the Code of Virginia:

- 1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board, Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, or Chapter 4.1 (§ 55-79.1 et seq.) or Chapter 4.2 (§ 55-79.39 et seq.) of Title 55 of the Code of Virginia.
- 2. Obtaining or attempting to obtain a registration by false or fraudulent representation, or maintaining a registration by false or fraudulent representation.

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Materials contained herein are not to be construed as regulation or official Board position.
3. Failing to comply with 18VAC48-30-80 in offering literature.
 4. Failing to alter or amend the public offering statement as directed in accordance with 18VAC48-30-390 or 18VAC48-30-490.
 5. Providing information to purchasers in a manner that willfully and intentionally fails to promote full and fair disclosure.
 6. Failing to provide information or documents, or amendments thereof, in accordance with subsection B of 18VAC48-30-460.
 7. Failing to comply with the post-registration requirements of 18VAC48-30-460, 18VAC48-30-470, 18VAC48-30-480, 18VAC48-30-490, 18VAC48-30-500, 18VAC48-30-510, 18VAC48-30-520, 18VAC48-30-530, and 18VAC48-30-540.
 8. Failing to give notice to a purchaser in accordance with 18VAC48-30-510.
 9. Failing to give notice to the board of transition of control of unit owners' association in accordance with 18VAC48-30-560.
 10. Failing to transition control of the unit owners' association in accordance with § 55-79.74 of the Code of Virginia.
 11. Failing to turn over books and records in accordance with subsection H of § 55-79.74 of the Code of Virginia.
 12. Providing false information or misrepresenting an affiliation with an association in seeking return of a bond or letter of credit in accordance with 18VAC48-30-570 or 18VAC48-30-580.
 13. Filing false or misleading information in the course of terminating a registration in accordance with 18VAC48-30-610 or 18VAC48-30-620.
 14. Failing to comply with 18VAC48-30-630 and 18VAC48-30-640.
 15. Failing to comply with the advertising standards contained in 18VAC48-30-670.

Historical Notes:

Derived from Virginia Register Volume 31, Issue 20, eff. August 1, 2015.

NOTICE

Included in this booklet are relevant excerpts from the Code of Virginia. Please note that the Virginia General Assembly is responsible for creating and amending the Code, not the Common Interest Community Board. The version contained herein contains all changes, if any, that have been made by the General Assembly through the 2018 session. Any changes made during the 2018 session became effective July 1, 2018, unless otherwise noted. It is your responsibility to stay informed of revisions to the regulations and the statutes governing time-shares. Please consult the General Assembly or your local library for annual changes.

You can access the Code of Virginia online at <http://law.lis.virginia.gov/vacode>

Code of Virginia

Title 55, Chapter 4.2

§ 55-79.39. How chapter cited.

This chapter shall be known and may be cited as the "Condominium Act."

1974, c. 416.

§ 55-79.40. Application and construction of chapter.

A. This chapter shall apply to all condominiums and to all horizontal property regimes or condominium projects. For the purposes of this chapter, the terms "horizontal property regime" and "condominium project" shall be deemed to correspond to the term "condominium"; the term "apartment" shall be deemed to correspond to the term "unit"; the term "co-owner" shall be deemed to correspond to the term "unit owner"; the term "council of co-owners" shall be deemed to correspond to the term "unit owners' association"; the term "developer" shall be deemed to correspond to the term "declarant"; the term "general common elements" shall be deemed to correspond to the term "common elements"; and the terms "master deed" and "master lease" shall be deemed to correspond to the term "declaration" and shall be deemed included in the term "condominium instruments." This chapter shall be deemed to supersede the Horizontal Property Act, §§ 55-79.1 through 55-79.38, and no condominium shall be established under the latter on or after July 1, 1974. But this chapter shall not be construed to affect the validity of any provision of any condominium instrument recorded prior to July 1, 1974. Nor shall Article 4 (§ 55-79.86 et seq.) of this chapter be deemed to supersede §§ 55-79.16 through 55-79.31 of the Horizontal Property Act as to any condominiums established prior to the effective date hereof.

B. This chapter shall not apply to condominiums located outside the Commonwealth. Sections 55-79.88 through 55-79.94 and §§ 55-79.98 through 55-79.103 shall apply to all contracts for the

disposition of condominium units signed in the Commonwealth by any person, unless exempt under § 55-79.87.

C. Subsection B of § 55-79.79 and § 55-79.94 do not apply to the declarant of a conversion condominium if that declarant is a proprietary lessees' association that, immediately before the creation of the condominium, owned fee simple title to or a fee simple reversionary interest in the real estate described pursuant to subdivision (a) (3) of § 55-79.54.

1974, c. 416; 1982, c. 545; 1989, c. 63; 2006, c. 646.

§ 55-79.41. Definitions.

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of unit, *infra*.)

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this

chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

"Conversion condominium" means a condominium containing structures which before the recording of the declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of unit, *infra*.)

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to § 55-79.74:3; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55-79.74:3. The term "declarant" shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Executive organ" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

"Financial update" means an update of the financial information referenced in subdivisions C 2 through C 7 of § 55-79.97.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Meeting" or "meetings" means the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

"Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

"Officer" means any member of the executive organ or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Resale certificate update" means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of § 55-79.97. The update shall include a copy of the original resale certificate.

"Settlement agent" means the same as that term is defined in § 55-525.16.

"Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any

officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § 55-79.66.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of condominium unit, supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § 55-79.62.

"Unit owner" means one or more persons who own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person or persons holding an interest in a condominium unit solely as security for a debt.

1974, c. 416; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977; 2001, c. 715; 2002, c. 459; 2003, c. 442; 2008, cc. 851, 871; 2015, cc. 93, 410.

§ 55-79.41:1. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under power of attorney or use any other device to evade the limitations or prohibitions of this chapter or of the condominium instruments.

1982, c. 545.

§ 55-79.42. Separate assessments, titles and taxation.

Except as provided in the following sentence, each condominium unit constitutes for all purposes a separate parcel of real estate. If there is any unit owner other than the declarant, each unit, together with its common element interest, but excluding its common element interest in convertible land and in any withdrawable land within which the declarant has the right to create units and/or limited common elements shall be separately assessed and taxed. Each convertible land and withdrawable land within which the declarant has the right to create units and/or limited common elements shall be separately assessed and taxed against the declarant.

1974, c. 416; 1986, c. 324.

§ 55-79.42:1. Association charges.

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55-79.83, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55-79.97:1. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners'

association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

2015, c. 277.

§ 55-79.43. County and municipal ordinances; nonconforming conversion condominiums; applicability of Uniform Statewide Building Code; other regulations.

A. No zoning or other land use ordinance shall prohibit condominiums as such by reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any zoning or other land use ordinance which would permit a physically identical project or development under a different form of ownership. Except as provided in subsection E, no local government may require further review or approval to record condominium instruments when a property has previously complied with subdivision, site plan, zoning, or other applicable land use regulations.

B. Subdivision and site plan ordinances in any county, city or town in the Commonwealth shall apply to any condominium in the same manner as such ordinances would apply to a physically identical project or development under a different form of ownership; however, the declarant need not apply for or obtain subdivision approval to record condominium instruments if site plan approval for the land being submitted to the condominium has first been obtained.

C. During development of a condominium containing additional land or withdrawable land, phase lines created by the condominium instruments shall not be considered property lines for purposes of subdivision. If the condominium can no longer be expanded by the addition of additional land, then the owner of the land not part of the condominium shall subdivide such land prior to its conveyance, unless such land is subject to an approved site plan as provided in subsection B of this section, or prior to modification of such approved site plan. In the event of any conveyance of land within phase lines of the condominium, the condominium and any lot created by such conveyance shall be deemed to comply with the local subdivision ordinance, provided such land is subject to an approved site plan.

D. During the period of declarant control and as long as the declarant has the right to create additional units or to complete the common elements, the declarant has the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the unit owners' association without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the declarant is not the owner of the land.

In accordance with subsection B of § 55-79.80, once the declarant no longer has such authority, the executive organ of the unit owners' association, if any, and if not, then a representative duly appointed by the unit owners' association, shall have the authority to execute, file, and process any subdivision, site plan, zoning, or other land use applications or disclosures, including

conditional zoning proffers and agreements incidental thereto that do not create an affirmative obligation on the declarant without its consent, with respect to the common elements or applications affecting more than one unit, notwithstanding that the unit owners' association is not the owner of the land. Such applications shall not adversely affect the rights of the declarant to develop additional land. For purposes of obtaining building and occupancy permits, the unit owner (including the declarant if the declarant is the unit owner) shall apply for permits for the unit, and the unit owners' association shall apply for permits for the common elements, except that the declarant shall apply for permits for convertible land.

E. Counties, cities and towns may provide by ordinance that proposed conversion condominiums and the use thereof, which do not conform to the zoning, land use and site plan regulations of the respective county or city in which the property is located, shall secure a special use permit, a special exception, or variance, as the case may be, prior to such property becoming a conversion condominium. A request for such a special use permit, special exception, or variance filed on or after July 1, 1982, shall be granted if the applicant can demonstrate to the reasonable satisfaction of the local authority that the nonconformities are not likely to be adversely affected by the proposed conversion. No action on any such request shall be unreasonably delayed. In the event of an approved conversion to condominium ownership, counties, cities, towns, sanitary districts, or other political subdivisions may impose such charges and fees as are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions may be reasonably related to greater or additional services provided by the political subdivision as a result of the conversion.

F. Nothing in this section shall be construed to permit application of any provision of the Uniform Statewide Building Code (§ 36-97 et seq.) or any local ordinances regulating design and construction of roads, sewer and water lines, stormwater management facilities and other public infrastructure, to a condominium in a manner different from the manner in which such provision is applied to other buildings of similar physical form and nature of occupancy.

1974, c. 416; 1975, c. 415; 1982, c. 663; 1991, c. 497; 2006, cc. 9, 317.

§ 55-79.44. Eminent domain.

(a) If any portion of the common elements is taken by eminent domain, the award therefor shall be paid to the unit owners' association. Provided, however, that the portion of the award attributable to the taking of any permanently assigned limited common element shall be allocated by the decree to the unit owner of the unit to which that limited common element was so assigned at the time of the taking. If that limited common element was permanently assigned to more than one unit at the time of the taking, then the portion of the award attributable to the taking thereof shall be allocated in equal shares to the unit owners of the units to which it was so assigned or in such other shares as the condominium instruments may specify for this express purpose. A permanently assigned limited common element is a limited common element which cannot be reassigned or which can be reassigned only with the consent of the unit owner or owners of the unit or units to which it is assigned in accordance with § 55-79.57.

(b) If one or more units is taken by eminent domain, the undivided interest in the common elements appertaining to any such unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common elements as well as for his unit.

(c) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of such unit not taken, and the undivided interest in the common elements appertaining to any such units shall be reduced, in the case of each such unit, in proportion to the diminution in the fair market value of such unit resulting from the taking. The portions of undivided interest in the common elements thereby divested from the unit owners of any such units shall be reallocated among those units and the other units in the condominium in proportion to their respective undivided interests in the common elements, with any units partially taken participating in such reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common elements divested from him by operation of the first sentence of this subsection and not revested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(d) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the condominium instruments, then the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a common element. The court shall enter a decree reflecting the reallocation of undivided interests produced thereby, and the award shall include, without limitation, just compensation to the unit owner of such unit for his entire undivided interest in the common elements and for his entire unit.

(e) Votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, appertaining to any unit or units taken or partially taken by eminent domain, shall thenceforth appertain to the remaining units, being allocated to them in proportion to their relative voting strength in the unit owners' association, with any units partially taken participating in such reallocation as though their voting strength in the unit owners' association had been reduced in proportion to the reduction in their undivided interests in the common elements, and the decree of the court shall provide accordingly.

(f) The decree of the court shall require the recordation thereof among the land records of the city or county in which the condominium is located.

1974, c. 416; 1975, c. 415; 1982, c. 545; 1998, c. 32.

§ 55-79.45. How condominium may be created.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections A and B of § 55-79.58. The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, ex proprio vigore, to terminate the condominium.

1974, c. 416.

§ 55-79.46. Release of liens.

A. At the time of the conveyance to the first purchaser of each condominium unit following the recordation of the declaration, every mortgage, deed of trust, any other perfected lien, or any mechanics' or materialmen's liens, affecting all of the condominium or a greater portion thereof than the condominium unit conveyed, shall be paid and satisfied of record, or the declarant shall forthwith have the said condominium unit released of record from all such liens not so paid and satisfied. The provisions of this subsection shall not apply, however, to any withdrawable land in a contractable condominium, nor shall any provision of this subsection be construed to prohibit the unit owners' association from mortgaging or causing a deed of trust to be placed on any portion of the condominium within which no units are located, so long as any time limit specified pursuant to § 55-79.74 has expired, and so long as the bylaws authorize the same. This subsection shall not apply to any lien on more than one condominium unit in a condominium in which all units are restricted to nonresidential use and in which all unit owners whose condominium units will be subject to such lien expressly agree to assume or take subject thereto.

B. In the event that any lien, other than a deed of trust or mortgage, becomes effective against two or more condominium units subsequent to the creation of the condominium, any unit owner may remove his condominium unit from that lien by payment of the amount attributable to his condominium unit. Such amount shall be computed by reference to the liability for common expenses appertaining to that condominium unit pursuant to subsection D of § 55-79.83. Subsequent to such payment, discharge or other satisfaction, the unit owner of that condominium unit shall be entitled to have that lien released as to his condominium unit in accordance with the provisions of § 55-66.4, and the unit owners' association shall not assess, or have a valid lien against, that condominium unit for any portion of the common expenses incurred in connection with that lien, notwithstanding anything to the contrary in §§ 55-79.83 and 55-79.84.

1974, c. 416; 1985, c. 107; 1992, c. 72; 1993, c. 667.

§ 55-79.47. Description of condominium units.

After the creation of the condominium, no description of a condominium unit shall be deemed vague, uncertain, or otherwise insufficient or infirm which sets forth the identifying number of

that unit, the name of the condominium, the name of the city or county wherein the condominium is situated, and either the deed book and page number where the first page of the declaration is recorded or else the document number assigned to the declaration by the clerk. Any such description shall be deemed to include the undivided interest in the common elements appertaining to such unit even if such interest is not defined or referred to therein.

1974, c. 416; 1975, c. 415.

§ 55-79.48. Execution of condominium instruments.

The declaration and bylaws, and any amendments to either made pursuant to § 55-79.71 shall be duly executed by or on behalf of all of the owners and lessees of the submitted land. But the phrase "owners and lessees" in the preceding sentence and in § 55-79.63 does not include, in their capacity as such, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale and/or lease of a condominium unit, any lessee whose leasehold interest does not extend to any portion of the common elements, any person whose land is subject to an easement included in the condominium or, in the case of a leasehold condominium subject to any lease or leases executed before July 1, 1962, any lessor of the submitted land who is not a declarant.

1974, c. 416; 1980, c. 702; 1984, c. 21; 1990, c. 831.

§ 55-79.49. Recordation of condominium instruments.

All amendments and certifications of condominium instruments shall set forth the name of the city or county in which the condominium is located, and the deed book and page number where the first page of the declaration is recorded. All condominium instruments and all amendments and certifications thereof shall be recorded in every city and county wherein any portion of the condominium is located. The condominium instruments, amendments and certifications shall set forth the name of the condominium and either the deed book and page number where the first page of the declaration is recorded or the document number assigned to the declaration by the clerk. Wherever the phrase "city or county" appears in this chapter, the disjunctive shall be deemed to include the conjunctive and the singular shall be deemed to include the plural.

1974, c. 416; 1975, c. 415; 1982, c. 545.

§ 55-79.50. Construction of condominium instruments.

Except to the extent otherwise provided by the condominium instruments:

(a) The terms defined in § 55-79.41 shall be deemed to have the meanings therein specified wherever they appear in the condominium instruments unless the context otherwise requires.

(b) To the extent that walls, floors and/or ceilings are designated as the boundaries of the units or of any specified units, all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint,

finished flooring and any other materials constituting any part of the finished surfaces thereof, shall be deemed a part of such units, while all other portions of such walls, floors and/or ceilings shall be deemed a part of the common elements.

(c) If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common elements.

(d) Subject to the provisions of subsection (c) hereof, all space, interior partitions and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

(e) Any shutters, awnings, doors, windows, window boxes, doorsteps, porches, balconies, patios and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common element appertaining to that unit exclusively; provided that if a single unit's electrical master switch is located outside the designated boundaries of the unit, the switch and its cover shall be deemed a part of the common elements.

1974, c. 416; 1982, cc. 206, 545.

§ 55-79.51. Complementarity of condominium instruments; controlling construction.

The condominium instruments shall be construed together and shall be deemed to incorporate one another to the extent that any requirement of this chapter as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others. In the event of any conflict between the condominium instruments, the declaration shall control; but particular provisions shall control more general provisions, except that a construction conformable with the statute shall in all cases control over any construction inconsistent therewith.

1974, c. 416; 1975, c. 415.

§ 55-79.52. Validity of condominium instruments; discrimination prohibited.

A. All provisions of the condominium instruments shall be deemed severable, and any unlawful provision thereof shall be void.

B. No provision of the condominium instruments shall be deemed void by reason of the rule against perpetuities.

C. No restraint on alienation shall discriminate or be used to discriminate on any basis prohibited under the Virginia Fair Housing Law (§ 36-96.1 et seq.).

D. Subject to the provisions of subsection C, the rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the

condominium instruments restraining the alienation of condominium units other than such units as may be restricted to residential use only.

1974, c. 416; 1975, c. 415; 1998, cc. 32, 454.

§ 55-79.53. Compliance with condominium instruments.

A. The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive organ or any managing agent on behalf of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action. A unit owners' association shall have standing to sue in its own name for any claims or actions related to the common elements as provided in subsection B of § 55-79.80. Except as provided in subsection B, the prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382. This section shall not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § 8.01-382 in such actions.

B. In actions against a unit owner for nonpayment of assessments in which the unit owner has failed to pay assessments levied by the unit owners' association on more than one unit or such unit owner has had legal actions taken against him for nonpayment of any prior assessment and the prevailing party is the association or its executive organ or any managing agent on behalf of the association, the prevailing party shall be awarded reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in subsection A, even if the proceeding is settled prior to judgment. The delinquent unit owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the unit owners' association, whether any judicial proceedings are filed.

C. The condominium instruments may provide for arbitration of disputes or other means of alternative dispute resolution. Any such arbitration held in accordance with this subsection shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01. The place of any such arbitration or alternative dispute resolution shall be in the county or city in which the condominium is located, or as mutually agreed by the parties.

1974, c. 416; 1975, c. 415; 1993, c. 667; 1996, c. 977; 2012, c. 758; 2014, c. 569.

§ 55-79.54. Contents of declaration.

(a) The declaration for every condominium shall contain the following:

(1) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium."

(2) The name of the city or county in which the condominium is located.

(3) A legal description by metes and bounds of the land submitted to this chapter.

(4) A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries.

(5) A description or delineation of any limited common elements, other than those which are limited common elements by virtue of subsection (e) of § 55-79.50, showing or designating the unit or units to which each is assigned.

(6) A description or delineation of all common elements not within the boundaries of any convertible lands which may subsequently be assigned as limited common elements, together with a statement that (i) they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of § 55-79.57 or (ii) once assigned, the conditions under which they may be unassigned and converted to common elements in accordance with § 55-79.57.

(7) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 55-79.55.

(7a) A statement of the extent of the declarant's obligation to complete improvements labeled "(NOT YET COMPLETED)" or to begin and complete improvements labeled "(NOT YET BEGUN)" on plats recorded pursuant to the requirements of this chapter. Such statement shall be specific as to the type and quality of materials to be used, the size or capacity of the improvements, when material, and the time by which such improvements shall be completed.

(8) Such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land, the declaration shall also contain the following:

(1) A legal description by metes and bounds of each convertible land within the condominium.

(2) A statement of the maximum number of units that may be created within each such convertible land.

(3) A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use.

(4) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used, and architectural style.

(5) A description of all other improvements that may be made on each convertible land within the condominium.

(6) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein.

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (1), (4), (5), (6), and (7), and that item (3) need not be complied with if none of the units on other portions of the submitted land are restricted exclusively to residential use.

(c) If the condominium is an expandable condominium, the declaration shall also contain the following:

(1) The explicit reservation of an option to expand the condominium.

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations.

(3) A time limit, not exceeding 10 years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified. After the expiration of any period of declarant control reserved pursuant to subsection A of § 55-79.74, such time limit may be extended by an amendment to the declaration made pursuant to § 55-79.71.

(4) A legal description by metes and bounds of all land that may be added to the condominium, henceforth referred to as "additional land."

(5) A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations.

(6) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be added to the condominium.

(7) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium, or a statement that no assurances are made in that regard.

(8) A statement of the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium and the boundaries of those portions are fixed in accordance with item (6), the declaration shall also state the maximum number of units that may be created on each such portion added to the condominium. If portions of the additional land may be added to the condominium and the boundaries of those portions are not fixed in accordance with item (6), then the declaration shall also state the maximum number of units per acre that may be created on any such portion added to the condominium.

(9) A statement, with respect to the additional land and to any portion or portions thereof that may be added to the condominium, of the maximum percentage of the aggregate land and floor area of all units that may be created thereon that may be occupied by units not restricted exclusively to residential use.

(10) A statement of the extent to which any structures erected on any portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards.

(11) A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard.

(12) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard.

(13) A description of the declarant's reserved right, if any, to create limited common elements within any portion of the additional land added to the condominium, and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such portion, or a statement that no assurances are made in those regards.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (4), (5), (6), (7), (10), (11), (12), and (13), and that item (9) need not be complied with if none of the units on the submitted land are restricted exclusively to residential use.

(d) If the condominium is a contractable condominium, the declaration shall also contain the following:

(1) The explicit reservation of an option to contract the condominium.

(2) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations.

(3) A time limit, not exceeding 10 years from the recording of the declaration, upon which the option to contract the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified.

(4) A legal description by metes and bounds of all land that may be withdrawn from the condominium, henceforth referred to as "withdrawable land."

(5) A statement as to whether portions of the withdrawable land may be withdrawn from the condominium at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be withdrawn from the condominium.

(6) A legal description by metes and bounds of all of the submitted land to which the option to contract the condominium does not extend.

Provided, that plats may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (4), (5), and (6), and that item (6) shall not be construed in derogation of any right the declarant may have to terminate the condominium in accordance with the provisions of § 55-79.72:1.

(e) If the condominium is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium, the declaration shall set forth the city or county wherein the same are recorded and the deed book and page number where the first page of each such lease is recorded; and the declaration shall also contain the following:

(1) The date upon which each such lease is due to expire.

(2) A statement as to whether any land and/or improvements will be owned by the unit owners in fee simple, and if so, either (a) a description of the same, including without limitation a legal description by metes and bounds of any such land, or (b) a statement of any rights the unit owners shall have to remove such improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights.

(3) A statement of the rights the unit owners shall have to redeem the reversion or any of the reversions, or a statement that they shall have no such rights.

Provided, that after the recording of the declaration, no lessor who executed the same, and no

successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold interest of any unit owner who makes timely payment of his share of the rent to the person or persons designated in the declaration for the receipt of such rent and who otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a leasehold interest by the owner of the reversion or remainder shall not cause a merger of the leasehold and fee simple interests unless all leasehold interests in the condominium are thus acquired or reacquired.

(f) Wherever this section requires a legal description by metes and bounds of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient description of any easements that are submitted to this chapter or that may be added to or withdrawn from the condominium, as the case may be. In the case of each such easement, the declaration shall contain the following:

(1) A description of the permitted use or uses.

(2) If less than all of those entitled to the use of all of the units may utilize such easement, a statement of the relevant restrictions and limitations on utilization.

(3) If any persons other than those entitled to the use of the units may utilize such easement, a statement of the rights of others to utilization of the same.

(g) Wherever this section requires a legal description by metes and bounds of land that is submitted to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants in common or joint tenants with any other persons, and a separate legally sufficient description of all lands in which the unit owners shall or may be life tenants. No units shall be situated on any such lands, however, and the declaration shall describe the nature of the unit owners' estate therein. No such lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be shown instead on separate plats.

1974, c. 416; 1975, c. 415; 1977, c. 428; 1982, c. 545; 1993, c. 667; 1998, c. 32; 2012, c. 520.

§ 55-79.55. Allocation of interests in the common elements.

(a) The declaration may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55-79.58 an undivided interest in the common elements proportionate to either the size or par value of each unit.

(b) Otherwise, the declaration shall allocate to each such unit an equal undivided interest in the common elements, subject to the following exception: Each convertible space so depicted shall be allocated an undivided interest in the common elements proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common elements shall be allocated equally to the other units so depicted.

(c) The undivided interests in the common elements allocated in accordance with subsection (a) or (b) hereof shall add up to 1 if stated as fractions or 100% if stated as percentages.

(d) If, in accordance with subsection (a) or (b) hereof, an equal undivided interest in the common elements is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated.

(e) Otherwise, the undivided interest allocated to each unit in accordance with subsection (a) or (b) hereof shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith, containing three columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective areas or par values of those units and the fraction or percentage of undivided interest in the common elements allocated thereto.

(f) Except to the extent otherwise expressly provided by this chapter, the undivided interest in the common elements allocated to any unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the unit to which it appertains shall be void.

(g) The common elements shall not be subject to any suit for partition until and unless the condominium is terminated.

1974, c. 416.

§ 55-79.56. Reallocation of interests in common elements.

(a) If a condominium contains any convertible land or is an expandable condominium, then the declaration shall not allocate undivided interests in the common elements on the basis of par value unless the declaration:

(1) Prohibits the creation of any units not substantially identical to the units depicted on the plats and plans recorded pursuant to subsections A and B of § 55-79.58, or

(2) Prohibits the creation of any units not described pursuant to subdivision (b) (6) of § 55-79.54 (in the case of convertible lands) and subdivision (c) (12) of § 55-79.54 (in the case of additional land), and contains from the outset a statement of the par value that shall be assigned to every such unit that may be created.

(b) Interests in the common elements shall not be allocated to any units to be created within any convertible land or within any additional land until plats and plans depicting the same are recorded pursuant to subsection C of § 55-79.58. But simultaneously with the recording of such plats and plans the declarant shall execute and record an amendment to the declaration reallocating undivided interests in the common elements so that the units depicted on such plats

and plans shall be allocated undivided interests in the common elements on the same basis as the units depicted on the plats and plans recorded simultaneously with the declaration pursuant to subsections A and B of § 55-79.58.

(c) If all of a convertible space is converted into common elements, including without limitation limited common elements, then the undivided interest in the common elements appertaining to such space shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

(d) In the case of a leasehold condominium, if the expiration or termination of any lease causes a contraction of the condominium which reduces the number of units, then the undivided interest in the common elements appertaining to any units thereby withdrawn from the condominium shall thenceforth appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common elements. The principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall forthwith prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interests produced thereby.

1974, c. 416.

§ 55-79.57. Assignments of limited common elements; conversion to common element.

A. All assignments and reassignments of limited common elements shall be reflected by the condominium instruments. No limited common element shall be assigned or reassigned except in accordance with the provisions of this chapter. No amendment to any condominium instrument shall alter any rights or obligations with respect to any limited common elements without the consent of all unit owners adversely affected thereby as evidenced by their execution of such amendment, except to the extent that the condominium instruments expressly provided otherwise prior to the first assignment of that limited common element.

B. Unless expressly prohibited by the condominium instruments, a limited common element may be reassigned or converted to a common element upon written application of the unit owners concerned to the principal officer of the unit owners' association, or to such other officer or officers as the condominium instruments may specify. The officer or officers to whom such application is duly made shall forthwith prepare and execute an amendment to the declaration reassigning all rights and obligations with respect to the limited common element involved. Such amendment shall be executed by the unit owner or unit owners of the unit or units concerned and recorded by an officer of the unit owners' association or his agent following payment by the unit owner or unit owners of the unit or units concerned of all reasonable costs for the preparation, acknowledgment and recordation thereof. The amendment shall become effective when recorded.

C. A common element not previously assigned as a limited common element shall be so assigned

only in pursuance of subdivision (a) (6) of § 55-79.54. The amendment to the declaration making such an assignment shall be prepared and executed by the declarant, the principal officer of the unit owners' association, or by such other officer or officers as the condominium instruments may specify. Such amendment shall be recorded by the declarant or his agent, without charge to any unit owner, or by an officer of the unit owners' association or his agent following payment by the unit owner or unit owners of the unit or units concerned of all reasonable costs for the preparation, acknowledgment and recordation thereof. The amendment shall become effective when recorded, and the recordation thereof shall be conclusive evidence that the method prescribed pursuant to subdivision (a) (6) of § 55-79.54 was adhered to. A copy of the amendment shall be delivered to the unit owner or unit owners of the unit or units concerned. If executed by the declarant, such an amendment recorded prior to July 1, 1983, shall not be invalid because it was not prepared by an officer of the unit owners' association.

D. If the declarant does not prepare and record an amendment to the declaration to effect the assignment of common elements as limited common elements in accordance with rights reserved in the condominium instruments, but has reflected an intention to make such assignments in deeds conveying units, then the principal officer of the unit owners' association may prepare, execute and record such an amendment at any time after the declarant ceases to be a unit owner.

E. The declarant may unilaterally record an amendment to the declaration converting a limited common element appurtenant to a unit owned by the declarant into a common element as long as the declarant continues to own the unit.

1974, c. 416; 1983, c. 230; 1991, c. 497; 1998, c. 32

§ 55-79.58. Contents of plats and plans.

A. There shall be recorded simultaneously with the declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there is more than one such land the plats shall label each such land with one or more letters and/or numbers different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. The plats shall show the location and dimensions of any additional lands and shall label each such land as an additional land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the plats shall label

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each such land with one or more letters and/or numbers different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "(NOT YET BEGUN)," and which, if any, have been begun but have not been substantially completed by the use of the phrase "(NOT YET COMPLETED)." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and compliance with the provisions of this subsection by a licensed land surveyor, and the said surveyor shall certify in such document or on the face of the plat that all units or portions thereof depicted thereon pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

B. There shall also be recorded, simultaneously with the declaration, plans of every structure which contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of such structures, subject to the following exception: In the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any, of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified on their face or in another recorded document as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer or licensed land surveyor, and the said architect, engineer or land surveyor shall certify on the plans or in the recorded document that all units or portions thereof depicted thereon have been substantially completed.

C. When converting all or any portion of any convertible land, or adding additional land to an expandable condominium, the declarant shall record, with regard to any structures on the land being converted, or added, either plats of survey conforming to the requirements of subsection A

and plans conforming to the requirements of subsection B, or certifications, conforming to the certification requirements of said subsections, of plats and plans previously recorded pursuant to § 55-79.59.

D. Notwithstanding the provisions of subsection A and B, a time-share interest in a unit which has been subjected to a time-share instrument pursuant to § 55-367 may be conveyed prior to substantial completion of that unit if (i) a completion bond has been filed in compliance with subsection B of § 55-79.58:1 and remains in full force and effect until the unit is certified as substantially complete in accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring the time-share estate in the unit certifies to the purchaser in writing, based on information provided by the Common Interest Community Board, that the bond has been filed with the Common Interest Community Board.

E. When converting all or any portion of any convertible space into one or more units and/or limited common elements, the declarant shall record, with regard to the structure or portion thereof constituting that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit and/or limited common elements formed out of such space. Such plans shall be certified as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer or licensed land surveyor.

F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall be deemed equally applicable to limited common elements. The limited common elements shall be labeled as such, and each limited common element depicted on the plats and plans shall bear the identifying number or numbers of the unit or units to which it is assigned, if it has been assigned, unless the provisions of subsection (e) of § 55-79.50 make such designations unnecessary.

1974, c. 416; 1975, c. 415; 1984, c. 601; 1991, c. 497; 1999, c. 560; 2008, cc. 851, 871.

§ 55-79.58:1. Bond to insure completion of improvements.

A. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the declarant's obligation as stated in the declaration, of all improvements to the common elements of the condominium labeled in the plat or plats as "(NOT YET COMPLETED)" or "(NOT YET BEGUN)" located upon submitted land and which the declarant reasonably believes will not be substantially complete at the time of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful performance of the declarant's obligation to complete said improvements in strict conformity with the plans and specifications for the same as described in the declaration.

B. The declarant shall file with the Common Interest Community Board a bond entered into by the declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share interest is conveyed before the unit has been certified as substantially complete in accordance with subsections A and B of § 55-79.58. The bond required by this subsection shall

be conditioned upon the faithful performance of the declarant's obligation to complete said improvements in strict conformity with the plans and specifications for the same as described in the declaration.

C. All bonds required herein shall be executed by a surety company authorized to transact business in the Commonwealth of Virginia or by such other surety as is satisfactory to the Board.

D. The Board may promulgate reasonable regulations which govern the return of bonds submitted in accordance with this section.

1977, c. 428; 1988, c. 15; 1999, c. 560; 2008, cc. 851, 871.

§ 55-79.59. Preliminary recordation of plats and plans.

Plats and plans previously recorded pursuant to § 55-79.54 (a), (b) and (c) may be used in lieu of new plats and plans to satisfy in whole or in part the requirements of § 55-79.56 (b), § 55-79.61 B and/or § 55-79.63 if certifications thereof are recorded by the declarant in accordance with § 55-79.58 A and B; and if such certifications are recorded, the plats and plans which they certify shall be deemed recorded pursuant to § 55-79.58 C within the meaning of the three sections aforesaid. All condominium instruments for condominiums created prior to July 1, 1991, are hereby validated notwithstanding that the plats were prerecorded as if in compliance with this section and not recorded with amendments converting convertible land or adding additional land if the plats or subsequent amendments contained the required certifications.

1974, c. 416; 1991, c. 497.

§ 55-79.60. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, whether by reason of any deviation from the plats and plans in the construction, repair, renovation, restoration, or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist. The purpose of this section is to protect the unit owners, except in cases of willful and intentional misconduct by them or their agents or employees, and not to relieve the declarant or any contractor, subcontractor, or materialman of any liability which any of them may have by reason of any failure to adhere strictly to the plats and plans.

1974, c. 416.

§ 55-79.61. Conversion of convertible lands.

A. The declarant may convert all or any portion of any convertible land into one or more units and/or limited common elements subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection B of this section and

subsection C of § 55-79.58.

B. Simultaneously with the recording of plats and plans pursuant to subsection C of § 55-79.58, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common elements in accordance with subsection (b) of § 55-79.56. Such amendment shall describe or delineate the limited common elements formed out of the convertible land, showing or designating the unit or units to which each is assigned.

C. All convertible lands shall be deemed a part of the common elements except for such portions thereof as are converted in accordance with the provisions of this section. Until the expiration of the period during which conversion may occur or until actual conversion, whichever occurs first, the declarant alone shall be liable for real estate taxes assessed against the convertible land and any improvements thereon and all other expenses in connection with that real estate, and no other unit owner and no other portion of the condominium shall be subject to a claim for payment of those taxes or expenses, and unless the declaration provides otherwise, any income or proceeds from the convertible land and any improvements thereon shall inure to the declarant. No such conversion shall occur after 10 years from the recordation of the declaration, or such shorter period of time as the declaration may specify.

1974, c. 416; 1975, c. 415; 1986, c. 324; 1991, c. 497; 1993, c. 45; 2012, c. 520.

§ 55-79.62. Conversion of convertible spaces.

(a) The declarant may convert all or any portion of any convertible space into one or more units and/or common elements, including, without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) hereof and subsection B of § 55-79.58.

(b) Simultaneously with the recording of plats and plans pursuant to subsection E of § 55-79.58, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare and execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses not specially assessed, all as in the case of the subdivision of a unit in accordance with subsection D of § 55-79.70.

(d) Any convertible space not converted in accordance with the provisions of this section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such space, or portion or portions thereof, as though the same were a unit.

1974, c. 416; 1999, c. 560.

§ 55-79.63. Expansion of condominium.

No condominium shall be expanded except in accordance with the provisions of the declaration and of this chapter. Any such expansion shall be deemed to have occurred at the time of the recordation of plats and plans pursuant to subsection C of § 55-79.58, together with an amendment to the declaration, duly executed by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium. Such amendment shall contain a legal description by metes and bounds of the land added to the condominium, and shall reallocate undivided interests in the common elements in accordance with the provisions of subsection (b) of § 55-79.56. Such amendment may create convertible or withdrawable lands or both within the land added to the condominium, but this provision shall not be construed in derogation of the time limits imposed by or pursuant to subdivision (d) (3) of § 55-79.54 and subsection C of § 55-79.61.

1974, c. 416; 1975, c. 415.

§ 55-79.64. Contraction of condominium.

No condominium shall be contracted except in accordance with the provisions of the declaration and of this chapter. Any such contraction shall be deemed to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium. If portions of the withdrawable land were described pursuant to subdivision (d) (5) of § 55-79.54, then no such portion shall be so withdrawn after the conveyance of any unit on such portion. If no such portions were described, then none of the withdrawable land shall be withdrawn after the first conveyance of any unit thereon.

1974, c. 416.

§ 55-79.65. Easement to facilitate conversion and expansion.

Subject to any restrictions and limitations the condominium instruments may specify, the declarant shall have a transferable easement over and on the common elements for the purpose of making improvements on the submitted land and any additional land pursuant to the provisions of those instruments and of this chapter, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

1974, c. 416.

§ 55-79.66. Easement to facilitate sales.

The declarant and his duly authorized agents, representatives, and employees may maintain sales offices and/or model units on the submitted land if and only if the condominium instruments provide for the same and specify the rights of the declarant with regard to the number, size, location, and relocation thereof. Any such sales office or model unit which is not designated a unit by the condominium instruments shall become a common element as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights with regard thereto unless such sales office or model unit is removed forthwith from the submitted land in accordance with a right reserved in the condominium instruments to make such removal.

1974, c. 416.

§ 55-79.67. Declarant's obligation to complete and restore.

(a) No covenants, restrictions, limitations, or other representations or commitments in the condominium instruments with regard to anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium or never added thereto except to the extent that the condominium instruments so provide. But in the case of any covenant, restriction, limitation, or other representation or commitment in the condominium instruments or in any other agreement requiring the declarant to add all or any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations with regard to anything that is or is not to be done thereon or with regard thereto, or imposing any obligations with regard to anything that is or is not to be done on or with regard to the condominium or any portion thereof, this subsection shall not be construed to nullify, limit, or otherwise affect any such obligation.

(a1) The declarant shall complete all improvements labeled "(NOT YET COMPLETED)" on plats recorded pursuant to the requirements of this chapter unless the condominium instruments expressly exempt the declarant from such obligation, and shall, in the case of every improvement labeled "(NOT YET BEGUN)" on such plats, state in the declaration either the extent of the obligation to complete the same or that there is no such obligation.

(b) To the extent that damage is inflicted on any part of the condominium by any person or persons utilizing the easements reserved by the condominium instruments or created by §§ 55-79.65 and 55-79.66, the declarant together with the person or persons causing the same shall be jointly and severally liable for the prompt repair thereof and for the restoration of the same to a condition compatible with the remainder of the condominium.

1974, c. 416; 1975, c. 415.

§ 55-79.68. Alterations within units.

(a) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. But no unit owner shall do anything which would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

(b) If a unit owner acquires an adjoining unit, or an adjoining part of an adjoining unit, then such unit owner shall have the right to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may in whole or in part be a common element, so long as no portion of any bearing wall or bearing column is weakened or removed and no portion of any common element other than that partition is damaged, destroyed, or endangered. Such creation of doorways or other apertures shall not be deemed an alteration of boundaries within the meaning of § 55-79.69.

1974, c. 416.

§ 55-79.69. Relocation of boundaries between units.

A. If the condominium instruments expressly permit the relocation of boundaries between adjoining units, then the boundaries between such units may be relocated in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify. The boundaries between adjoining units shall not be relocated unless the condominium instruments expressly permit it.

B. If the unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate such boundaries, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of such unit owners, forthwith prepare and execute appropriate instruments pursuant to subsections C, D, and E.

C. An amendment to the declaration shall identify the units involved and shall state that the boundaries between those units are being relocated by agreement of the unit owners thereof, which amendment shall contain conveyancing between those unit owners. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate undivided interest in the common elements appertaining to those units, the amendment to the declaration shall reflect that reallocation.

D. If the unit owners of the units involved have specified in their written application a reasonable reallocation as between the units involved of the aggregate number of votes in the unit owners' association allocated to those units, an amendment to the bylaws shall reflect that reallocation and a proportionate reallocation of liability for common expenses as between those units.

E. Such plats and plans as may be necessary to show the altered boundaries between the units

involved together with their other boundaries shall be prepared, and the units depicted thereon shall bear their identifying numbers. Such plats and plans shall indicate the new dimensions of the units involved, and any change in the horizontal boundaries of either as a result of the relocation of their boundaries shall be identified with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the unit owners of the units involved of all reasonable costs for the preparation, acknowledgment and recordation thereof. Said instruments shall become effective when executed by the unit owners of the units involved and recorded, and the recordation thereof shall be conclusive evidence that the relocation of boundaries thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Any relocation of boundaries between adjoining units shall be governed by this section and not by § 55-79.70. Section 55-79.70 shall apply only to such subdivisions of units as are intended to result in the creation of two or more new units in place of the subdivided unit.

1974, c. 416; 1991, c. 497.

§ 55-79.70. Subdivision of units.

A. If the condominium instruments expressly permit the subdivision of any units, then such units may be subdivided in accordance with (i) the provisions of this section and (ii) any restrictions and limitations not otherwise unlawful which the condominium instruments may specify. No unit shall be subdivided unless the condominium instruments expressly permit it.

B. If the unit owner of any unit which may be subdivided desires to subdivide such unit, then the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall, upon written application of the subdivider, as such unit owner shall henceforth be referred to in this section, forthwith prepare and execute appropriate instruments pursuant to subsections C, D and E.

C. An amendment to the declaration shall assign new identifying numbers to the new units created by the subdivision of a unit and shall allocate to those units, on a reasonable basis acceptable to the subdivider, all of the undivided interest in the common elements appertaining to the subdivided unit. The new units shall jointly share all rights, and shall be equally liable jointly and severally for all obligations, with regard to any limited common elements assigned to the subdivided unit except to the extent that the subdivider may have specified in his written application that all or any portions of any limited common element assigned to the subdivided unit exclusively should be assigned to one or more, but less than all of the new units, in which case the amendment to the declaration shall reflect the desires of the subdivider as expressed in

such written application.

D. An amendment to the bylaws shall allocate to the new units, on a reasonable basis acceptable to the subdivider, the votes in the unit owners' association allocated to the subdivided unit, and shall reflect a proportionate allocation to the new units of the liability for common expenses formerly appertaining to the subdivided unit.

E. Such plats and plans as may be necessary to show the boundaries separating the new units together with their other boundaries shall be prepared, and the new units depicted thereon shall bear their new identifying numbers. Such plats and plans shall indicate the dimensions of the new units, and the horizontal boundaries thereof, if any, shall be identified thereon with reference to established datum. Such plats and plans shall be certified as to their accuracy and compliance with the provisions of this subsection (i) by a licensed land surveyor in the case of any plat and (ii) by a licensed architect, licensed engineer or licensed land surveyor in the case of any plan.

F. When appropriate instruments in accordance with the preceding subsections hereof have been prepared, executed, and acknowledged, they shall be recorded by an officer of the unit owners' association following payment by the subdivider of all reasonable costs for the preparation, acknowledgment and recordation thereof. Said instruments shall become effective when executed by the subdivider and recorded, and the recordation thereof shall be conclusive evidence that the subdivision thus effectuated did not violate any restrictions or limitations specified by the condominium instruments and that any reallocations made pursuant to subsections C and D were reasonable.

G. Notwithstanding the definition of "unit" found in § 55-79.41 and the provisions of subsection (d) of § 55-79.62, this section shall have no application to convertible spaces, and no such space shall be deemed a unit for the purposes of this section. However, this section shall apply to any units formed by the conversion of all or any portion of any such space, and any such unit shall be deemed a unit for the purposes of this section.

1974, c. 416; 1991, c. 497.

§ 55-79.71. Amendment of condominium instruments.

A. If there is no unit owner other than the declarant, the declarant may unilaterally amend the condominium instruments, and the amendment shall become effective upon the recordation thereof if the amendment has been executed by the declarant. But this section shall not be construed to nullify, limit, or otherwise affect the validity of enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. If any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify, except in cases for which this chapter provides different methods of amendment. If none of the units in the

condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. An action to challenge the validity of an amendment adopted by the unit owners' association pursuant to this section may not be brought more than one year after the amendment is recorded.

D. Agreement of the required majority of unit owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment, or ratifications thereof, and the same shall become effective when a copy of the amendment is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer or officers as the condominium instruments may specify, that the requisite majority of the unit owners signed the amendment or ratifications thereof.

E. Except to the extent expressly permitted or expressly required by other provisions of this chapter, or agreed to by 100 percent of the unit owners, no amendment to the condominium instruments shall change (i) the boundaries of any unit, (ii) the undivided interest in the common elements, (iii) the liability for common expenses, or (iv) the number of votes in the unit owners' association that appertains to any unit.

F. Notwithstanding any other provision of this section, the declarant may unilaterally execute and record a corrective amendment or supplement to the condominium instruments to correct a mathematical mistake, an inconsistency or a scrivener's error, or clarify an ambiguity in the condominium instruments with respect to an objectively verifiable fact (including without limitation recalculating the undivided interest in the common elements, the liability for common expenses or the number of votes in the unit owners' association appertaining to a unit), within five years after the recordation of the condominium instrument containing or creating such mistake, inconsistency, error or ambiguity. No such amendment or supplement may materially reduce what the obligations of the declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred. Regardless of the date of recordation of the condominium instruments, the principal officer of the unit owners' association may also unilaterally execute and record such a corrective amendment or supplement upon a vote of two-thirds of the members of the executive organ. All corrective amendments and supplements recorded prior to July 1, 1986, are hereby validated to the extent that such corrective amendments and supplements would have been permitted by this subsection.

1974, c. 416; 1993, c. 667.

§ 55-79.71:1. Use of technology.

A. Unless the condominium instruments expressly provide otherwise, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. This section shall govern the use of technology in implementing the provisions of any condominium instrument or any provision of this chapter dealing with notices, signatures, votes,

consents, or approvals.

B. Electronic transmission and other equivalent methods. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use of any technological means providing sufficient security, reliability, identification, and verifiability. "Acceptable technological means" shall include without limitation electronic transmission over the Internet or the community or other network, whether by direct connection, intranet, telecopier, or electronic mail.

C. Signature requirements. An electronic signature meeting the requirements of applicable law shall satisfy any requirement for a signature under any condominium instrument or any provision of this chapter.

D. Voting rights. Voting, consent to and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic transmission or other equivalent technological means provided that a record is created as evidence thereof and maintained as long as such record would be required to be maintained in nonelectronic form.

E. Acknowledgment not required. Subject to other provisions of law, no action required or permitted by any condominium instrument or any provision of this chapter need be acknowledged before a notary public if the identity and signature of such person can otherwise be authenticated to the satisfaction of the executive organ.

F. Nontechnology alternatives. If any person does not have the capability or desire to conduct business using electronic transmission or other equivalent technological means, the unit owners' association shall make reasonable accommodation, at its expense, for such person to conduct business with the unit owners' association without use of such electronic or other means.

G. This section shall not apply to any notice related to an enforcement action by the unit owners' association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

2010, c. 432.

§ 55-79.71:2. Merger or consolidation of condominiums; procedure.

A. Any two or more condominiums, by agreement of the unit owners as provided in subsection B, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium shall be the legal successor, for all purposes, of all of the preexisting condominiums, and the operations and activities of all unit owners' associations of the preexisting condominiums shall be merged or consolidated into a single unit owners' association that holds all powers, rights, obligations, assets, and liabilities of all preexisting unit owners' associations.

B. An agreement to merge or consolidate two or more condominiums pursuant to subsection A

shall be evidenced by an agreement prepared, executed, recorded, and certified by the principal officer of the unit owners' association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. The agreement shall be recorded in every locality in which a portion of the condominium is located and shall not be effective until recorded.

C. Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new unit owners' association among the units of the resultant condominium either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of the overall allocated interests of the condominium that are allocated to all of the units comprising each of the preexisting condominiums, and provided that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

D. If the condominium instruments of a condominium to be merged or consolidated require a vote or consent of mortgagees in order to amend the condominium instruments or terminate the condominium, the same vote or consent of mortgagees shall be required before such merger or consolidation shall become effective. No merger or consolidation shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. A vote or consent of a mortgagee required by this section may be deemed received pursuant to § 55-79.73:1.

2014, c. 659.

§ 55-79.72. Repealed.

Repealed by Acts 1993, c. 667.

§ 55-79.72:1. Termination of condominium.

A. If there is no unit owner other than the declarant, the declarant may unilaterally terminate the condominium. An instrument terminating a condominium shall become effective upon recordation thereof if the termination instrument has been signed by the declarant. But this section shall not be construed to nullify, limit, or otherwise affect the validity or enforceability of any agreement renouncing or to renounce, in whole or in part, the right hereby conferred.

B. Except in the case of a taking of all the units by eminent domain, if any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium may be terminated only by the agreement of unit owners of units to which four-fifths of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify. If none of the units in the condominium is restricted exclusively to residential use, the condominium instruments may specify a majority smaller than the minimum specified in the preceding sentence.

C. Agreement of the required majority of unit owners to termination of the condominium shall be evidenced by their execution of a termination agreement, or ratifications thereof, and the same shall become effective when a copy of the termination agreement is recorded together with a certification, signed by the principal officer of the unit owners' association or by such other officer or officers as the condominium instruments may specify, that the requisite majority of the unit owners signed the termination agreement or ratifications thereof. Unless the termination agreement otherwise provides, prior to recordation of the termination agreement, a unit owner's prior agreement to terminate the condominium may be revoked only with the approval of unit owners of units to which a majority of the votes in the unit owners' association appertain. The termination agreement shall specify a date after which the termination agreement shall be void if the termination agreement is not recorded. For the purposes of this section, an instrument terminating a condominium and any ratification thereof shall be deemed a condominium instrument subject to the provisions of § 55-79.49.

D. In the case of a condominium that contains only units having horizontal boundaries described in the condominium instruments, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the termination agreement, any property in the condominium is sold following termination, the termination agreement shall set forth the minimum terms of the sale.

E. In the case of a condominium that contains any units not having horizontal boundaries described in the condominium instruments, a termination agreement may provide for sale of the common elements. The termination agreement may not require that the units be sold following termination, unless the condominium instruments as originally recorded provide otherwise or all the unit owners consent to the sale. In the case of a master condominium that contains a unit which is a part of another condominium, a termination agreement for the master condominium shall not terminate the other condominium.

F. On behalf of the unit owners, the unit owners' association may contract for the disposition of property in the condominium, but the contract shall not be binding on the unit owners until approved pursuant to subsections B and C of this section. If the termination agreement requires that any property in the condominium be sold following termination, title to the property, upon termination, shall vest in the unit owners' association as trustee for the holders of all interest in the units. Thereafter, the unit owners' association shall have powers necessary and appropriate to effect the sale. Until the same has been concluded and the proceeds have been distributed, the unit owners' association shall continue in existence with all the powers the unit owners' association had before termination. Proceeds of the sale shall be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of the unit owners as provided in subsection I of this section. Unless otherwise specified in the termination agreement, for as long as the unit owners' association holds title to the property, each unit owner or his successor in interest shall have an exclusive right to occupancy of the portion of the property that formerly constituted his unit. During the period of occupancy by the unit owner or his successor in interest, each unit owner or his successor in interest shall remain liable for any assessment or other obligation imposed on the unit owner by this chapter or the condominium

instruments.

G. If the property that constitutes the condominium is not sold following termination, title to the common elements and, in the case of a condominium containing only units that have horizontal boundaries described in the condominium instruments, title to all the property in the condominium shall vest in the unit owners, upon termination, as tenants in common in proportion to the unit owners' respective interests as provided in subsection I of this section. Any liens on the units shall shift accordingly. While the tenancy in common exists, each unit owner or his successor in interest shall have the exclusive right to occupancy of the portion of the property that formerly constituted the unit owner's unit.

H. Following termination of the condominium, the proceeds of any sale of property, together with the assets of the unit owners' association, shall be held by the unit owners' association as trustee for unit owners or lien holders on the units as their interests may appear. Following termination, any creditor of the unit owners' association who holds a lien on the unit that was recorded before termination may enforce the lien in the same manner as any lien holder. Any other creditor of the unit owners' association shall be treated as if he had perfected a lien on the units immediately before termination.

I. Unless the condominium instruments as originally recorded or as amended by 100 percent of the unit owners provide otherwise, the respective interests of unit owners referred to in subsections F, G, and H shall be as follows:

1. Except as provided in subdivision 2, the respective interests of the unit owners shall be the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the unit owners' association. The decision of the independent appraisers shall be distributed to the unit owners and become final unless disapproved within thirty days after distribution by unit owners of units to which one-quarter of the votes in the unit owners' association appertain. The proportion of any unit owner's interest to the interest of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and their common element interests.

2. If any unit or limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are the unit owners' respective common element interests immediately before the termination.

J. Except as provided in subsection K, foreclosure or enforcement of a lien or encumbrance against the entire condominium shall not alone terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable land, shall not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable land shall not alone withdraw the land from the condominium, but the person who takes title to the withdrawable land shall have the right to require from the unit owners' association, upon request, an amendment that excludes the land from the condominium.

K. If a lien or encumbrance against a portion of the property that comprises the condominium has priority over the condominium instruments and the lien or encumbrance has not been partially released, upon foreclosure, the parties foreclosing the lien or encumbrance may record an instrument that excludes the property subject to the lien or encumbrance from the condominium.

1993, c. 667.

§ 55-79.72:2. Rights of mortgagees.

No provision of this chapter shall be construed in derogation of any requirement of the condominium instruments that all or a specified number of the beneficiaries of mortgages or deeds of trust encumbering the condominium units approve specified actions contemplated by the unit owners' association.

1993, c. 667.

§ 55-79.72:3. Statement of unit owner rights.

Every unit owner who is a member in good standing of a unit owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § 55-79.74:1, including records of all financial transactions;
2. The right to cast a vote on any matter requiring a vote by the unit owners' association membership in proportion to the unit owner's ownership interest, except to the extent that the condominium instruments provide otherwise;
3. The right to have notice of any meeting of the executive organ, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § 55-79.75;
4. The right to have (i) notice of any proceeding conducted by the executive organ or other tribunal specified in the condominium instruments against the unit owner to enforce any rule or regulation of the unit owners' association and (ii) the opportunity to be heard and represented by counsel at the proceeding, as provided in § 55-79.80:2, and the right of due process in the conduct of that hearing; and
5. The right to serve on the executive organ if duly elected and a member in good standing of the unit owners' association, except to the extent that the condominium instruments provide otherwise.

The rights enumerated in this section shall be enforceable by any such unit owner pursuant to the

provisions of § 55-79.53.

2015, c. 286.

§ 55-79.73. Bylaws to be recorded with declaration; contents; unit owners' association; executive organ; amendment of bylaws.

A. There shall be recorded simultaneously with the declaration a set of bylaws providing for the self-government of the condominium by an association of all the unit owners. The unit owners' association may be incorporated.

B. The bylaws shall provide whether or not the unit owners' association shall elect an executive organ. If there is to be such an organ, the bylaws shall specify the powers and responsibilities of the same and the number and terms of its members. Except to the extent the condominium instruments provide otherwise, any vacancy occurring in the executive organ shall be filled by a vote of a majority of the remaining members of the executive organ at a meeting of the executive organ, even though the members of the executive organ present at such meeting may constitute less than a quorum because a quorum is impossible to obtain. Each person so elected shall serve until the next annual meeting of the unit owners' association at which time a successor shall be elected by a vote of the unit owners. The bylaws may delegate to such organ, inter alia, any of the powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws shall also specify which, if any, of its powers and responsibilities the unit owners' association or its executive organ may delegate to a managing agent.

C. The bylaws may provide for arbitration of disputes or other means of alternative dispute resolution in accordance with subsection C of § 55-79.53.

D. In any case where an amendment to the declaration is required by subsection (b), (c), or (d) of § 55-79.56, the person or persons required to execute the same shall also prepare and execute, and record simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws shall allocate votes in the unit owners' association to new units on the same basis as was used for the allocation of such votes to the units depicted on plats and plans recorded pursuant to subsections A and B of § 55-79.58, or shall abolish the votes appertaining to former units, as the case may be. The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for future common expenses not specially assessed, in proportion to relative voting strengths as reflected by the said amendment.

1974, c. 416; 1978, c. 332; 1993, c. 667; 1998, c. 32; 2012, c. 758.

§ 55-79.73:1. Amendment to condominium instruments; consent of mortgagee.

A. In the event that any provision in the condominium instruments requires the written consent of a mortgagee in order to amend the condominium instruments, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the

mortgagee at the address supplied by such mortgagee in a written request to the unit owners' association to receive notice of proposed amendments to the condominium instruments and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise. If the mortgagee has not supplied an address to the unit owners' association, the unit owners' association shall be deemed to have received the written consent of a mortgagee if the unit owners' association sends the text of the proposed amendment by certified mail, return receipt requested, to the mortgagee at the address filed in the land records or with the local tax assessor's office, and receives no written objection to the adoption of the amendment from the mortgagee within 60 days of the date that the notice of amendment is sent by the unit owners' association, unless the condominium instruments expressly provide otherwise.

B. Subsection A shall not apply to amendments which alter the priority of the lien of the mortgagee or which materially impair or affect the unit as collateral or the right of the mortgagee to foreclose on a unit as collateral.

C. Where the condominium instruments are silent on the need for mortgagee consent, no mortgagee consent shall be required if the amendment to the condominium instruments does not specifically affect mortgagee rights.

1993, c. 1; 1998, c. 32; 2007, c. 675.

§ 55-79.73:2. Reformation of declaration; judicial procedure.

A. A unit owners' association may petition the circuit court in the county or city wherein the condominium or the greater part thereof is located to reform the condominium instruments where the unit owners' association, acting through its executive organ, has attempted to amend the condominium instruments regarding ownership of legal title of the common elements or real property using provisions outlined therein to resolve (i) ambiguities or inconsistencies in the condominium instruments that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the unit owners' association or individual unit owners or (ii) scrivener's errors, including incorrectly identifying the unit owners' association, incorrectly identifying an entity other than the unit owners' association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.

B. The court shall have jurisdiction over matters set forth in subsection A regarding ownership of legal title of the common elements or real property to:

1. Reform, in whole or in part, any provision of the condominium instruments; and
2. Correct mistakes or any other error in the condominium instruments that may exist with respect to the declaration for any other purpose.

C. A petition filed by the unit owners' association with the court setting forth any inconsistency

or error made in the condominium instruments, or the necessity for any change therein, shall be deemed sufficient basis for the reformation, in whole or in part, of the condominium instruments, provided that:

1. The unit owners' association has made three good faith attempts to convene a duly called meeting of the unit owners' association to present for consideration amendments to the condominium instruments for the reasons specified in subsection A, which attempts have proven unsuccessful as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association;

2. There is no adequate remedy at law as practical and effective to attain the ends of justice as may be accomplished in the circuit court;

3. Where the declarant of the condominium still owns a unit or continues to have any special declarant rights in the condominium, the declarant joins in the petition of the unit owners' association;

4. A copy of the petition is sent to all unit owners at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association; and

5. A copy of the petition is sent to all mortgagees at least 30 days before the petition is filed as evidenced by an affidavit verified by oath of the principal officer of the unit owners' association.

D. Any mortgagee of a condominium unit in the condominium shall have standing to participate in the reformation proceedings before the court. No reformation pursuant to this section shall affect mortgagee rights, alter the priority of the lien of any mortgage, materially impair or affect any condominium unit as collateral for a mortgage, or affect a mortgagee's right to foreclose on a condominium unit as collateral without the prior written consent of the mortgagee. Consent of a mortgagee required by this section may be deemed received pursuant to § 55-79.73:1.

2014, c. 659.

§ 55-79.74. Control of condominium by declarant.

A. The condominium instruments may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the officers of the unit owners' association and/or its executive organ, or to exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter to the unit owners' association, the officers, or the executive organ. The declarant or the managing agent or such other person or persons selected by the declarant to so appoint and remove officers and/or the executive organ or to exercise such powers and responsibilities otherwise assigned to the unit owners' association, the officers, or the executive organ shall be subject to liability as fiduciaries of the unit owners for their action or omissions during the period of declarant control as specified in the condominium instruments or if not so specified, within such period as defined

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in this section. But no amendment to the condominium instruments shall increase the scope of such authorization if there is any unit owner other than the declarant, and no such authorization shall be valid after the time limit set by the condominium instruments or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first. For the purposes of the preceding sentence only, the calculation of the fraction of undivided interest shall be based upon the total undivided interests assigned or to be assigned to all units registered with the Common Interest Community Board pursuant to subsection B of § 55-79.92 hereof and described pursuant to subdivision (4) of subsection (a), subdivision (2) of subsection (b), or subdivision (8) of subsection (c), of § 55-79.54.

B. The time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium, three years in the case of a condominium (other than an expandable condominium) containing any convertible land, or two years in the case of any other condominium. Such time period shall commence upon settlement of the first unit to be sold in any portion of the condominium.

Notwithstanding the foregoing, at the request of the declarant, such time limits may be extended for a period not to exceed 15 years from the settlement of the first unit to be sold in any portion of the condominium or after units to which three-fourths of the undivided interests in the common elements appertain have been conveyed, whichever occurs first, provided that (i) a special meeting is held prior to the expiration of the initial period of declarant control; (ii) at such special meeting, the extension of such time limits is approved by a two-thirds affirmative vote of the unit owners other than the declarant; and (iii) at such special meeting, there is an election of a warranty review committee consisting of no fewer than three persons unaffiliated with the declarant.

Prior to any such vote, the declarant shall furnish to the unit owners in the notice of such special meeting made in accordance with § 55-79.75 a written statement in a form provided by the Common Interest Community Board that discloses that an affirmative vote extends the right of the declarant, or a managing agent or some other person selected by the declarant, to (a) appoint and remove some or all of the officers of the unit owners' association or its executive organ and (b) exercise powers and responsibilities otherwise assigned by the condominium instruments and by this chapter. In addition, such statement shall contain both a notice of the effect of the extension of declarant control on the enforcement of the warranty against structural defects provided by the declarant in accordance with § 55-79.79 and a statement that a unit owner is advised to exercise whatever due diligence the unit owner deems necessary to protect his interest.

C. If entered into any time prior to the expiration of the period of declarant control, no contract or lease entered into with the declarant or any entity controlled by the declarant, management contract, employment contract or lease of recreational or parking areas or facilities, which is directly or indirectly made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be entered into for a period in excess of two years. Any such contract or agreement entered into on or after July 1, 1978, may be terminated without penalty by the unit owners' association or its executive organ upon not less than 90 days' written notice to the other party given not later than 60 days after the expiration of the period of declarant control.

Any such contract or agreement may be renewed for periods not in excess of two years; however, at the end of any two-year period the unit owners' association or its executive organ may terminate any further renewals or extensions thereof. The provisions of this subsection shall not apply to any lease or leases which are referred to in § 55-79.48 or which are subject to subsection (e) of § 55-79.54.

D. If entered into at any time prior to the expiration of the period of declarant control, any contract, lease or agreement, other than those subject to the provisions of subsection C, may be entered into by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, if such contract, lease or agreement is bona fide and is commercially reasonable to the unit owners' association at the time entered into under the circumstances.

E. This section does not apply to any contract, incidental to the disposition of a condominium unit, to provide to a unit owner for the duration of such unit owner's life, or for any term in excess of one year, nursing services, medical services, other health-related services, board and lodging and care as necessary, or any combination of such services. The rule of property law known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any provision of the condominium instruments requiring that the unit owners be parties to such contracts.

F. If the unit owners' association is not in existence or does not have officers at the time of the creation of the condominium, the declarant shall, until there is such an association with such officers, have the power and the responsibility to act in all instances where this chapter requires action by the unit owners' association, its executive organ, or any officer or officers.

G. Thirty days prior to the expiration of the period of declarant control, the declarant shall notify the governing body of the city, county or town in which the condominium is located of the forthcoming termination of declarant control. Prior to the expiration of the 30-day period, the local governing body or an agency designated by the local governing body shall advise the principal elected officer of the condominium unit owners' association of any outstanding violations of applicable building codes, local ordinances or other deficiencies of record.

H. Within 45 days from the expiration of the period of declarant control, the declarant shall deliver to the president of the unit owners' association or his designated agent (i) all unit owners' association books and records held by or controlled by the declarant including, without limitation, the following items: minute books and all rules, regulations and amendments thereto which may have been promulgated; (ii) a statement of receipts and expenditures from the date of the recording of the condominium instruments to the end of the regular accounting period immediately succeeding the first election of the board of directors by the unit owners not to exceed 60 days from the date of the election, such statement being prepared in an accurate and complete manner, utilizing the accrual method of accounting; (iii) a copy of the latest available approved plans and specifications for all improvements in the project or as-built plans if available; (iv) all association insurance policies which are currently in force; (v) written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers, if any; (vi) any contracts in which the association is a contracting party, if any; and (vii) a list of

manufacturers of paints, roofing materials and other similar materials if specified for use on the condominium property.

In the event that the unit owners' association is managed by a management company in which the declarant, or its principals, have no pecuniary interest or management role, then such management company shall have the responsibility to provide the documents and information as required by clauses (i), (ii), (iv), and (vi) of this subsection.

I. This section shall be strictly construed to protect the rights of the unit owners.

1974, c. 416; 1975, c. 415; 1978, c. 332; 1980, c. 738; 1984, c. 601; 1985, c. 83; 1996, c. 977; 2008, cc. 851, 871; 2013, c. 599.

§ 55-79.74:01. Deposit of funds.

All funds deposited with a managing agent shall be handled in a fiduciary capacity and shall be kept in a fiduciary trust account in a federally insured financial institution separate from other assets of the managing agent. The funds shall be the property of the unit owners' association and shall be segregated for each account in the records of the managing agent in a manner that permits the funds to be identified on an individual unit owners' association basis.

2007, cc. 696, 712.

§ 55-79.74:1. Books, minutes and records; inspection.

A. The declarant, the managing agent, the unit owners' association, or the person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association

requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive organ;
5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive organ held pursuant to subsection C of § 55-79.75;
8. Documentation, correspondence or management or executive organ reports compiled for or on behalf of the unit owners' association or the executive organ by its agents or committees for consideration by the executive organ in executive session; or
9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Books and records kept by or on behalf of a unit owners' association shall be withheld from examination and copying in their entirety only to the extent that an exclusion from disclosure under subsection C applies to the entire content of such books and records. Otherwise, only those portions of the books and records containing information subject to an exclusion under subsection C may be withheld or redacted, and all portions of the books and records that are not so excluded shall be available for examination and copying, provided that the requesting member shall be responsible to the association for paying or reimbursing the association for any reasonable costs incurred by the association in responding to the request for the books and records and review for redaction of the same.

E. Prior to providing copies of any books and records, the unit owners' association may impose

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and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof. Charges may be imposed only in accordance with a cost schedule adopted by the executive organ in accordance with this subsection. The cost schedule shall (i) specify the charges for materials and labor, (ii) apply equally to all unit owners in good standing, and (iii) be provided to such requesting unit owner at the time the request is made.

1980, c. 738; 1985, c. 75; 1989, c. 57; 1990, c. 662; 1992, c. 72; 1994, c. 463; 1999, c. 594; 2000, cc. 906, 919; 2001, c. 419; 2011, cc. 334, 361, 605; 2014, c. 207; 2018, c. 663.

§ 55-79.74:2. Management office.

Unless the condominium instruments expressly provide otherwise, the unit owners' association shall not be prohibited from maintaining a management office on common elements or in one or more units in the condominium.

1982, c. 545.

§ 55-79.74:3. Transfer of special declarant rights.

A. No special declarant right may be transferred except by a document evidencing the transfer recorded in every city and county wherein any portion of the condominium is located. The instrument shall not be effective unless executed by the transferee.

B. Upon transfer of any special declarant right, the liability of a transferor declarant shall be as follows:

1. The transferor shall not be relieved of any obligation or liability arising before the transfer and shall remain liable for warranty obligations imposed upon him by subsection B of § 55-79.79. Lack of privity shall not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor.

2. If the successor to any special declarant right is an affiliate of a declarant, the transferor shall also be jointly and severally liable with the successor for any obligation or liability of the successor which relates to the condominium.

3. If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor shall also be liable for all obligations and liabilities relating to the retained special declarant rights and imposed on a declarant by this chapter or by the condominium instruments.

4. A transferor shall have no liability for any breach of a contractual or warranty obligation or for any other act or omission, arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

C. Except as otherwise provided by the mortgage or deed of trust, in case of foreclosure of a

mortgage, sale by a trustee under a deed of trust, tax sale, judicial sale or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code, of any unit owned by a declarant or land subject to development rights:

1. A person acquiring title to all the land being foreclosed or sold shall, but only upon his request, succeed to all special declarant rights related to that land reserved by that declarant, or only to any rights reserved in the declaration pursuant to § 55-79.66 and held by that declarant to maintain sales offices, management offices, model units and/or signs.

2. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

For the purposes of this subsection, "development rights" means any right or combination of rights to expand an expandable condominium, contract a contractable condominium, convert convertible land or convert convertible space.

D. Upon foreclosure, sale by a trustee under a deed of trust, tax sale, judicial sale or sale under receivership proceedings or the Bankruptcy Code as codified in Title 11 of the United States Code of all units and other land in the condominium owned by a declarant (i) that declarant ceases to have any special declarant rights, and (ii) any period of declarant control reserved under subsection A of § 55-79.74 shall terminate, unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

E. The liabilities and obligations of any person or persons who succeed to any special declarant right shall be as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the condominium instruments.

2. A successor to any special declarant right, other than a successor described in subdivisions 3 and 4 of this subsection, who is not an affiliate of a declarant shall be subject to all obligations and liabilities imposed by this chapter or the condominium instruments on a declarant, which relate to his exercise or nonexercise of special declarant rights, or on his transferor, except for (i) misrepresentations by any prior declarant, (ii) warranty obligations as provided in subsection B of § 55-79.79 on improvements made by any previous declarant or made before the condominium was created, (iii) breach of any fiduciary obligation by any previous declarant or his appointees to the executive organ, or (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

3. Unless he is an affiliate of a declarant, a successor to only a right reserved in the declaration to maintain sales offices, management offices, model units and/or signs shall not exercise any other special declarant right and shall not be subject to any liability or obligation as a declarant, except the liabilities and obligations arising under Article 4 (§ 55-79.86 et seq.) of this chapter as to disposition by that successor.

4. A successor to all special declarant rights held by his transferor who is not an affiliate of that transferor and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection C hereof may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right reserved by his transferor pursuant to subsection A of § 55-79.74. Any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he shall not be subject to any liability or obligation as a declarant other than liability for his acts and omissions relating to the exercise of rights reserved under subsection A of § 55-79.74.

F. Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the condominium instruments.

G. For the purposes of this section, "affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person (i) is general partner, officer, director or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interests in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of the capital of the declarant. A person is controlled by a declarant if the declarant (i) is a general partner, officer, director or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than twenty percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

1982, c. 545; 1991, c. 497; 1996, c. 977; 2006, c. 646.

§ 55-79.74:4. Declarants not succeeding to special declarant rights.

A declarant who does not succeed to any special declarant rights shall be liable only to the extent of his actions for claims and obligations arising under this chapter or the condominium instruments.

1993, c. 667.

§ 55-79.75. Meetings of unit owners' associations and executive organ.

A. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of said association. The bylaws shall specify an officer or his agent who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least seven days in advance of any other meeting, send to each unit owner notice of the time, place, and purposes of such meeting. In the event of cancellation of any annual meeting of the unit owners' association at which directors are elected, the seven-day notice of any subsequent meeting scheduled to elect such directors shall include a statement that the meeting is scheduled for the purpose of the election of directors.

Notice shall be sent by United States mail to all unit owners of record at the address of their respective units unless the unit owner has provided to such officer or his agent an address other than the address of the unit; or notice may be hand delivered by the officer or his agent, provided the officer or his agent certifies in writing that notice was delivered to the person of the unit owner.

In lieu of delivering notice as specified in the preceding paragraph of this subsection, such officer or his agent may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the unit owner to whom the notice is given, provided the officer or his agent certifies in writing that notice was sent.

B. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.

Notice of the time, date and place of each meeting of the executive organ or of any subcommittee or other committee thereof, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

A unit owner may make a request to be notified on a continual basis of any such meetings which request shall be made at least once a year in writing and include the unit owners' name, address, zip code, and any e-mail address as appropriate. Notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the executive organ or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the executive organ, or of a subcommittee or other committee of the unit owners' association.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given

contemporaneously with the notice provided members of the (i) executive organ or any subcommittee or other committee thereof or (ii) subcommittee or other committee of the unit owners' association conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive organ or subcommittee or other committee thereof for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive organ.

Any unit owner may record any portion of a meeting required to be open. The executive organ or subcommittee or other committee thereof conducting the meeting may adopt rules (i) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (ii) requiring the unit owner recording the meeting to provide notice that the meeting is being recorded.

If a meeting of the executive organ is conducted by telephone conference or video conference or similar electronic means, at least two board members shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any board member participating in the meeting who is not physically present.

Voting by secret or written ballot in an open meeting shall be a violation of this chapter except for the election of officers.

C. The executive organ or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant thereto for which a unit owner, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive organ shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the executive organ or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

D. Subject to reasonable rules adopted by the executive organ, the executive organ shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is

limited to specific topics or at a special meeting, the executive organ may limit the comments of unit owners to the topics listed on the meeting agenda.

1974, c. 416; 1978, c. 363; 1989, c. 58; 1990, c. 662; 1992, c. 72; 2000, c. 906; 2001, c. 715; 2003, cc. 404, 405, 442; 2005, c. 353; 2007, c. 675; 2013, c. 275.

§ 55-79.75:1. Distribution of information by members.

A. The executive organ shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive organ regarding any matter concerning the unit owners' association.

B. Except as otherwise provided in the condominium instruments, the executive organ shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

§ 55-79.75:2. Display of the flag of the United States; necessary supporting structures; affirmative defense.

A. In accordance with the federal Freedom to Display the American Flag Act of 2005, no unit owners' association shall prohibit or otherwise adopt or enforce any policy restricting a unit owner from displaying upon property to which the unit owner has a separate ownership interest or a right to exclusive possession or use the flag of the United States whenever such display is in compliance with Chapter 1 of Title 4 of the United States Code, or any rule or custom pertaining to the proper display of the flag. A unit owners' association may, however, establish reasonable restrictions as to the size, place, duration, and manner of placement or display of the flag on such property provided such restrictions are necessary to protect a substantial interest of the unit owners' association.

B. The unit owners' association may restrict the display of such flags in the common elements.

C. In any action brought by the unit owners' association under § 55-79.80:2 for a violation of a flag restriction, the unit owners' association shall bear the burden of proof that the restrictions as to the size, place, duration, and manner of placement or display of such flag are necessary to protect a substantial interest of the unit owners' association.

D. In any action brought by the unit owners' association under § 55-79.80:2, the unit owner shall be entitled to assert as an affirmative defense that the required disclosure of any limitation pertaining to the flag of the United States or any flagpole or similar structure necessary to display the flag of the United States was not contained in the public offering statement or resale certificate, as appropriate, required pursuant to § 55-79.90 or 55-79.97.

2007, cc. 854, 910; 2010, cc. 166, 453.

§ 55-79.76. Meetings of unit owners' associations and executive organ; quorums.

A. Unless the condominium instruments otherwise provide or as specified in subsection G of § 55-79.77, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than 33 1/3 percent of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 10 percent.

B. Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the executive organ if persons entitled to cast one-half of the votes in that body are present at the beginning of such meeting.

C. On petition of the unit owners' association or any unit owner entitled to vote, the circuit court of the city or county in which the condominium or the greater part thereof is located may order an annual meeting of the unit owners' association be held for the purpose of the election of members of the executive organ, provided that:

1. No annual meeting as required by § 55-79.75 has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments; and

2. The unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years, which attempts have proven unsuccessful due to the failure to obtain a quorum.

The court may set the quorum for the meeting and enter other orders necessary to convene the meeting.

A unit owner filing a petition under this subsection shall provide a copy of the petition to the executive organ at least ten business days prior to filing.

1974, c. 416; 2003, c. 413; 2015, cc. 214, 430.

§ 55-79.77. Meetings of unit owners' associations and executive organ; voting by unit owners; proxies.

A. The bylaws may allocate to each unit depicted on plats and plans that comply with subsections A and B of § 55-79.58 a number of votes in the unit owners' association proportionate to the undivided interest in the common elements appertaining to each such unit.

B. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the unit owners' association, subject to the following exception: Each convertible space so depicted shall be allocated a number of votes in the unit owners' association proportionate to the size of each such space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit owners' association shall be allocated equally to the other units so depicted.

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C. Since a unit owner may be more than one person, if only one of such persons is present at a meeting of the unit owners' association, that person shall be entitled to cast the votes appertaining to that unit. But if more than one of such persons is present, the vote appertaining to that unit shall be cast only in accordance with their unanimous agreement unless the condominium instruments expressly provide otherwise, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that unit without protest being made forthwith by any of the others to the person presiding over the meeting. Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this subsection to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which is, either alone or in conjunction with another person or persons, a unit owner.

D. The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Except to the extent otherwise provided in the condominium instruments, any proxy shall be void if it is not dated, or if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting. The proxy shall include a brief explanation of the effect of leaving the proxy uninstructed. To the extent the condominium instruments or rules adopted thereto expressly so provide, a vote or proxy may be submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the unit owner or the unit owner's proxy.

E. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

F. All votes appertaining to units owned by the unit owners' association shall be deemed present for quorum purposes at all duly called meetings of the unit owners' association and shall be deemed cast in the same proportions as the votes cast by unit owners other than the unit owners' association.

G. Except to the extent that the condominium instruments provide otherwise, the voting interest allocated to the unit or member that has been suspended by the unit owners' association or the executive organ pursuant to the condominium instruments shall not be counted in the total number of voting interests used to determine the quorum for any meeting or vote under the condominium instruments.

1974, c. 416; 1980, c. 108; 1991, c. 497; 1993, c. 667; 1998, c. 32; 2003, c. 442; 2015, c. 214.

§ 55-79.78. Officers.

A. If the condominium instruments provide that any officer or officers must be unit owners, then any such officer who disposes of all of his units in fee shall be deemed to have disqualified himself from continuing in office unless the condominium instruments otherwise provide, or unless he acquires or contracts to acquire another unit in the condominium under terms giving him a right of occupancy thereto effective on or before the termination of his right of occupancy under such disposition or dispositions.

B. If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of subsection (a) of § 55-79.50, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner in, or trustee of any person which is, either alone or in conjunction with another person or persons, a unit owner. Any officer who would not be eligible to serve as such were he not a director, officer, partner in, or trustee of such a person, shall be deemed to have disqualified himself from continuing in office if he ceases to have any such affiliation with that person, or if that person would itself have been deemed to have disqualified itself from continuing in such office under subsection A were it a natural person holding such office.

1974, c. 416; 1991, c. 497; 2002, c. 520.

§ 55-79.79. Upkeep of condominiums; warranty against structural defects; statute of limitations for warranty; warranty review committee.

A. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owners' association in the case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part thereof, except to the extent that the need for repairs, renovation, restoration or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners' association shall have such powers and responsibilities. Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either such access through his unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. But to the extent that damage is inflicted on the common elements or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

B. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for two years from the date each is conveyed, and all of the common elements for two years. In the case of each unit the declarant shall also warrant that the unit is fit for habitation and constructed in a workmanlike manner so as to pass without objection in the trade. The two years referred to in this subsection shall begin as

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to each of the common elements whenever the same has been completed or, if later, (i) as to any common element within any additional land or portion thereof, at the time the first unit therein is conveyed, (ii) as to any common element within any convertible land or portion thereof, at the time the first unit therein is conveyed, and (iii) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed. For the purposes of this subsection, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. Any conveyance of a condominium unit transfers to the purchaser all of the declarant's warranties against structural defects imposed by this subsection. For the purposes of this subsection, structural defects shall be those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in this subsection shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

C. An action for breach of any warranty prescribed by this section shall be commenced within (i) five years after the date such warranty period began or (ii) one year after the formation of any warranty review committee pursuant to subsection B of § 55-79.74, whichever last occurs. However, no such action shall be maintained against the declarant unless a written statement by the claimant or his agent, attorney or representative, of the nature of the alleged defect has been sent to the declarant, by registered or certified mail, at his last known address, as reflected in the records of the Common Interest Community Board, more than six months prior to the commencement of the action giving the declarant an opportunity to cure the alleged defect within a reasonable time, not to exceed five months. Sending the notice required by this subsection shall toll the statute of limitations for commencing a breach of warranty action for a period not to exceed six months.

D. If the initial period of declarant control has been extended in accordance with subsection B of § 55-79.74, the warranty review committee (the committee) shall have (i) subject to the provisions of subdivision 3, the irrevocable power as attorney-in-fact on behalf of the unit owners' association to assert or settle in the name of the unit owners' association any claims involving the declarant's warranty against structural defects with respect to all of the common elements and (ii) the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements pursuant to § 55-79.83 if the committee determines that the assessments levied by the unit owners' association are insufficient to enable the committee reasonably to perform its functions pursuant to this subsection. The committee or the declarant shall notify the governing body of the county, city, or town in which the condominium is located of the formation of the committee, within 30 days of its formation. Within 30 days after such notice, the local governing body or an agency designated by the local governing body shall advise the chair of the committee of any outstanding violations of applicable building codes, local ordinances, or other deficiencies of record. Members of the committee shall be insured, indemnified, and subject to liability to the same extent as officers or directors under the condominium instruments or applicable law. The unit owners' association shall provide sufficient funds reasonably necessary for the committee to perform the functions set out in this subsection and to:

1. Engage an independent architect, engineer, legal counsel, and such other experts as the committee may reasonably determine;

2. Investigate whether there exists any breach of the warranty as to any of the common elements. The committee shall document its findings and the evidence that supports such findings. Such findings and evidence shall be confidential and shall not be disclosed to the declarant without the consent of the committee; and

3. Assert or settle in the name of the unit owners' association any claims involving the declarant's warranty on the common elements, provided (i) the committee sends the declarant at least six months prior to the expiration of the statute of limitations a written statement pursuant to subsection C of the alleged nature of any defect in the common elements giving the declarant an opportunity to cure the alleged defect, (ii) the declarant fails to cure the alleged defect within a reasonable time, and (iii) the declarant control period or the statute of limitations has not expired.

E. Within 45 days after the formation of the committee, the declarant shall deliver to the chair of the committee (i) a copy of the latest available approved plans and specifications for all improvements in the project or as-build plans if available; (ii) all association insurance policies that are currently in force; (iii) any written unexpired warranties of the contractors, subcontractors, suppliers, and manufacturers applicable to the condominium; and (iv) a list of manufacturers of paints, roofing materials, and other similar materials if specified for use on the condominium property.

1974, c. 416; 1975, c. 415; 1980, c. 386; 1982, c. 545; 1984, c. 347; 1987, c. 395; 2006, c. 646; 2008, cc. 851, 871; 2013, c. 599.

§ 55-79.80. Control of common elements.

A. Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the unit owners' association shall have the power to:

1. Employ, dismiss, and replace agents and employees to exercise and discharge the powers and responsibilities of the said association arising under § 55-79.79.

2. Make or cause to be made additional improvements on and as a part of the common elements.

3. Grant or withhold approval of any action by one or more unit owners or other persons entitled to the occupancy of any unit which would change the exterior appearance of any unit or of any other portion of the condominium, or elect or provide for the appointment of an architectural control committee, the members of which must have the same qualifications as officers, to grant or withhold such approval.

4. Acquire, hold, convey, and encumber title to real property, including but not limited to condominium units, whether or not the association is incorporated.

B. Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitations specified therein, the executive organ of the unit owners' association, if any, and if not, then the unit owners' association itself, shall have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, including without limitation the right, in the name of the unit owners' association, (i) to grant easements through the common elements and accept easements benefiting the condominium or any portion thereof, (ii) to assert, through litigation or otherwise, defend against, compromise, adjust, and settle any claims or actions related to common elements, other than claims against or actions involving the declarant during any period of declarant control reserved pursuant to subsection A of § 55-79.74, and (iii) to apply for any governmental approvals under state and local law.

C. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

1974, c. 416; 1975, c. 415; 1981, c. 146; 1982, c. 195; 1991, c. 497; 1993, c. 667; 1996, c. 977.

§ 55-79.80:01. Common elements; notice of pesticide application.

Unit owners' associations shall post notice of all pesticide applications in or upon the common elements. Such notice shall consist of conspicuous signs placed in or upon the common elements where the pesticide will be applied at least forty-eight hours prior to the application.

1999, c. 65.

§ 55-79.80:1. Tort and contract liability; judgment lien.

A. An action for tort alleging a wrong done (i) by any agent or employee of the declarant or of the unit owners' association, or (ii) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be. No unit owner shall be precluded from bringing such an action by virtue of his ownership of an undivided interest in the common elements or by reason of his membership in the association or his status as an officer.

B. Unit owners other than the declarant shall not be liable for torts caused by agents or employees of the declarant within any convertible land or using any easement reserved in the declaration or created by § 55-79.65 or § 55-79.66.

C. An action arising from a contract made by or on behalf of the unit owners' association, its executive organ, or the unit owners as a group, shall be brought against the association, or against the declarant if the cause of action arose during the exercise by the declarant of control reserved pursuant to subsection A of § 55-79.74. No unit owner shall be precluded from bringing such an action by reason of his membership in the association or his status as an officer.

D. A judgment for money against the unit owners' association shall be a lien against any property

owned by the association, and against each of the condominium units in proportion to the liability of each unit owner for common expenses as established pursuant to subsection D of § 55-79.83, but not against any other property of any unit owner. A unit owner who pays a percentage of the total amount due under such judgment equal to such unit owner's liability for common expenses fixed pursuant to subsection D of § 55-79.83 shall be entitled to a release of any such judgment lien and the association shall not be entitled to assess the unit for payment of the remaining amount due. Such judgment shall be otherwise subject to the provisions of § 8.01-458.

1975, c. 415; 1991, c. 497; 1992, c. 72; 1996, c. 977.

§ 55-79.80:2. Suspension of services for failure to pay assessments; corrective action; assessment of charges for violations; notice; hearing; adoption and enforcement of rules.

A. The unit owners' association shall have the power, to the extent the condominium instruments or rules duly adopted pursuant thereto expressly so provide, to (i) suspend a unit owner's right to use facilities or services, including utility services, provided directly through the unit owners' association for nonpayment of assessments which are more than 60 days past due, to the extent that access to the unit through the common elements is not precluded and provided that such suspension shall not endanger the health, safety, or property of any unit owner, tenant, or occupant and (ii) assess charges against any unit owner for any violation of the condominium instruments or of the rules or regulations promulgated pursuant thereto for which such unit owner or his family members, tenants, guests or other invitees are responsible.

B. Before any action authorized in this section is taken, the unit owner shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the unit owner at the address required for notices of meetings pursuant to § 55-79.75. If the violation remains uncorrected, the unit owner shall be given an opportunity to be heard and to be represented by counsel before the executive organ or such other tribunal as the condominium instruments or rules duly adopted pursuant thereto specify.

Notice of such hearing, including the actions that may be taken by the unit owners' association in accordance with this section, shall, at least 14 days in advance thereof, be hand delivered or mailed by registered or certified United States mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75. Within seven days of the hearing, the hearing result shall be hand delivered or mailed by registered or certified mail, return receipt requested, to such unit owner at the address required for notices of meetings pursuant to § 55-79.75.

C. The amount of any charges so assessed shall not exceed \$50 for a single offense, or \$10 per diem for any offense of a continuing nature, and shall be treated as an assessment against such unit owner's condominium unit for the purpose of § 55-79.84. However, the total charges for any offense of a continuing nature shall not be assessed for a period exceeding 90 days.

D. The unit owners' association may file or defend legal action in general district or circuit court that seeks relief, including injunctive relief, arising from any violation of the condominium

instruments or duly adopted rules and regulations.

E. After the date a lawsuit is filed in the general district or circuit court by (i) the unit owners' association, by and through its counsel to collect the charges or obtain injunctive relief and correct the violation or (ii) the unit owner challenging any such charges, no additional charges shall accrue.

If the court rules in favor of the unit owners' association, it shall be entitled to collect such charges from the date the action was filed as well as all other charges assessed pursuant to this section against the unit owner prior to the action. In addition, if the court finds that the violation remains uncorrected, the court may order the unit owner to abate or remedy the violation.

In any suit filed in general district court pursuant to this section, the court may enter default judgment against the unit owner on the unit owners' association's sworn affidavit.

F. This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ.

1993, c. 667; 1997, cc. 173, 417; 2000, cc. 846, 906; 2002, c. 509; 2011, cc. 372, 378; 2014, c. 784.

§ 55-79.80:3. Power of unit owners' association to limit occupancy of a unit.

The unit owners' association shall have the power, to the extent the condominium instruments expressly so provide, to limit the number of persons who may occupy a unit as a dwelling. Such limitation shall be reasonable and shall comply with the provisions of § 55-79.52.

1996, c. 888; 1998, c. 454.

§ 55-79.81. Insurance.

A. The condominium instruments may require the unit owners' association, or the executive organ or managing agent on behalf of such association, to obtain:

1. A master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the structures within the condominium, or of such structures that in whole or in part comprise portions of the common elements.

2. A master liability policy, in an amount specified by the condominium instruments, covering the unit owners' association, the executive organ, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the condominium, and all unit owners and other persons entitled to occupy any unit or other portion of the condominium.

3. Such other policies as may be required by the condominium instruments, including, without

limitation, workers' compensation insurance, liability insurance on motor vehicles owned by the unit owners' association, and specialized policies covering lands or improvements in which the unit owners' association has or shares ownership or other rights.

B. Any unit owners' association collecting assessments for common expenses shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the unit owners' association against losses resulting from theft or dishonesty committed by the officers, directors, or persons employed by the unit owners' association, or committed by any common interest community manager or employees of the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$1 million or the amount of reserve balances of the unit owners' association plus one-fourth of the aggregate annual assessment of such unit owners' association. The minimum coverage amount shall be \$10,000. The executive organ or common interest community manager may obtain such bond or insurance on behalf of the unit owners' association.

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § 55-79.75.

1974, c. 416; 2000, c. 906; 2003, c. 360; 2004, c. 281; 2007, cc. 696, 712; 2008, cc. 851, 871.

§ 55-79.82. Repealed.

Repealed by Acts 1991, c. 497.

§ 55-79.83. Liability for common expenses; late fees.

A. Except to the extent that the condominium instruments provide otherwise, any common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any limited common element shall be specially assessed against the condominium unit to which that limited common element was assigned at the time such expenses were made or incurred. If the limited common element involved was assigned at that time to more than one condominium unit, however, such expenses shall be specially assessed against each such condominium unit equally so that the total of such special assessments equals the total of such expenses, except to the extent that the condominium instruments provide otherwise.

B. To the extent that the condominium instruments expressly so provide, any other common expenses benefiting less than all of the condominium units, or caused by the conduct of less than all those entitled to occupy the same or by their licensees or invitees, shall be specially assessed against the condominium unit or units involved, in accordance with such reasonable provisions as the condominium instruments may make for such cases. The executive organ may impose reasonable user fees.

C. To the extent that the condominium instruments expressly so provide, (i) any common expenses paid or incurred in making available the same off-site amenities or paid subscription television service to some or all of the unit owners shall be assessed equally against the condominium units involved and (ii) any common expenses paid or incurred in providing metered utility services to some or all of the units shall be assessed against each condominium unit involved based on its actual consumption of such services.

D. The amount of all common expenses not specially assessed pursuant to subsection A, B, or C hereof shall be assessed against the condominium units in proportion to the number of votes in the unit owners' association appertaining to each such unit, or, if such votes were allocated as provided in subsection B of § 55-79.77, those common expense assessments shall be either in proportion to those votes or in proportion to the units' respective undivided interests in the common elements, whichever basis the condominium instruments specify. Such assessments shall be made by the unit owners' association annually, or more often if the condominium instruments so provide. No change in the number of votes in the unit owners' association appertaining to any condominium unit shall enlarge, diminish, or otherwise affect any liabilities arising from assessments made prior to such change.

E. Except to the extent otherwise provided in the condominium instruments, if the executive organ determines that the assessments levied by the unit owners' association are insufficient to cover the common expenses of the unit owners' association, the executive organ shall have the authority to levy an additional assessment against all of the units in proportion to their respective undivided interests in the common elements. The executive organ shall give written notice of any additional assessment to the unit owners stating the amount, reasons therefor, and the due date for payment of such assessment. If the additional assessment is to be paid in a lump sum, payment shall be due and payable no earlier than 90 days after delivery or mailing of the notice.

All unit owners shall be obligated to pay the additional assessment unless the unit owners by a majority of votes cast, in person or by proxy, at a meeting of the unit owners' association convened in accordance with the provisions of the condominium instruments within 60 days of the delivery or mailing of the notice required by this subsection, rescind or reduce the additional assessment. No director or officer of the unit owners' association shall be liable for failure to perform his fiduciary duty if an additional assessment for the funds necessary for the director or officer to perform his fiduciary duty is rescinded by the unit owners' association in accordance with this subsection. The unit owners' association shall indemnify such director or officer against any damage resulting from any claimed breach of fiduciary duty arising therefrom.

F. It remains the policy of this section that neither a unit owned by the declarant nor any other unit may be exempted from assessments made pursuant to this section by reason of the identity of the unit owner thereof.

G. All condominium instruments for condominiums created prior to January 1, 1981, are hereby validated notwithstanding noncompliance with the first sentence of subsection D hereof, if they provide instead that the amount of all common expenses not specially assessed pursuant to subsection A, B, or C hereof shall be assessed against the condominium units in proportion to

their respective undivided interests in the common elements.

H. Except to the extent that the condominium instruments or rules or regulations promulgated pursuant thereto provide otherwise, an executive organ may impose a late fee, not to exceed the penalty provided in § 58.1-3915, for any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment.

1974, c. 416; 1977, c. 428; 1981, c. 180; 1984, cc. 27, 84, 601; 1992, c. 72; 1993, c. 667; 2003, c. 421; 2013, c. 256; 2014, c. 239.

§ 55-79.83:1. Reserves for capital components.

A. Except to the extent otherwise provided in the condominium instruments and unless the condominium instruments impose more stringent requirements, the executive organ shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace and restore the capital components;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive organ deems necessary to maintain reserves, as appropriate.

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; and
3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect.

2002, c. 459.

§ 55-79.84. Lien for assessments.

A. The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. The said lien, once perfected, shall be prior to all other liens and encumbrances except (i) real estate tax liens on that

condominium unit, (ii) liens and encumbrances recorded prior to the recordation of the declaration, and (iii) sums unpaid on any first mortgages or first deeds of trust recorded prior to the perfection of said lien for assessments and securing institutional lenders. The provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

B. Notwithstanding any other provision of this section, or any other provision of law requiring documents to be recorded in the miscellaneous lien books or the deed books in the clerk's office of any court, on or after July 1, 1974, all memoranda of liens arising under this section shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the deed books in such clerk's office. Any such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

C. The unit owners' association, in order to perfect the lien given by this section, shall file before the expiration of 90 days from the time the first such assessment became due and payable in the clerk's office of the circuit court in the county or city in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

1. A description of the condominium unit in accordance with the provisions of § 55-79.47.
2. The name or names of the persons constituting the unit owners of that condominium unit.
3. The amount of unpaid assessments currently due or past due together with the date when each fell due.
4. The date of issuance of the memorandum.

It shall be the duty of the clerk in whose office such memorandum is filed as hereinabove provided to record and index the same as provided in subsection B, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

D. No suit to enforce any lien perfected under subsection C shall be brought or action to foreclose any lien perfected under subsection I shall be initiated after 36 months from the time when the memorandum of lien was recorded; however, the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section. Nothing herein shall extend the time within which any such lien may be perfected.

E. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees of the prevailing party. If the association prevails, it may also recover interest at the legal rate for the sums secured by the lien from the time each such sum became due and payable.

F. When payment or satisfaction is made of a debt secured by the lien perfected by subsection C, said lien shall be released in accordance with the provisions of § 55-66.3. Any lien which is not so released shall subject the lien creditor to the penalty set forth in subdivision A 1 of § 55-66.3. For the purposes of that section, the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor.

G. Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection A creates a lien, maintainable pursuant to § 55-79.53.

H. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days of the receipt of such request shall extinguish the lien created by subsection A as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive organ, and every unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

I. At any time after perfecting the lien pursuant to this section, the unit owners' association may sell the unit at public sale, subject to prior liens. For purposes of this section, the unit owners' association shall have the power both to sell and convey the unit, and shall be deemed the unit owner's statutory agent for the purpose of transferring title to the unit. A nonjudicial foreclosure sale shall be conducted in compliance with the following:

1. The unit owners' association shall give notice to the unit owner prior to advertisement required by subdivision 4. The notice shall specify (i) the debt secured by the perfected lien; (ii) the action required to satisfy the debt secured by the perfected lien; (iii) the date, not less than 60 days from the date the notice is given to the unit owner, by which the debt secured by the lien must be satisfied; and (iv) that failure to satisfy the debt secured by the lien on or before the date specified in the notice may result in the sale of the unit. The notice shall further inform the unit owner of the right to bring a court action in the circuit court of the county or city where the condominium is located to assert the nonexistence of a debt or any other defense of the unit owner to the sale.

2. After expiration of the 60-day notice period provided in subdivision 1, the unit owners' association may appoint a trustee to conduct the sale. The appointment of the trustee shall be filed in the clerk's office of the circuit court in the county or city in which the condominium is located. It shall be the duty of the clerk in whose office such appointment is filed to record and index the same as provided in subsection C, in the names of the persons identified therein as well as in the name of the unit owners' association. The unit owners' association, at its option, may from time to time remove the trustee and appoint a successor trustee.

3. If the unit owner meets the conditions specified in this subdivision prior to the date of the foreclosure sale, the unit owner shall have the right to have enforcement of the perfected lien discontinued prior to the sale of the unit. Those conditions are that the unit owner: (a) satisfy the debt secured by lien that is the subject of the nonjudicial foreclosure sale and (b) pays all expenses and costs incurred in perfecting and enforcing the lien, including but not limited to advertising costs and reasonable attorneys' fees.

4. In addition to the advertisement required by subdivision 5, the unit owners' association shall give written notice of the time, date and place of any proposed sale in execution of the lien, and including the name, address and telephone number of the trustee, by personal delivery or by mail to (i) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the unit owners' association, (ii) any lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust, and (iii) any assignee of such a note secured by a deed of trust provided the assignment and address of the assignee are likewise recorded at least 30 days prior to the proposed sale. Mailing a copy of the advertisement or the notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to the lienholders and their assigns, at the addresses noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale, shall be a sufficient compliance with the requirement of notice.

5. The advertisement of sale by the unit owners' association shall be in a newspaper having a general circulation in the city or county wherein the property to be sold, or any portion thereof, lies pursuant to the following provisions:

a. The unit owners' association shall advertise once a week for four successive weeks; however, if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement that is no earlier than eight days following the first advertisement nor more than 30 days following the last advertisement.

b. Such advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale. The advertisement of sale, in addition to such other matters as the unit owners' association finds appropriate, shall set forth a description of the property to be sold, which description need not be as extensive as that contained in the deed of trust, but shall identify the property by street address, if any, or, if none, shall give the general location of the property with reference to streets, routes, or known landmarks. Where available, tax map identification may be used but is not required. The advertisement shall also include the date, time, place, and terms of sale and the name of the unit owners' association. It shall set forth the name, address and telephone number of the representative, agent, or attorney who may be able to respond to inquiries concerning the sale.

c. In addition to the advertisement required by subdivisions a and b above, the unit owners' association may give such other further and different advertisement as the association finds

appropriate.

6. In the event of postponement of sale, which postponement shall be at the discretion of the unit owners' association, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

7. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

8. In the event of a sale, the unit owners' association shall have the following powers and duties:

a. Written one-price bids may be made and shall be received by the trustee from the unit owners' association or any person for entry by announcement at the sale. Any person other than the trustee may bid at the foreclosure sale, including a person who has submitted a written one-price bid. Upon request to the trustee, any other bidder in attendance at a foreclosure sale shall be permitted to inspect written bids. Unless otherwise provided in the condominium instruments, the unit owners' association may bid to purchase the unit at a foreclosure sale. The unit owners' association may own, lease, encumber, exchange, sell or convey the unit. Whenever the written bid of the unit owners' association is the highest bid submitted at the sale, such written bid shall be filed by the trustee with his account of sale required under subdivision I 10 of this section and § 64.2-1309. The written bid submitted pursuant to this subsection may be prepared by the unit owners' association, its agent or attorney.

b. The unit owners' association may require of any bidder at any sale a cash deposit of as much as 10 percent of the sale price before his bid is received, which shall be refunded to him if the property is not sold to him. The deposit of the successful bidder shall be applied to his credit at settlement, or if such bidder fails to complete his purchase promptly, the deposit shall be applied to pay the costs and expenses of the sale, and the balance, if any, shall be retained by the unit owners' association in connection with that sale.

c. The unit owners' association shall receive and receipt for the proceeds of sale, no purchaser being required to see to the application of the proceeds, and apply the same in the following order: first, to the reasonable expenses of sale, including reasonable attorneys' fees; second, to the satisfaction of all taxes, levies, and assessments, with costs and interest; third, to the satisfaction of the lien for the unit owners' assessments; fourth, to the satisfaction in the order of priority of any remaining inferior claims of record; and fifth, to pay the residue of the proceeds to the unit owner or his assigns; provided, however, that the association as to such residue shall not be bound by any inheritance, devise, conveyance, assignment or lien of or upon the unit owner's equity, without actual notice thereof prior to distribution.

9. The trustee shall deliver to the purchaser a trustee's deed conveying the unit with special warranty of title. The trustee shall not be required to take possession of the property prior to the sale thereof or to deliver possession of the unit to the purchaser at the sale.

10. The trustee shall file an accounting of the sale with the commissioner of accounts pursuant to

§ 64.2-1309 and every account of a sale shall be recorded pursuant to § 64.2-1310. In addition, the accounting shall be made available for inspection and copying pursuant to § 55-79.74:1 upon the written request of the prior unit owner, current unit owner or any holder of a recorded lien against the unit at the time of the sale. The unit owners' association shall maintain a copy of the accounting for at least 12 months following the foreclosure sale.

11. If the sale of a unit is made pursuant to subsection I and the accounting is made by the trustee, the title of the purchaser at such sale shall not be disturbed unless within 12 months from the confirmation of the accounting by the commissioner of accounts, the sale is set aside by the court or an appeal is allowed by the Supreme Court of Virginia, and a decree is therein entered requiring such sale to be set aside.

1974, c. 416; 1975, c. 415; 1991, c. 497; 1992, c. 72; 1997, cc. 760, 766; 2000, c. 906; 2004, cc. 778, 779, 786.

§ 55-79.84:01. Notice of sale under deed of trust.

In accordance with the provisions of § 15.2-979, the unit owners' association shall be given notice whenever a condominium unit becomes subject to a sale under a deed of trust. Upon receipt of such notice, the executive organ, on behalf of the unit owners' association, shall exercise whatever due diligence it deems necessary with respect to the unit subject to a sale under a deed of trust to protect the interests of the unit owners' association.

2015, cc. 93, 410.

§ 55-79.84:1. Bond to be posted by declarant.

A. The declarant of a condominium containing units which are required by this chapter to be registered with the Common Interest Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to \$1,000 per unit, except that such sum shall not be less than \$10,000, nor more than \$100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than 10 percent of the units in the condominium or, if the declarant owns less than 10 percent of the units in the condominium, until the declarant is current in the payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided such declarant is current in the payment of assessments.

B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth, or by such other surety as is satisfactory to the Board and such bond shall be conditioned upon the payment of all assessments levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

The Board may promulgate reasonable regulations which govern the return of bonds submitted in

accordance with this section.

1977, c. 428; 1981, c. 480; 1984, c. 601; 1985, c. 107; 1988, c. 15; 1993, cc. 667, 900; 2008, cc. 851, 871.

§ 55-79.85. Restraints on alienation.

If the condominium instruments create any rights of first refusal or other restraints on free alienability of the condominium units, such rights and restraints shall be void unless the condominium instruments make provision for promptly furnishing to any unit owner or purchaser requesting the same a recordable statement certifying to any waiver of, or failure or refusal to exercise, such rights and restraints, in all cases where such waiver, failure, or refusal does in fact occur. Failure or refusal to furnish promptly such a statement in such circumstances in accordance with the provisions of the condominium instruments shall make all such rights and restraints inapplicable to any disposition of a condominium unit in contemplation of which such statement was requested. Any such statement shall be binding on the association of unit owners, the executive organ, and every unit owner. Payment of a fee not exceeding twenty-five dollars may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

1974, c. 416.

§ 55-79.86. Administrative agency.

This chapter shall be administered by the Common Interest Community Board which hereinafter is called the agency.

1974, c. 416; 2008, cc. 851, 871.

§ 55-79.87. Exemptions from certain provisions of article.

A. Unless the method of offer or disposition is adopted for the purpose of evasion of this chapter, the provisions of §§ 55-79.88 through 55-79.93, subsections A and C of § 55-79.94, and § 55-79.97 do not apply to:

1. Dispositions pursuant to court order;
2. Dispositions by any government or government agency;
3. Offers by the declarant on nonbinding reservation agreements;
4. Dispositions in a residential condominium in which there are three or fewer units, so long as the condominium instruments do not reserve to the declarant the right to create additional condominium units; or

5. A disposition of a unit by a sale at an auction, where a current public offering statement or resale certificate was made available as part of an auction package for prospective purchasers prior to the auction sale.

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of §§ 55-79.88 through 55-79.95 shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

1974, c. 416; 1975, c. 415; 1984, c. 427; 1993, c. 667; 2007, c. 266; 2012, c. 325; 2015, c. 277.

§ 55-79.87:1. Rental of units.

A. Except as expressly authorized in this chapter or in the condominium instruments or as otherwise provided by law, no unit owners' association shall:

1. Condition or prohibit the rental of a unit to a tenant by a unit owner or make an assessment or impose a charge except as provided in § 55-79.42:1;

2. Charge a rental fee, application fee, or other processing fee of any kind in excess of \$50 during the term of any lease;

3. Charge an annual or monthly rental fee or any other fee not expressly authorized in § 55-79.42:1;

4. Require the unit owner to use a lease or an addendum to the lease prepared by the unit owners' association;

5. Charge any deposit from the unit owner or the tenant of the unit owner; or

6. Have the authority to evict a tenant of any unit owner or to require any unit owner to execute a power of attorney authorizing the unit owners' association to so evict. However, if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative with respect to any lease, the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § 55-79.77 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

B. The unit owners' association may require the unit owner to provide the unit owners' association with the names and contact information of the tenants and authorized occupants under such lease and any authorized agent of the unit owner, and vehicle information for such tenants or authorized occupants. The unit owners' association may require the unit owner to provide the unit owners' association with the tenant's acknowledgement of and consent to any rules and regulations of the unit owners' association.

C. The provisions of this section shall not apply to units owned by the unit owners' association.

2015, c. 277; 2016, c. 471.

§ 55-79.88. Limitations on dispositions of units.

Unless exempt by § 55-79.87:

1. No declarant may offer or dispose of any interest in a condominium unit located in this Commonwealth, nor offer or dispose in this Commonwealth of any interest in a condominium unit located without this Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

2. No declarant may dispose of any interest in a condominium unit unless he delivers to the purchaser a current public offering statement by the time of such disposition and such disposition is expressly and without qualification or condition subject to cancellation by the purchaser within five calendar days from the contract date of the disposition or delivery of the current public offering statement, whichever is later. If the purchaser elects to cancel, he may do so by notice thereof hand-delivered or sent by United States mail, return receipt requested, to the declarant. Such cancellation shall be without penalty, and any deposit made by the purchaser shall be promptly refunded in its entirety.

3. The purchaser's right to cancel the purchase contract pursuant to subdivision 2 shall be set forth on the first page of the purchase contract in boldface print of not less than 12 point type.

1974, c. 416; 1975, c. 415; 1988, c. 15; 2014, c. 215.

§ 55-79.89. Application for registration; fee.

A. The application for registration of the condominium shall be filed as prescribed by the agency's regulations and shall contain the following documents and information:

1. An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative if nonresidents of the Commonwealth;

2. The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name, address, and the form, date, and jurisdiction or organization; and the address of each of its offices in this Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the

applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the condominium as of a specified date within 30 days of the filing of the application;

5. A statement, in a form acceptable to the agency, of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the agency;

6. Copies of the instruments which will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements which a purchaser will be required to agree to or sign;

7. Copies of any management agreements, employment contracts or other contracts or agreements affecting the use, maintenance or access of all or a part of the condominium;

8. A statement of the zoning and other governmental regulations affecting the use of the condominium, including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments which affect the condominium;

9. A narrative description of the promotional plan for the disposition of the units in the condominium;

10. Plats and plans of the condominium that comply with the provisions of § 55-79.58 other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands, except that the agency may establish by regulation or order requirements in lieu of the provisions of § 55-79.58 for plats and plans of a condominium located outside this Commonwealth;

11. The proposed public offering statement;

12. Any bonds required to be posted pursuant to the provisions of this chapter; and

13. Any other information, including any current financial statement, which the agency by its regulations requires for the protection of purchasers.

B. If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

C. The declarant shall immediately report any material changes in the information contained in an application for registration.

D. Each application shall be accompanied by a fee in an amount established by the agency

pursuant to § 54.1-113. All fees shall be remitted by the agency to the State Treasurer, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

1974, c. 416; 1975, c. 415; 1977, c. 428; 1988, c. 16; 2008, cc. 851, 871; 2011, c. 605.

§ 55-79.90. Public offering statement; condominium securities.

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and regulations and shall include the following:

1. The name and principal address of the declarant and the condominium;
2. A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;
3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, a projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;
4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;
5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;
6. The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;
7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;
8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection B of § 55-79.79;
9. A statement that, pursuant to subdivision A 2 of § 55-79.88, the purchaser may cancel the

disposition within five calendar days of delivery of the current public offering statement or within five calendar days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium which are planned but not yet begun, or begun but not yet completed. Said statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;

11. If the units in the condominium are being subjected to a time-share instrument pursuant to § 55-367, the information required to be disclosed by § 55-374;

12. A statement listing the facilities or amenities which are defined as common elements or limited common elements in the condominium instruments, which are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities which are not included as part of any assessment, and the amount of such fees or charges, if any, a purchaser may be required to pay;

13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

14. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag; and

15. Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

C. The agency may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

D. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this chapter if he delivers to the purchaser and files with the

agency a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).

1974, c. 416; 1977, c. 428; 1986, c. 324; 1996, cc. 281, 888; 1999, c. 560; 2006, c. 646; 2007, cc. 854, 910; 2011, c. 605; 2014, c. 215.

§ 55-79.91. Inquiry and examination.

Upon receipt of an application for registration, the agency shall conduct an examination of the material submitted to determine that:

1. The declarant can convey or cause to be conveyed the units offered for disposition if the purchaser complies with the terms of the offer;
2. There is reasonable assurance that all proposed improvements will be completed as represented;
3. The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the agency in its regulations and afford full and fair disclosure;
4. The declarant has not, or if a corporation, its officers, and principals have not, been convicted of a crime involving condominium unit dispositions or any aspect of the land sales business in this Commonwealth, United States, or any other state or foreign country within the past ten years and has not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and
5. The public offering statement requirements of this chapter have been satisfied.

1974, c. 416; 1988, c. 15.

§ 55-79.92. Notice of filing and registration.

A. Upon receipt of the application for registration, the agency shall, within five business days, issue a notice of filing to the applicant. In the case of receipt of an application for a condominium that is a conversion condominium, the agency shall, within five business days, also issue a notice of filing to the chief administrative officer of the county or city in which the proposed condominium is located, which notice shall include the name and address of the applicant and the name and address or location of the proposed condominium. Within sixty days from the date of the notice of filing, the agency shall enter an order registering the condominium or rejecting the registration. If no order of rejection is entered within sixty days from the date of notice of filing, the condominium shall be deemed registered unless the applicant has consented in writing to a delay.

B. If the agency affirmatively determines, upon inquiry and examination, that the requirements of §§ 55-79.89 and 55-79.91 have been met, it shall enter an order registering the condominium and shall designate the form of the public offering statement.

C. If the agency determines upon inquiry and examination that any of the requirements of §§ 55-79.89 and 55-79.91 have not been met, the agency shall notify the applicant that the application for registration must be corrected in the particulars specified within twenty days. If the requirements are not met within the time allowed the agency shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days after issuance of the order. During this twenty-day period the applicant may petition for reconsideration and shall be entitled to a hearing or correct the particulars specified in the agency's notice. Such order of rejection shall not take effect, in any event, until such time as the hearing, once requested, is given to the applicant.

1974, c. 416; 1985, c. 107; 1988, c. 15; 2006, c. 726.

§ 55-79.93. Annual report by declarant.

The declarant shall file a report in the form prescribed by the regulations of the agency within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

1974, c. 416; 1975, c. 415; 1988, c. 15; 2012, cc. 481, 797.

§ 55-79.93:1. Annual report by unit owners' association.

A. The unit owners' association shall file an annual report in a form and at such time as prescribed by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of the declarant control period pursuant to § 55-79.74. The annual report shall be accompanied by a fixed fee in an amount established by the agency.

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

C. The unit owners' association shall also remit to the agency an annual payment as follows:

1. The lesser of:

a. \$1,000 or such other amount as established by agency regulation; or

b. Five hundredths of one percent (0.05%) of the unit owners' association's gross assessment income during the preceding year.

2. For the purposes of clause b of subsection C, no minimum payment shall be less than \$10.00.

D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529.

1993, c. 958; 2008, cc. 851, 871; 2009, c. 557; 2012, cc. 481, 797.

§ 55-79.93:2. Termination of registration.

A. In the event that all of the units in the condominium have been disposed of, and that all periods for conversion or expansion have expired, the agency shall issue an order terminating the registration of the condominium.

B. Notwithstanding any other provision of this chapter, the agency may administratively terminate the registration of a condominium if:

1. The declarant has not filed an annual report in accordance with § 55-79.93 for three or more consecutive years; or

2. The declarant's registration with the State Corporation Commission, if applicable, has not been active for five or more consecutive years.

2012, cc. 481, 797.

§ 55-79.94. Conversion condominiums; special provisions.

A. Any declarant of a conversion condominium shall include in his public offering statement in addition to the requirements of § 55-79.90 the following:

1. A specific statement of the amount of any initial or special condominium fee due from the purchaser on or before settlement of the purchase contract and the basis of such fee;

2. Information on the actual expenditures made on all repairs, maintenance, operation or upkeep of the subject building or buildings within the last three years, set forth tabularly with the proposed budget of the condominium, and cumulatively broken down on a per unit basis in proportion to the relative voting strengths allocated to the units by the bylaws. If such building or buildings have not been occupied for a period of three years, then the information shall be set forth for the maximum period such building or buildings have been occupied;

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves, or, if no provision is made for such reserves, a statement to that effect;

4. A statement of the declarant as to the present condition of all structural components and major utility installations in the condominium, which statement shall include the approximate dates of

construction, installation, and major repairs, and the expected useful life of each such item, together with the estimated cost (in current dollars) of replacing each of the same;

5. If any building included or that may be included in the condominium was substantially completed prior to July 1, 1978, a statement that each such building has been inspected for asbestos in accordance with standards in effect at the time of inspection; or that an asbestos inspection will be conducted; and whether asbestos requiring response actions has been found, and if found, that response actions have been or will be completed in accordance with applicable standards prior to the conveyance of any unit in such building. Any asbestos management program or response action undertaken by the building owner shall comply with the standards promulgated pursuant to § 2.2-1164.

B. In the case of a conversion condominium, the declarant shall give at the time specified in subsection C of this section, formal notice to each of the tenants of the building or buildings which the declarant has submitted or intends to submit to the provisions of this chapter. This notice shall advise each tenant of (i) the offering price of the unit he occupies, (ii) the projected common expense assessments against that unit for at least the first year of the condominium's operation, (iii) any relocation services or assistance, public or private, of which the declarant is aware, (iv) any measures taken or to be taken by the declarant to reduce the incidence of tenant dislocation, and (v) the details of the relocation plan, if any is provided by the declarant, to assist tenants in relocating. During the first sixty days after such notice is mailed or hand delivered, each of the said tenants shall have the exclusive right to purchase the unit he occupies, but only if such unit is to be retained in the conversion condominium without substantial alteration in its physical layout. If the conversion condominium is subject to local ordinances that have been adopted pursuant to subsections F and G, any tenant who is disabled or elderly may assign the exclusive right to purchase his unit to a government agency, housing authority, or certified nonprofit housing corporation, which shall then offer the tenant a lease at an affordable rent, following the provisions of subsection F. The acquisition of such units by the governmental agency, housing authority, or certified nonprofit housing corporation shall not (i) exceed the greater of one unit or five percent of the total number of units in the condominium or (ii) impede the condominium conversion process. In determining which, if any, units shall be acquired pursuant to this subsection, preference shall be given to elderly or disabled tenants.

The notice required above shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the conversion to condominium. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55-222, except that, despite the provisions of § 55-222, a tenancy from month to month may only be terminated upon 120 days' notice when such termination is in regard to the creation of a conversion condominium. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the declarant, in order to then terminate the tenancy, such declarant shall give the tenant a further notice as provided in § 55-222. Until the expiration of the 120-day period, the declarant shall have no right of access to the unit except as provided by subsection A of § 55-248.18 and except that, upon 45 days' written notice to the tenant, the declarant may enter the unit in order to make additional repairs, decorations, alterations or improvements, provided (i) the making of the same does not constitute an actual or constructive

eviction of the tenant; and (ii) such entry is made either with the consent of the tenant or only at times when the tenant is absent from the unit. The declarant shall also provide general notice to the tenants of the condominium or proposed condominium at the time of application to the agency in addition to the formal notice required by this subsection.

C. The declarant of a conversion condominium shall, in addition to the requirements of § 55-79.89, include with the application for registration a copy of the formal notice set forth in subsection B and a certified statement that such notice, fully complying with the provisions of subsection B, shall be, at the time of the registration of such condominium, mailed or delivered to each of the tenants in the building or buildings for which registration is sought. The price and projected common expense assessments for each unit need not be filed with the agency until such notice is mailed to the tenants.

D. Notwithstanding the provisions of § 55-79.40 of this chapter, in the case of any conversion condominium created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.) for which a final report has not been issued by the agency pursuant to § 55-79.21 prior to June 1, 1975, the provisions of subsections A and B of this section shall apply and the declarant shall be required to furnish evidence of full compliance with subsections A and B prior to the issuance by the agency of a final report for such conversion condominium.

E. Any county, city or town may require by ordinance that the declarant of a conversion condominium file with that governing body all information which is required by the agency pursuant to § 55-79.89 and a copy of the formal notice required by subsection B. Such information shall be filed with that governing body when the application for registration is filed with the agency, and such copy of the formal notice shall be filed with that governing body. There shall be no fees for such filings.

F. The governing body of any county, city or town may enact an ordinance requiring that elderly or disabled tenants occupying as their residence, at the time of issuance of the general notice required by subsection B, apartments or units in a conversion condominium be offered leases or extensions of leases on the apartments or units they then occupied, or on other apartments or units of at least equal size and overall quality. The terms and conditions thereof shall be as agreed upon by the lessor and the lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable apartments or units in the same market area as such conversion condominium and such lease shall include or incorporate by reference the bylaws and/or rules and regulations, if any, of the association. No such ordinance may require that such leases or extensions be offered on more than twenty percent of the apartments or units in such conversion condominium, nor may any such ordinance require that such leases or extensions extend beyond three years from the date of such notice. Such leases or extensions shall not be required, however, in the case of any apartments or units which will, in the course of the conversion, be substantially altered in the physical layout, restricted exclusively to nonresidential use, or be converted in such a manner as to require relocation of the tenant in premises outside of the project being converted.

For the purposes of this section:

"Affordable rent" means a monthly rent that does not exceed the greater of 30 percent of the annual gross income of the tenant household or 30 percent of the imputed income limit applicable to such unit size, as published by the Virginia Housing Development Authority for compliance with the Low Income Housing Tax Credit program.

"Certified nonprofit housing corporation" means a nonprofit organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code that has been certified by a locality as actively engaged in producing or preserving affordable housing as determined by criteria established by the locality.

"Disabled" means a person suffering from a severe, chronic physical or mental impairment which results in substantial functional limitations.

"Elderly" means a person not less than 62 years of age.

G. The governing body of any county utilizing the urban county executive form of optional government (§§ 15.2-800 through 15.2-858) or the county manager plan of optional government (§§ 15.2-702 through 15.2-749), or of any city or town adjoining any such county, may require by ordinance that the declarant of any residential condominium converted from multi-family rental use shall reimburse any tenant displaced by the conversion for amounts actually expended to relocate as a result of such dislocation. The reimbursement shall not be required to exceed the amount which the tenant would have been entitled to receive under §§ 25.1-407 and 25.1-415 if the real estate comprising the condominium had been condemned by the Department of Transportation.

1974, c. 416; 1975, c. 415; 1980, cc. 727, 738; 1981, cc. 455, 503; 1982, cc. 273, 475, 663; 1983, c. 310; 1984, cc. 321, 601; 1985, c. 69; 1987, c. 412; 1988, c. 723; 1989, c. 398; 1991, c. 497; 1993, c. 634; 2007, cc. 602, 665.

§ 55-79.95. Escrow of deposits.

A. Any deposit made in regard to any disposition of a unit, including a nonbinding reservation agreement, shall be held in escrow until delivered at settlement. Such escrow funds shall be deposited in a separate account designated for this purpose which is federally insured and located in Virginia; except where such deposits are being held by a real estate broker or attorney licensed under the laws of this Commonwealth such funds may be placed in that broker's or attorney's regular escrow account and need not be placed in a separate designated account. Such escrow funds shall not be subject to attachment by the creditors of either the purchaser or the declarant.

B. In lieu of escrowing deposits as provided in subsection A, the declarant of a condominium consisting of more than 50 units may:

1. Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the Commonwealth, in the form and amount set forth below, or

2. Obtain and maintain an irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC, in the form and amount set forth below.

The surety bond or letter of credit shall be maintained until (i) the granting of a deed to the unit, (ii) the purchaser's default under a purchase contract for the unit entitling the declarant to retain the deposit, or (iii) the refund of the deposit to the purchaser, whichever occurs first.

C. The surety bond shall be payable to the Commonwealth for the use and benefit of every person protected under the provisions of this chapter. The declarant shall file the bond with the Common Interest Community Board. The surety bond may be either in the form of an individual bond for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket bond shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket bond shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket bond shall be \$500,000;
4. \$500,000 or more but less than \$1 million, the blanket bond shall be \$1 million; and
5. \$1 million or more, the blanket bond shall be 100 percent of the amount of such deposits.

D. The letter of credit shall be payable to the Commonwealth for use and benefit of every person protected under this chapter. The declarant shall file the letter of credit with the Common Interest Community Board. The letter of credit may be either in the form of an individual letter of credit for each deposit accepted by the declarant or, if the total amount of the deposits accepted by the declarant under this chapter exceeds \$10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount shall be as follows. If the amount of such deposits is:

1. \$75,000 or less, the blanket letter of credit shall be \$75,000;
2. More than \$75,000 but less than \$200,000, the blanket letter of credit shall be \$200,000;
3. \$200,000 or more but less than \$500,000, the blanket letter of credit shall be \$500,000;
4. \$500,000 or more but less than \$1 million, the blanket letter of credit shall be \$1 million; and
5. \$1 million or more, the blanket letter of credit shall be 100 percent of the amount of such deposits.

For the purposes of determining the amount of any blanket letter of credit that a declarant

maintains in any calendar year, the total amount of deposits considered held by the declarant shall be determined as of May 31 in each calendar year and the amount of the letter of credit shall be in accordance with the amount of deposits held as of May 31.

1974, c. 416; 1977, c. 91; 2007, c. 445; 2008, cc. 851, 871.

§ 55-79.96. Declarant to deliver declaration, etc., to purchaser.

The declarant shall within ten days of recordation of the condominium instruments as provided for in §§ 55-79.45 and 55-79.49 hereof, forward to each purchaser at his last known address by first-class mail, return receipt requested, an exact copy of the recorded declaration and bylaws.

1974, c. 416.

§ 55-79.97. Resale by purchaser; resale certificate; use of for sale sign in connection with resale; designation of authorized representative.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55-79.97:1, as appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55-79.93:1, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate or is notified that the resale certificate will not be available on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate or notice that the

resale certificate will not be available is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate or notice that the resale certificate will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the resale certificate will not be available and the resale certificate is not delivered to the purchaser.

Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

- a. Hand delivery;
- b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;
- c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or
- d. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.

A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and, if applicable, an appropriate statement pursuant to § 55-79.85;
2. A statement of any expenditure of funds approved by the unit owners' association or the executive organ which shall require an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;
3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition and maintenance of the condominium unit and the use of the common elements, and the status of the account;
4. A statement whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;

5. The current reserve study report or a summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the executive organ;

6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due of any outstanding loans of the unit owners' association;

7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit owners' association is a party which either could or would have a material impact on the unit owners' association or the unit owners or which relates to the unit being purchased;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including the fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, are or are not in violation of the condominium instruments;

10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the unit owners' association and the amendments thereto;

11. A statement of whether the condominium or any portion thereof is located within a development subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

12. A copy of the notice given to the unit owner by the unit owners' association of any current or pending rule or architectural violation;

13. A copy of any approved minutes of the executive organ and unit owners' association meetings for the six calendar months preceding the request for the resale certificate;

14. Certification that the unit owners' association has filed with the Common Interest Community Board the annual report required by § 55-79.93:1; which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing;

15. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

16. A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, time, place, and manner of placement or display of such flag;

17. A statement setting forth any restriction, limitation, or prohibition on the right of a unit owner

to install or use solar energy collection devices on the unit owner's property;

18. A statement indicating any known project approvals currently in effect issued by secondary mortgage market agencies; and

19. A copy of the fully completed form developed by the Common Interest Community Board pursuant to § 54.1-2350.

Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

The resale certificate shall be delivered in accordance with the written request and instructions of the seller or the seller's authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or the seller's authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or the seller's authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or the seller's authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or the seller's authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or the seller's authorized agent to pay any fees to use the provider's electronic network or system. The resale certificate shall not be delivered in hard copy if the requester has requested delivery of such resale certificate electronically. If the resale certificate is provided electronically by a website link, the preparer shall not cause the website link to expire within the subsequent 90-day period. The preparer shall not charge another fee during the subsequent 12-month period, except that the preparer may charge an update fee for a financial update or for an inspection as provided in § 55-79.97:1. If the seller or the seller's authorized agent asks that the resale certificate be provided in electronic format, the seller or the seller's authorized agent may request that an electronic copy be provided to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. If so requested, the unit owners' association or its common interest community manager may require the seller or the seller's authorized agent to pay the fee specified in § 55-79.97:1. Regardless of whether the resale certificate is delivered in paper form or electronically, the preparer of the resale certificate shall provide such resale certificate directly to the persons designated by the requester to the addresses or, if applicable, the email addresses provided by the requester.

E. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this

chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

F. The resale certificate required by this section need not be provided in the case of:

1. A disposition of a unit by gift;
2. A disposition of a unit pursuant to court order if the court so directs;
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.

G. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.

H. For purposes of this chapter:

"Delivery" means that the resale certificate is delivered to the purchaser or purchaser's authorized agent by one of the methods specified in this section.

"Purchaser's authorized agent" means any person designated by such purchaser in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

"Receives, received, or receiving" the resale certificate means that the purchaser or purchaser's authorized agent has received the resale certificate by one of the methods specified in this section.

"Seller's authorized agent" means a person designated by such seller in a ratified real estate contract for purchase and sale of residential real property or other writing designating such agent.

I. Unless otherwise provided in the ratified real estate contract or other writing, delivery to the purchaser's authorized agent shall require delivery to such agent and not to a person other than such agent. Delivery of the resale certificate may be made by the unit owner or the seller's authorized agent.

J. If the unit is governed by more than one association, the purchaser's right of cancellation may be exercised within the required time frames following delivery of the last resale certificate or disclosure packet.

K. Except as expressly authorized in this chapter or in the condominium instruments or as

otherwise provided by law, no unit owners' association shall:

1. Require the use of any for sale sign that is (i) a unit owners' association sign or (ii) a real estate sign that does not comply with the requirements of the Virginia Real Estate Board. A unit owners' association may, however, prohibit the placement of signs in the common elements and establish reasonable rules and regulations that regulate (a) the number of real estate signs to be located on real property upon which the owner has a separate ownership interest or a right of exclusive possession, so long as at least one real estate sign is permitted; (b) the geographical location of real estate signs on real property in which the owner has a separate ownership interest or a right of exclusive possession, so long as the location of the real estate signs complies with the requirements of the Virginia Real Estate Board; (c) the manner in which real estate signs are affixed to real property; and (d) the period of time after settlement when the real estate signs on such real property shall be removed; or

2. Require any unit owner to execute a formal power of attorney if the unit owner designates a person licensed under the provisions of § 54.1-2106.1 as the unit owner's authorized representative, and the unit owners' association shall recognize such representation without a formal power of attorney, provided that the unit owners' association is given a written authorization signed by the unit owner designating such representative. Notwithstanding the foregoing, the requirements of § 55-79.77 and the condominium instruments shall be satisfied before any such representative may exercise a vote on behalf of a unit owner as a proxy.

1974, c. 416; 1975, c. 415; 1978, cc. 234, 290; 1983, c. 60; 1984, cc. 29, 103; 1990, c. 662; 1991, c. 497; 1994, c. 172; 1997, c. 222; 1998, cc. 32, 454, 463; 1999, c. 263; 2001, c. 556; 2002, cc. 459, 509; 2005, c. 415; 2007, cc. 696, 712, 854, 910; 2008, cc. 851, 871; 2011, c. 334; 2013, cc. 357, 492; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 393, 406; 2018, c. 70.

§ 55-79.97:1. Fees for resale certificate.

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate required by § 55-79.97, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:

1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed \$100;

2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed \$150 for no more than two hard copies, or (ii) electronic format, a fee not to exceed a total of \$125, for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. Only one fee shall be charged for the preparation and delivery

of the resale certificate;

3. At the option of the seller or the seller's authorized agent, with the consent of the unit owners' association or the common interest community manager, expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed \$50;

4. At the option of the seller or the seller's authorized agent, an additional hard copy of the resale certificate, a fee not to exceed \$25 per hard copy;

5. At the option of the seller or the seller's authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the resale certificate; and

6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of establishing the purchaser as the owner of the unit in the records of the unit owners' association, a fee not to exceed \$50.

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83, if not paid at settlement or within 60 days of the delivery of the resale certificate, whichever occurs first.

For purposes of this section, an expedite fee shall only be charged if the inspection and preparation of delivery of the resale certificate are completed within five business days of the request for a resale certificate.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. No additional fee shall be charged for access to the unit owners' association's or common interest community manager's website. The unit owners' association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or the seller's authorized agent will know such fees at the time of requesting the resale certificate.

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requester, payable at settlement. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check,

certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent or the purchaser or the purchaser's authorized agent, may request a resale certificate update. The requester shall specify whether the resale certificate update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requester shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the resale certificate update or financial update may be charged by the preparer, not to exceed \$50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit, as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' association or common interest community manager may require the requester to request the specified update electronically. The seller or the seller's authorized agent shall

continue to have the right to request a hard copy of the specified update in person at the principal place of business of the unit owners' association. If the requester asks that the specified update be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or the seller's authorized agent.

K. When a resale certificate has been delivered as required by § 55-79.97, the unit owners' association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale.

M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the resale certificate within 14 days against any (i) unit owners' association pursuant to § 54.1-2351 or (ii) common interest community manager pursuant to § 54.1-2349 and regulations promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

2008, cc. 851, 871; 2011, cc. 334, 577, 585; 2014, c. 216; 2015, c. 277; 2016, c. 471; 2017, cc. 393, 406.

§ 55-79.97:2. Properties subject to more than one declaration.

If the unit is subject to more than one declaration, the unit owners' association or its common interest community manager may charge the fee authorized by § 55-79.97:1 for each of the applicable associations, provided however, that no association may charge an inspection fee unless the association has architectural control over the unit.

2008, cc. 851, 871.

§ 55-79.97:3. Requests by settlement agents.

A. The settlement agent may request a financial update from the preparer of the resale certificate.

The preparer of the resale certificate shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions; however a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the unit owners' association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the resale certificate with (i) the complete record name of the seller, (ii) the address of the subject unit, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

2008, cc. 851, 871.

§ 55-79.98. General powers and duties of the Common Interest Community Board.

A. The agency shall prescribe reasonable rules and regulations which shall be adopted, amended or repealed in compliance with law applicable to the administrative procedure of agencies of government. The rules and regulations shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and other rules and regulations as are necessary and proper to accomplish the purpose of this chapter.

B. The agency by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to condominiums prior to its distribution.

C. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the agency, with or without prior administrative proceedings may bring an action in the circuit court of the city or county in which any portion of the condominium is located to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief of temporary restraining orders shall be granted. The agency is not required to post a bond in any court proceedings or prove that any other adequate remedy at law exists.

D. With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with subdivision A 1 of § 55-79.89, the agency shall forthwith cause the same to be sent by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in such application or any annual report.

E. The agency may intervene in any suit involving the declarant. In any suit by or against a declarant involving a condominium, the declarant shall promptly furnish the agency notice of the suit and copies of all pleadings.

F. The agency may:

1. Accept registrations filed in other states or with the federal government;
2. Contract with similar agencies in this Commonwealth or other jurisdictions to perform investigative functions;
3. Accept grants in aid from any governmental source.

G. The agency shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

1974, c. 416; 1981, c. 480; 2011, c. 605.

§ 55-79.99. Investigations and proceedings.

A. Whenever the agency receives a written complaint which appears to state a valid claim, the agency shall make necessary public or private investigations in accordance with law within or outside of this Commonwealth to determine whether any declarant, its agents, employees or other representatives have violated or are about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules, regulations and forms hereunder. The agency may also in like manner and with like authority investigate written complaints against persons other than the declarant, its agents, employees or other representatives.

B. For the purpose of any investigation or proceeding under this chapter, the agency or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

1974, c. 416; 1993, c. 198; 2011, c. 605.

§ 55-79.100. Cease and desist orders.

(a) If the agency determines after notice and hearing that a person has:

- (1) Violated any provision of this chapter;

(2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

(3) Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency;

(4) Disposed of any units which have not been registered with the agency; or

(5) Violated any lawful order or rule of the agency;

it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this chapter.

(b) If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

1974, c. 416; 1975, c. 415.

§ 55-79.101. Revocation of registration.

(a) A registration may be revoked after notice and hearing upon a written finding of fact that the declarant has:

(1) Failed to comply with the terms of a cease and desist order;

(2) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(3) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of unit purchasers;

(4) Failed faithfully to perform any stipulation or agreement made with the agency as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(5) Made intentional misrepresentations or concealed material facts in an application for registration.

Findings of fact, if set forth in statutory language, shall be accompanied by concise and explicit statement of the underlying facts supporting the findings.

(b) If the agency finds after notice and hearing that the developer has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

1974, c. 416.

§ 55-79.102. Judicial review.

Proceedings for judicial review shall be in accordance with the provisions of the Administrative Process Act (§ 2-2-4000 et seq.).

1974, c. 416; 1996, c. 573.

§ 55-79.103. Penalties.

Any person who willfully violates any provision of §§ 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, or any rule adopted under or order issued pursuant to § 55-79.98, or any person who willfully in an application for registration makes any untrue statement of a material fact or omits to state a material fact shall be guilty of a misdemeanor and may be fined not less than \$1,000 or double the amount of gain from the transaction, whichever is the larger but not more than \$50,000; or he may be imprisoned for not more than 6 months; or both, for each offense.

1974, c. 416.

MEMORANDUM

**TO: Members
Common Interest Community Board**

**FROM: Joseph C. Haughwout, Jr., Board Administrator
Common Interest Community Board**

DATE: August 26, 2019

SUBJECT: Review of Proposed Assessment Letter of Credit

Declarant Name:	Avalon Columbia Pike, LLC
Condominium Project Name	Columbia Center Condominium
Registration No.	0517050167

BACKGROUND:

On August 25, 2005, Columbia Center Condominium (“Columbia Center”) became registered as a condominium project in Virginia. Avalon Columbia Pike, LLC (“Avalon LLC”) is the Declarant for Columbia Center. There are 275 registered units in the condominium.

As part of the registration for Columbia Center, Avalon LLC submitted an Irrevocable Standby Letter of Credit (“assessment letter of credit”) issued by Bank of America, in the amount of \$100,000.00, in favor of the unit owners’ association for Columbia Center. The current expiration date for the assessment letter of credit is November 3, 2019. The assessment letter of credit is automatically renewable from year to year.

On July 22, 2019, the Board’s office received a proposed replacement letter of credit for the assessment letter of credit. The proposed replacement letter of credit was issued by The Bank of Nova Scotia, NY Agency, in the amount of \$100,000.00, on June 18, 2019 (“replacement letter of credit”).

Applicable Statute and Board Guidance

Section 55-79.84:1 of the Code of Virginia states, in part:

- A. The declarant of a condominium containing units which are required by this chapter to be registered with the Common Interest Community

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Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to \$1,000 per unit, except that such sum shall not be less than \$10,000, nor more than \$100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than 10 percent of the units in the condominium or, if the declarant owns less than 10 percent of the units in the condominium, until the declarant is current in the payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided such declarant is current in the payment of assessments.

B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth, or by such other surety as is satisfactory to the Board and such bond shall be conditioned upon the payment of all assessments levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

On June 27, 2013, the Board adopted guidance regarding the acceptance of letters of credit submitted in lieu of assessment bonds required by § 55-79.84:1. The Board established that letters of credit submitted in lieu of bonds shall be issued by institutions that are FDIC insured. Any letter of credit that does not meet this policy shall be reviewed by the Board on a case-by-case basis.

Request for Review of Letter of Credit

The replacement letter of credit was issued by The Bank of Nova Scotia, a financial institution that is not insured by the FDIC.

On July 30, 2019, staff advised the attorney for Avalon LLC as to the Board's policy regarding letters of credit issued by financial institutions that are not FDIC insured. Avalon LLC requested the Board review the replacement letter of credit.

Staff requests that the Board review the replacement letter of credit submitted by Avalon LLC to determine if it is acceptable for posting with the Board in accordance with § 55-79.84:1 of the Code of Virginia.

Common Interest Community Board

Guidance Document

Regarding that Letters of Credit may be Accepted in Lieu of Bonds to Comply with Section 55-79.84:1 of the Code of Virginia.

Adopted June 27, 2013

I. Issue

Section 55-79.84:1 of the Code of Virginia does not require letters of credit that may be accepted in lieu of bonds to be issued by financial institutions whose accounts are insured by the FDIC. This does not coincide with Section 55-79.95.B.2 of the Code of Virginia pertaining to letters of credit in lieu of escrowing deposits which requires an “irrevocable letter of credit issued by a financial institution whose accounts are insured by the FDIC . . .”

II. Applicable Statute

§ 55-79.84:1 Bond to be posted by declarant.

A. The declarant of a condominium containing units which are required by this chapter to be registered with the Common Interest Community Board shall post a bond in favor of the unit owners' association with good and sufficient surety, in a sum equal to \$1,000 per unit, except that such sum shall not be less than \$10,000, nor more than \$100,000. Such bond shall be filed with the Common Interest Community Board and shall be maintained for so long as the declarant owns more than 10 percent of the units in the condominium or, if the declarant owns less than 10 percent of the units in the condominium, until the declarant is current in the payment of assessments. However, the Board shall return a bond where the declarant owns one unit in a condominium containing less than 10 units, provided such declarant is current in the payment of assessments.

B. No bond shall be accepted for filing unless it is with a surety company authorized to do business in the Commonwealth, or by such other surety as is satisfactory to the Board and such bond shall be conditioned upon the payment of all assessments levied against condominium units owned by the declarant. The Board may accept a letter of credit in lieu of the bond contemplated by this section.

III. Policy

Letters of credit submitted in lieu of bonds as required by Section 55-79.84:1 of the Code of Virginia shall be issued by financial institutions that are FDIC insured. Any letter of credit submitted that does not meet this policy will be reviewed on a case by case basis by the Board.

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are proposed topics for discussion and are not to be construed as regulation or official Board position.

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 33

An Act to amend and reenact §§ 55-79.83:1, 55-471.1, and 55-514.1 of the Code of Virginia, relating to common interest communities; dissemination of annual budget; reserve for capital components.

[H 2030]

Approved February 19, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.83:1, 55-471.1, and 55-514.1 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.83:1. Annual budget; reserves for capital components.

A. Except to the extent provided in the condominium instruments, the executive organ shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments ~~and unless the condominium instruments impose more stringent requirements~~, the executive organ shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components *as defined in § 55-79.41*;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive organ deems necessary to maintain reserves, as appropriate.

~~B-~~ C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components *as defined in § 55-79.41*;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; ~~and~~

3. A ~~general~~ statement describing the procedures used for ~~the~~ estimation and accumulation of cash reserves pursuant to this section ~~and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect~~; ~~and~~

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

§ 55-471.1. Annual budget; reserves for capital components.

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration ~~and unless the declaration imposes more stringent requirements~~, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components *as defined in § 55-426*;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

~~B-~~ C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components *as defined in § 55-426*;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; ~~and~~

3. A ~~general~~ statement describing the procedures used for ~~the~~ estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; ~~and~~

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

§ 55-514.1. Annual budget; reserves for capital components.

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components *as defined in § 55-509*;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

~~B.~~ C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components *as defined in § 55-509*;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year; ~~and~~

3. A ~~general~~ statement describing the procedures used for ~~the~~ estimation and accumulation of cash reserves pursuant to this section ~~and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and~~

4. A *statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.*

2. That the Common Interest Community Board shall develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study.

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VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 44

An Act to amend and reenact §§ 55-79.83:1, 55-471.1, and 55-514.1 of the Code of Virginia, relating to common interest communities; dissemination of annual budget; reserve for capital components.

[S 1538]

Approved February 19, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.83:1, 55-471.1, and 55-514.1 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.83:1. Annual budget; reserves for capital components.

A. Except to the extent provided in the condominium instruments, the executive organ shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments ~~and unless the condominium instruments impose more stringent requirements~~, the executive organ shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components *as defined in § 55-79.41*;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive organ deems necessary to maintain reserves, as appropriate.

~~B-~~ C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components *as defined in § 55-79.41*;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; ~~and~~

3. A ~~general~~ statement describing the procedures used for ~~the~~ estimation and accumulation of cash reserves pursuant to this section ~~and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect~~; ~~and~~

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

§ 55-471.1. Annual budget; reserves for capital components.

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration ~~and unless the declaration imposes more stringent requirements~~, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components *as defined in § 55-426*;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

~~B-~~ C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components *as defined in § 55-426*;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year; ~~and~~

3. A ~~general~~ statement describing the procedures used for ~~the~~ estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; ~~and~~

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

§ 55-514.1. Annual budget; reserves for capital components.

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components *as defined in § 55-509*;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

~~B.~~ C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components *as defined in § 55-509*;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside, to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year; and
3. A ~~general~~ statement describing the procedures used for ~~the~~ estimation and accumulation of cash reserves pursuant to this section ~~and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and~~
4. A *statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.*

2. That the Common Interest Community Board shall develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study.

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Materials for Board are proposed topics for discussion and are not to be construed as regulation or official Board position.

Introductory Disclaimer

Chapters 33 and 44 of the 2019 Virginia Acts of Assembly, which resulted from the passage of House Bill 2030 and Senate Bill 1538, direct the Common Interest Community Board (“the Board”) to “...develop guidelines for the development of reserve studies for capital components, including a list of capital components that should be addressed in a reserve study.”

In accordance with the General Assembly’s directive, this document provides guidelines for the development of reserve studies for capital components, as defined in the Code of Virginia. This document reflects the significant input and contributions of industry professionals experienced in the development of reserve studies for common interest communities, and generally reflects standard and accepted industry practice. It is intended to provide useful information and guidance to members of the public, including members of association governing boards and those who provide management services to associations, regarding developing reserves studies. It is not intended to regulate the development of or define a “standard of care” for reserve studies, and does not prescribe, or proscribe, any specific method for developing such studies.

Introduction

Throughout the United States there are various forms of real property ownership in which multiple homeowners agree to share in the common ownership of certain real property for their mutual benefit and enjoyment. Developers have employed this approach to, among other things, create neighborhoods, increase density, comply with local zoning and proffer requirements, and allow neighbors to establish shared services, facilities and expenses, take advantage of economies of scale and enhance property values.

In Virginia, developments of this type are called common interest communities (CICs), and can take one of the following forms: property owners' association, condominium, or real estate cooperative. Generally, in a CIC individuals own their lot or unit in the community and have shared ownership with other owners in the remaining real property, the **common area or common elements**. Real estate cooperatives are somewhat different in that the real property is owned by a company, and the membership of the association is made up of proprietary lessees, who are entitled to exclusive use and possession of a unit through a proprietary lease from the company. CICs have three general characteristics. First, the property is subject to **governing documents** that organize the community, provide for the administration of the community and common areas through an association, and establish the rights and obligations of the association, individual owners, and the association's governing board. Second, by virtue of ownership in a CIC, membership in the association is mandatory and automatic. Finally, in a CIC members are required to pay **assessments** to fund the association and maintain the property. In a CIC, responsibility for maintenance and upkeep of the property is established by the community's governing documents. Generally, these responsibilities are divided between the association and the individual lot or unit owners. Items that the association is obligated to maintain, repair, and replace, regardless of whether such items are part of the common areas or elements, and for which the association's governing board has determined funding is necessary, are called **capital components**.

The number and types of capital components can vary from community to community. For some communities there may only be a few components, such as a shared road or main entrance, signage for the community, and landscaping. Other communities may have significantly more components, including structures such as parking garages or recreational facilities (e.g. exercise rooms, pools, tennis courts). In addition, many communities have stormwater management facilities, which are often required to be installed as a measure to protect the environment. These might take the form of a pond or other waterway in the community. Stormwater management facilities, if they are part of the common area or elements, are the responsibility of the association to maintain. A list of typical common area components is located at Appendix C. Please be advised that this list is not exhaustive, and does not reflect every type of component that may be found in an association.

In order to ensure capital components are properly maintained, repaired, and timely replaced, many associations establish a reserve fund consisting of a budgeted portion of monies collected from assessments imposed on lot or unit owners. Funds in reserve are set aside for the dedicated purpose of paying for costs to repair and replace capital components when the need arises. In this sense, a reserve fund is like a “piggy bank.” By establishing and funding a reserve, associations can lessen the potential of having to impose costly special assessments on members to pay for repairing or replacing capital components.

Toward this end, Virginia law requires the governing board of an association to periodically conduct a study, called a *reserve study*, to determine the necessity and amount of reserves required to repair, replace and restore the capital components. A reserve study is a capital budget planning tool used to determine the physical status and repair/replacement cost of an association’s capital components, and an analysis of an association’s funding capacity to maintain, repair, and replace capital components.

Sections 55-79.83:1, 55-471.1, and 55-514.1 of the Code of Virginia state, in part¹:

Except to the extent otherwise provided in the [governing documents], the [governing board] shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components, as defined in [applicable section of the Code of Virginia];
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the [governing board] deems necessary to maintain reserves, as appropriate.

In addition, these provisions in the Code stipulate that:

To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in [applicable section of the Code of Virginia];
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore

¹ Note: These provisions of the Code of Virginia will be recodified effective October 1, 2019. See Appendix A for the complete sections of the Code.

capital components and the amount of the expected contribution to the reserve fund for that year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

Because an association governing board has a fiduciary duty to manage association funds and property, establishing a reserve fund and making provision in the association budget for reserves is important. The information provided by a reserve study aids association members in understanding the physical condition of the property, and the financial condition of the association, in order to allow for adequate planning. It can serve as an important tool for the association to balance and optimize long-term property values and costs for members, as reserve planning helps assure property values by protecting against decline in value due to deferred maintenance and inability to keep up with aging components.

By establishing a reserve fund and maintaining sufficient reserves, a governing board can reduce the need to impose special assessments on association members when it comes time to replace capital components, particularly if the replacement cost is high. Even if a community only has a limited number of components, such as a simple road or driveway, setting aside funds in advance will help guard against financial shock when repair or replacement is needed. In addition, it creates a more equitable balance between newer owners in an association, and older owners, as newer owners will not have to assume the burden of the cost to repair or replace older components in the community.

Moreover, a reserve study is beneficial to purchasers of property in a CIC. A reserve study can aid in the evaluation of the value of the property, and show a more accurate and complete picture of the association's financial strength and market value.

In addition to establishing a reserve fund for capital components, associations should also consider establishing an operating reserve for budget overages. An operating reserve provides the association with funds in case of unexpected budget overages or unforeseen operating expenses. Doing so will guard against the risk that the capital reserve fund being used to cover these unanticipated expenses.

The Basics of Reserve Studies

Components of a Reserve Study

There are two components of a reserve study: (i) a ***physical analysis*** and (ii) a ***financial analysis***. The physical analysis provides information about the physical status and the repair or ***replacement cost*** of components the association is obligated to maintain. This entails conducting

an **inventory** of components, an assessment of the components' condition, and **life and valuation estimates**. The financial analysis assesses the association's reserve income and expenses, by examining the reserve **fund status**, measured in cash or **percent funded**, and recommending an appropriate contribution for the fund.

Types of Reserve Studies

Reserve studies can be grouped into four types, each of which reflects differing levels of service. The Community Associations Institute (CAI) identifies the following four levels of service.

1. **Full Study**: A full reserve study is the most comprehensive level of service. A full study involves performing: (i) a **component inventory**, (ii) a **condition assessment** (based upon on-site visual observations), and (iii) life and valuation estimates of components; then determining (iv) the reserve fund status, and (v) a funding plan.
2. **Update, With-Site-Visit/On-site Review**: A reserve study update which involves performing (i) a component inventory (verification only, not quantification), (ii) condition assessment (based upon on-site visual observation), and (iii) life and valuation estimates of components; then determining (iv) the reserve fund status, and (v) a funding plan.
3. **Update, No-Site-Visit/Off Site Review**: A reserve study update with no on-site visual observations in which involves performing (i) life and valuation estimates of components; then determining (ii) the reserve fund status, and (iii) a funding plan.
4. **Preliminary, Community Not Yet Constructed**: A reserve study prepared before construction that is generally used for budget estimates. It is based on design documents such as the architectural and engineering plans, and involves performing (i) a component inventory, (ii) life and valuation estimates of components; then determining (iii) a funding plan.

Contents of a Reserve Study

A reserve study should consist of the following:

- A summary of the association, including the number of units, physical description, and the financial condition of the reserve fund;
- A projection of the reserve starting balance, recommended reserve contributions, projected reserve expenses, and the projected ending reserve fund balance for typically a 30-year period; but at least a minimum of 20 years;
- A tabular listing of the component inventory, component quantity or identifying descriptions, useful life, remaining useful life, and current replacement cost;

- A description of the methods and objectives utilized in computing the fund status in the development of the funding plan;
- Source(s) utilized to obtain component repair or replacement cost estimates; and
- A description of the level of service by which the reserve study was prepared and the fiscal year for the reserve study was prepared.

Governing Board Action Steps to Providing for Adequate Reserves

In order to adequately provide for reserves, an association should employ a systematic approach involving specific action steps. First, the association's governing board should **resolve to have a reserve study** by passing a resolution that a reserve study be performed and commit the association to taking action to ensure the study is conducted. Associations that have been operating without a reserve study are not in compliance with Virginia law and must undertake this process as soon as possible. Keep in mind it is a statutory requirement for the governing board of an association to conduct a reserve study at least once every five years, and review the results of the study annually.

Second, the governing board should **identify the reserve study products needed**. A governing board may contract for the preparation of the physical analysis, financial analysis, and **operating budget** by professionals, or may elect to produce one or more of these items on its own. The governing board may also choose to perform part of the work, and have a professional perform the rest.

Third, the governing board should **establish a work plan**, specifying the nature of the tasks to be performed, before conducting the study. The work plan should establish (i) the types of components to be included or excluded; (ii) the timeframe for funding common area components; and (iii) the budget available for conducting the study.

Identifying components to include. Components that the association is obligated to maintain, repair, or restore should not be excluded from the reserve study, even if the components are not part of the common areas or elements. Components for which individual lot or unit owners are responsible should be excluded from the study. The association's governing documents establish those components that are the responsibility of the association to maintain, and those for which owners are individually responsible. Governing documents may contain a **maintenance responsibilities chart** which can be useful for this purpose. In addition, local governments may have information or documents on file regarding the community which can help identify components, including components for which the local government, and not the association, are responsible. (See Appendix C for a list of components that are typically addressed in reserve studies.)

Timeframe. There is not universal agreement of the appropriate timeframe for a reserve study. A good approach is to forecast for a time period that will include the replacement year of the component with the longest estimated useful life. Professionals recommend that the study include all components that will fail before the building itself. “Life-of-the-building” components such as the building foundation and structure are generally excluded from the reserve study budget. However, if there is reason to expect an item will wear out before the building does, or the item may wear out within the time span of the reserve study, then the item should be included as an item in the study.

Budget Available for the Study. Another consideration is the amount of money available to conduct the study. In order to comply with reserve study requirements, associations should, on an annual basis, adequately fund their budget to enable them to either conduct a study, or hire outside professionals to complete the study, once every five years.

Next, the governing board needs to **conduct the component and funding studies**. The governing board should identify documents, including the association’s governing documents (i.e. declaration, bylaws), the most accurate drawings of the development, and the maintenance history of major common area components. If “as built” plans exist, these would be the best source of information about the nature of the major components. The maintenance history should include the actual dollar cost figures of that maintenance. If an association has not already done so, it should consider creating a “permanent” maintenance history file for each major component.

Finally, once the study has been completed, the governing board needs to **accept, disclose, and implement the results** of the study. The governing board reviews and accepts the results of the reserve study, and incorporates this information into the association’s funding plan. State law specifies that to the extent a reserve study indicates a need to budget reserves, the association budget shall include, without limitation, (i) the current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components; (ii) the current amount, as of the beginning of the fiscal year for which the budget is prepared, of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that fiscal year; (iii) a statement describing the procedures used for estimation and accumulation of cash reserves; and (iv) a statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves. Association governing boards are also required by state law to review the results of the reserve study at least once annually to determine if reserves are sufficient, and make any adjustments they deem necessary to maintain reserves.

Conducting a Physical Analysis

The goals of a *physical analysis* are to (i) estimate useful and remaining life of major components; and (ii) estimate current replacement cost of major components. The analysis lists and estimates replacement costs and timing for replacement of components whose repair or replacement is funded through association reserves. The study determines when such repairs or replacements will be needed and what they will cost. The major steps in conducting a physical analysis are:

1. Identify components
2. Specify quantities
3. Inspect components; define scope and methodology for inspection
4. Determine useful life; document maintenance assumptions
5. Assess remaining life; determine replacement year
6. Determine cost of replacement

There are a number of professional firms that perform reserve studies for CICs in Virginia. This explanation of how to perform a physical analysis will help associations to contract for this service and interpret the study results. For associations that cannot, or do not wish to, hire a professional reserve study preparer, this explanation will provide guidelines for governing board members who decide to perform their own physical analysis. Governing board members may wish to consider any potential legal consequences, including civil liability against the association, if they choose to undertake their own study; and should consider seeking legal advice before proceeding.

Identify Components

For each association, the exact list of major components is unique. Lists from other associations or industry publications may serve as a general guide, but are rarely usable without modifications and additions. Note that an inaccurate or incomplete list of components can materially distort an association's long-term funding plan. Professionals recommend that items be placed on the list of components for the reserve budget if they meet all of the following criteria:

- The item is the responsibility of the association to maintain or replace, rather than the responsibility of individual homeowners;
- The item costs over a certain amount to replace (amount to be determined by the governing board)²; and

² One possible guideline is to include items that cost 1% or more of the total association budget. Another possible guideline is to include items that cost over \$500 or \$1,000 to replace, including groups of related items (e.g. gates

- The estimated remaining useful life of the item is greater than one year; and the estimated remaining useful life of the item is less than 30 years at the time of the study.

There is often no one document with a comprehensive list of components for a development. Therefore, it is not easy to identify components accurately, although it is nonetheless essential that the association develop an accurate list of all items whose repair or replacement it must budget.

The exact list of components to include depends upon the physical characteristics of the project, as well as upon the legal division of responsibility among owners, the association, and local government. Appendix C provides a list of items that might be listed as components for association reserves. Note, however, this list is not exhaustive of all possible items.

An association's governing documents can help provide a list of components. Governing documents, including the declaration for the community, typically provide a general description of the common areas or common elements of the development. In a condominium, the governing documents, called condominium instruments, describe that which is part of each unit and what is outside of the unit. Governing documents usually specify the division of responsibilities between the association and individual owners, and can serve as a guide to the components to be included in a reserve study.

The developer's reserve budget should list components the builder identified while planning the project. Such items as streets, roofs, exterior paint, and recreation areas are usually included in the developer's original reserve budget. However, note that governing documents and the developer's budget may not always account all components for which the association is responsible. A site analysis by knowledgeable individuals should result in a comprehensive list of items for which the association is, or might be responsible.

Local governments and utility companies can often help to identify capital components by stating where their responsibility for certain components ends, and that of the association begins. For instance, the governing documents or developer budget may be unclear about whether sidewalks along the edge of a development belong to the association or to the locality. If the sidewalks are an association responsibility, then they are components which should be included in the reserve budget; if not, then the budget need not account for their repair and replacement.

in the development) that cost over \$1,000 to replace. The dollar amount or percentage to use as a guideline should be discussed and adopted by the governing board.

Quantifying Components

Although existing maps and construction drawings of a development may serve as a guide to component quantities, a detailed site and building analysis is the best way to obtain an accurate count of these items. For some components, such as streets, roofs, and fences, the square or linear footage must be measured in order to describe the quantity; while for other items, such as utility room doors, it may be sufficient to know the number required. The approved plans and specifications on file with the locality, and the *as-built plans*, if different from those filed with the local government, can be an excellent source of information for these quantities.³

For components that are actually made up of a number of items, the nature and quantity of the constituent parts should be stated (e.g., the metal flashing for a shake roof as well as the square footage of shingles). It is common to overlook the “extra” pieces that are in fact necessary to the construction of essential items such as roofs, siding, and irrigation systems.

Once the number and constituent parts of each component are detailed, it is necessary to give some consideration to the quality and specifications of those parts. For instance, is the asphalt two inches thick, or four inches thick? Is the roof a two-ply roof? What grade of paint was used? An accurate description of the materials is essential to proper reserves. If significant in dollar amount, quantities of the same type of component existing in very different conditions should be noted separately (e.g., the square footage of siding with western or southern exposure as compared to the square footage with eastern or northern exposure).

Determining Useful Life and Remaining Life of Components

Useful life (UL) is typically defined as the number of years the component is expected to serve its intended purpose if given regular and proper maintenance. If the association fails to provide proper maintenance, then it may become difficult to anticipate the useful life of components.

One estimate of useful life is material manufacturer’s warranty. This estimate presumes, usually in writing in the fine print of the warranty, that the product was installed with the purported quality of materials and according to the manufacturer’s specifications. Note, though, that sometimes components may have been installed with lesser quality materials or inferior workmanship, thereby making the effective useful life shorter. When no knowledgeable inspection is made of the materials and installation, the manufacturer’s warranty may not be an accurate description of the useful life of the component.

There are also some commercially available manuals that have estimates of useful life. Published data may not be consistent with the location, exposure, or type of a particular

³ The drawings filed when the development was begun represent builder plans, but may not reflect the development as actually constructed. Therefore, they can be useful, but should be verified by physical inspection.

component. The estimated life of a street as predicted from national data may well be lower than that of a street in a comparatively mild climate, but the estimated life of exterior paint as predicted from national averages may be higher than that of paint on buildings in windy or coastal areas. In using published estimates, it is necessary to consider how the specific case in question may differ from the average case considered by the manual's author. Useful life estimates may vary considerably from manual to manual, so consulting more than one manual may guard against the risk of underestimating or overestimating the life of a component. The source(s) of component useful life estimates should be identified specifically.

Remaining useful life (RUL) is generally defined as the expected number of years the component will continue to serve its intended purpose prior to repair or replacement. If the development is new and the developer-prepared estimates are correct, the remaining useful life might be estimated simply by subtracting the age of the development from the useful life of each component. The older the components, the less accurate this method will be.

Some of the factors that affect the remaining useful life of a component are its (i) current age, (ii) apparent physical condition, and (iii) past maintenance record (or absence of maintenance). The current age of the component may be determined from association records. The apparent current condition must be determined through physical inspection, preferably by someone familiar with the component. Records of past maintenance must be compared with recommended maintenance in order to determine whether the item has been properly maintained or may wear out sooner than expected due to inadequate care.

In determining the remaining useful life of a component, it is assumed there has been a certain level of continued preventative maintenance. These maintenance assumptions should be explicitly stated so that proper maintenance can be continued through the component's remaining life.

The remaining life of a component implicitly specifies the year in which it may be repaired or replaced. A budget timeline can be used to show the replacement year for each component. This timeline can serve as a schedule for expected replacement of components and can be updated or changed when the physical analysis is updated, or as components last for shorter or longer periods than expected.

Sample Replacement Schedule

Component	Age in Years as of 12/31/2018	Estimated Useful Life (UL)	Estimated Remaining Useful Life (RUL)	Year to Replace
Painting	3	5	2	2021
Paving (slurry coat)	4	7	3	2022
Roofing	11	15	4	2023

(wood shingle)

Determining Replacement Cost

Replacement costs can be obtained from manufacturers or their representatives for some items, and from local licensed contractors on others. It is important to remember that the cost of component replacement should also include the cost of removing the existing component, along with the cost of obtaining permits and compliance with local building requirements, if applicable.

There are a number of recognized cost estimating manuals available with pricing information that can be used. Cost estimates are generally comparable among manuals for the same geographic area, so there is less need to consult multiple manuals for replacement costs than for estimates for useful life. However, there are some considerations to factor in when using these manuals to determine costs. The majority of professionals performing reserve studies for associations obtain their cost estimates from a data base gathered from their experience. Cost estimates derived from this data may vary significantly from estimates based on manuals alone. Accordingly, associations performing their own study may want to obtain additional supporting data for their manual cost estimates from other sources, such as contractors, material suppliers, etc. This collection of data should then be considered in conjunction with the results of an inspection by a reasonably qualified person when making a final determination of replacement cost.

It is important to determine the specific geographic area for which the manual offers a cost average. If a manual has national averages, it may underestimate the cost of labor in certain areas, such urban areas. It is also important to determine the base year in which the manual's cost estimates were made. The current replacement cost for components is not shown in the manual, and should be adjusted for ***inflation*** since the time cost data was obtained.

Documenting Maintenance Assumptions

An important adjunct to determining UL and RUL of a component is to document the type and schedule of maintenance that is assumed for the component to survive that life. For example, if the 20-year life expectancy of a roof is based upon annual cleaning of the roof and gutters, the association will be able to take action to help ensure that all the roofs will indeed last. Documentation of maintenance assumptions can lead to improved maintenance throughout the project and thereby lower replacement costs. On the other hand, ignoring maintenance assumptions, or improper maintenance, can put the replacement schedule and costs in jeopardy.

A properly prepared physical analysis will lead to a better maintenance program for the association. Clear and concise maintenance suggestions are a useful supplement to a

professionally prepared physical analysis. These suggestions may save more than the cost of the original study on future repairs and replacements.

Using Component Data to Develop the Funding Analysis

Once charts of replacement schedule and future replacement costs are completed, the physical analysis is finished. The next step is to determine how much will be spent in each year for all components, and that step is part of the financial analysis.

Conducting a Financial Analysis

The goals of a **financial analysis** are to (i) establish **funding goals**; (ii) identify annual funding requirements; and (iii) disclose limitations and assumptions. Once the estimated useful life, estimated remaining life, and estimated current replacement costs of components are identified, the association is ready to develop a plan for funding the **reserve account**.

In preparing the **funding plan**, the association will have to make decisions about the amount of current assessments and the need for **special assessments**, balanced against projected liability. The financial viability of the association will depend a great deal upon the ability of the association to replace components as they wear out, and not to defer major maintenance items.

A product of the financial analysis process is the development of a funding plan (**cash flow** forecast or projection) to estimate future reserve cash receipts and disbursements. This is most easily presented in a spread sheet format. All supporting assumptions and methodology should be carefully documented.

The major steps in conducting a financial analysis are:

1. Obtain component information (from physical analysis)
2. Determine funding goal
3. Calculate replacement fund liability
4. Identify reserve account asset (cash balance)
5. Estimate annual association reserve fund income (from regular assessments)
6. Project expenditures and reserve fund needs, including regular and special assessments
7. Prepare statement of limitations and assumptions
8. Disclose reserve study information in association budget

As an association completes these steps, the board will make major policy decisions. Professionals may be able to advise the governing board on key decisions, but it is important for the governing board to understand each of these decisions, since they independently affect the overall results of the funding plan. Since the amount of regular assessments and the need for

special assessments should be indicated in the plan, these decisions will affect owners' monthly costs and property values.

Determine Funding Goal

Determination of the funding strategy, including establishment of the funding goal, is one of the most important fiscal decisions to be made by the governing board. The association budget should clearly indicate estimated revenues and expenses, describe the funding goal, and indicate current status in meeting the goal.

The funding plan should show the funds required to replace each component as it comes to the end of its useful life, and indicate how the association will fund the replacements. The association should decide how much should be raised through regular assessments for the reserve account each year, and how much should be raised by special assessment, if any. In addition, the association should consider how much cash will remain in the reserve account at the end of the planning period relative to the projected balance needed at that date.

Associations will have to make difficult policy choices in determining the funding goal. Many associations underfund their reserves. This is due to lack of attention to reserve budgets in the past, and underestimation of replacement costs. An ideal goal for an association is to eliminate any *deficit* or shortage in reserve fund by building up the reserve fund to where the cash in the replacement reserve account is at least equal to the estimated value of accumulated wear of all major components. However, this goal may not be within reach of many associations in the short term, except through special assessments.

Funding Models

There are at least four basic funding models. All of these funding models have appropriate application. Furthermore, if done correctly, all of these models adequately fund the reserves.

- **Full Funding Model** – (Also called the Component Method.) This is the most conservative funding model. It funds each component as its own line item budget. This method is required in some states; however, Virginia does not require this method. The goal of this model is to attain and maintain the reserves at or near 100%. For example, if an association has a component with a 10-year life and a \$10,000 replacement cost, it should have \$3,000 set aside for its replacement after three years. In this case, \$3,000 equals full funding
- **Baseline Funding Model** – (Also called a Minimum Funded Model.) The goal of this model is to keep the reserve cash balance above zero. This means that at any time during the funding period the *reserve balance* does not drop below zero dollars. This is the least conservative model. An association using this model must understand that even a minor reduction in a component's remaining useful life can

result in a deficit in the reserve cash balance. Associations can implement this model more safely by conducting annual reserve updates that include field observations.

- **Threshold Funding Model** – (Also called the Cash Flow Method.) This model is based on the Baseline Funding concept. However, in this model the minimum cash reserve balance is established at some predetermined dollar amount. Associations should take into consideration that depending on the mix of common area major components this model may be more or less conservative than the fully funded model.
- **Statutory Funding Model** – This model is based on local statutes. To use it, associations set aside a specific minimum amount of reserves as required by statutes. At this time, Virginia statutes are silent on which funding model an association may choose.

Each of the funding models depends on an analysis of cash flows into and out of the reserve fund over the next 30 years. Assessment calculations are then made sufficient to reach the governing board's funding goals.

Calculate the Reserve Deficit

The association should employ the **accrual method** to estimate fund contributions and expenses. This will ensure payments to the reserve account remain level, and that sufficient funds will be available when expenses come due. With respect to revenues, this estimate includes regular and special assessments, as well as the after-tax **interest** income earned on accumulated cash reserves. Expenses can be accrued by spreading the eventual replacement cost of each component over its total useful life or obtaining an estimate of annual component wear. For instance, if a component currently valued at \$10,000 has a useful life of ten years, then one can estimate the annual wear, or the annual provision for the replacement fund, at \$1,000. By year five, this component would then have accrued a liability of \$5,000, assuming no inflation. (If the association fully funded its reserves, then this \$5,000 would already be in the reserve account by the end of the fifth year.)

After estimated revenues and expenses are established, this information can be used to calculate the required estimated reserves for components, and calculate any deficit or shortage in the reserve fund.

Begin by determining the **accrued fund balance** for each component. This can be calculated according to the following formula: $\text{Current Cost} \times \text{Effective Age/Useful Life}$. For example, consider a roofing component with a current cost of \$30,000, an effective age of 11 years, and a useful life of 15 years:

$$\frac{\text{Current Cost (Roofing)} \times \text{Effective Age}}{\text{Useful Life}}$$



$$\frac{\$30,000 \times 11}{15} = \frac{\$330,000}{15} = \$22,000$$

Analyze each component in this manner, and then total together the accrued fund balance for components to determine the projected reserve fund balance. Then determine the reserve deficit by calculating the difference between the projected reserve fund balance and the estimated cash balance in the reserve fund. Once the reserve deficit (if any) is established, this information can be used to determine the amount of reserve deficit per lot or unit. In addition, the reserve balance funding percentage can be determined.

Component Replacement	Current Cost	Useful Life (years)	Effective Age (years)	Accrued Fund Balance
Painting	\$10,000	5	3	\$6,000
Paving	\$14,000	7	4	\$8,000
Roofing	\$30,000	15	11	\$22,000
Total Reserve Balance (current)				\$36,000
Estimated Cash Reserves (current)				\$22,000
Reserve Deficit (current)				\$14,000
Reserve Deficit per unit (\$14,000 ÷ 35 units)				\$400
Percentage of Funding				61%

$$\text{Accrued Fund Balance} = \text{Current Cost} \times \text{Effective Age} / \text{Useful Life}$$

$$\text{Reserve Deficit} = \text{Total Reserve Balance} - \text{Estimated Cash Reserves}$$

$$\text{Percentage Funding} = \text{Estimated Cash Reserves} / \text{Reserve Deficit} \times 100$$

Although this approach is relatively simple, there are challenges posed by the fact that it does not factor the effects of interest or of inflation. Interest rates and inflation play a significant role in whether a reserve fund can meet its goals. An alternative reserve deficit model, which does take into account interest and inflation, is as follows:

$$\text{Desired Balance} = \left(\frac{\text{Current Cost}}{\text{Useful Life}} \times \text{Effective Age} \right) + \left(\frac{\text{Current Cost}}{\text{Useful Life}} \times \text{Effective Age} \right) \frac{1}{1 + \text{Interest Rate}^{\text{Remaining Life}}} - \left(\frac{\text{Current Cost}}{\text{Useful Life}} \times \text{Effective Age} \right) \frac{1}{1 + \text{Inflation Rate}^{\text{Remaining Life}}}$$

Assuming an inflation rate of 3% and interest rate of 5% after taxes, the following are calculated.

Component Replacement	Current Cost	Useful Life (years)	Effective Age (years)	Desired Fund Balance
Painting	\$10,000	5	3	\$5,787
Paving	\$14,000	7	4	\$7,590
Roofing	\$30,000	15	11	\$22,553
Total Reserve Balance (current)				\$33,930
Estimated Cash Reserves (current)				\$22,000
Reserve Deficit (current)				\$11,930
Reserve Deficit per unit (\$11,930 ÷ 35 units)				\$340
Percentage of Funding				65%

This approach, though more complicated, may be more reflective of the true amount of the reserve deficit (assuming the interest and inflation rates are accurate). In most cases, the difference between these approaches is not material; however, with some mixes of common area major components the difference can be quite noticeable and failure to properly take interest and inflation into account can unfairly lead to unrealistically high calculations of the reserve deficit.

Many associations take the approach of an **unfunded & special assessment model**. The association does not have reserve balances that will cover expected replacement costs, and the only recourse is to schedule special assessments to cover component replacement costs when they are due. Lack of information about needed special assessments can pose a problem for owners. One-time costs impose an additional financial burden on owners, and can be a considerable hardship on those with limited or fixed incomes who may be unable to pay. This approach is the riskiest, and could jeopardize the financial viability of the association if assessments cannot be raised when needed.

Another approach is a **mixed model** in which the cash needs for replacement of components are met through a combination of regular and planned special assessments. The degree to which an association can meet its cash needs through regular as opposed to special assessments may be an indicator of the association's financial viability.

The association's choice of the funding goal or strategy will have a direct effect on the cash required of each individual owner. The strategy, and the degree to which the association

has funded its reserves, should affect property value as well. (If an association shows a \$5,000 unfunded reserve deficit per unit, this amount reasonably should be reflected in the sales price.)

Estimate Association Reserve Fund Income

Ideally, the replacement reserve account should be built through regular (usually monthly) assessments paid by association members. A specific dollar amount of regular association payments should be earmarked for reserves, and deposited into a reserve account as they are collected. Financing of replacement reserves from regular assessments is desirable. First, it spreads the responsibility for replacements over time, rather than allocating costs to owners who happen to be in the association in the year a particular component comes due for repair or replacement. This funding approach provides a more equitable distribution of the costs of aging components. Second, it provides individual owners with more certainty as to the true costs of the property.

Income from regular assessments should be calculated for each year, based on the number of lots or units, and the level assessment per lot/unit. In associations with several rates for different types or sizes of units, the expected income should be calculated for each class of unit and then added. Assessment increases, if any, should be estimated by year. A method for calculating the amount to contribute to the reserve account follows. Under normal economic circumstances this approach should yield a good approximation. However, associations may wish to obtain the assistance of a professional firm to fine tune estimates to take into account inflation and interest rates.

Component	Replacement Cost	Estimated Useful Life (years)	Annual Contribution
Painting	\$10,000	5	\$2,000
Paving	\$14,000	7	\$2,000
Roofing	\$30,000	15	\$2,000
Total Annual Contribution			\$6,000
Add 10% for Contingencies			\$600
Total Annual Contribution			\$6,600
Number of Units in Association			48
Annual Contribution per Unit			\$138
Monthly Contribution per Unit			\$11.46

State law requires an association’s governing board to review reserve study results at least annually to determine if reserves are sufficient – according to the governing board, and to make adjustments necessary to maintain reserves. Changes in interest rates or inflation rates, or unusual changes in the prices of components, may make it advisable to raise or lower the

monthly amount assessed to fund reserves. These periodic “course corrections” can promote the stability of the reserve account, and decrease the likelihood of financial shocks when the next reserve study is performed.

Project Expenditures and Reserve Funding Needs

The physical analysis provides the estimates for expected expenditures by year for each component. Adding these component requirements together, by year, gives the estimate of needed funds over time. Association members should be aware of the limitations of expenditure forecasting and of the reality that the overall funding plan is only as good as the initial estimates of replacement costs and the time of replacement needs.

An important policy issue for a governing board is the decision over whether to use current costs, or estimated future costs. Use of an inflation rate will generally result in higher estimates of future costs. If the governing board uses current costs, it is essential the board revise the plan annually based upon updated current replacement costs, plus currently required or anticipated expenditures. The annual cost for each component would be calculated by dividing the unfunded replacement cost by the remaining useful life. This approach is valid only if repeated each year.

If the board chooses to use an inflation rate, it would apply an average long-term cost inflation rate to all components from the time of the study until the year of replacement (based on recent average component cost data). To keep this plan current, it is important to annually review and update projected expenditures, inflation factors and other assumptions. As with the current cost approach, the inflation rate approach is valid only if repeated each year.

There are several ways to select an inflation rate for estimating component costs for future years. These include: (i) Federal Bureau of Labor Statistics; (ii) published information from construction cost estimating companies; and (iii) Marshall & Swift. The interest rate assumption is an important decision for the governing board, and should be explicitly disclosed in the financial analysis. Because of their effect on estimating future costs, current cost information and inflation rate assumptions should be reviewed annually, and the projections adjusted as necessary.

Following is a sample chart showing calculations for future replacement costs. In a real situation, it may be necessary to add additional years of inflation in order to account for old pricing information. The sample chart assumes the pricing information on all components is up-to-date.

Component	Quantity & Units	Unit Cost	Current Cost to Replace (2019)	Year to Replace	Future Cost to Replace
Painting, exterior stucco	15,875 sq. ft.	.63	\$10,000	2021	\$10,941
Paving, slurry coat	35,000 sq. ft.	.40	\$14,000	2022	\$16,022
Roofing, wood shingle	10,715 sq. ft.	2.80	\$30,000	2023	\$35,913
(Future replacement cost was calculated with an annual 4.6% inflation rate.)					

Estimate Interest Earnings of Reserve Account Over Financial Analysis Period

Reserve funds deposited in certificates of deposit or money market accounts will generate interest income to increase the reserves. For forecasting purposes, it is necessary to choose an interest rate. For planning purposes, a lower interest rate is more conservative than a higher one. Interest rates can be pegged to current bank rates or CD rates. Income from the reserve and operating accounts is taxable to an association, even if the association is established as a non-profit organization. A governing board should adjust the interest rate assumption to account for applicable federal and state taxes.

Though it may be difficult to accurately project future component cost increases or future interest earned on reserve cash balances, it is nonetheless important to use these factors for calculations in the financial analysis, and to update them each year. This is particularly true for associations that have chosen to rely in part on special assessments.

As component replacement comes due in future years, it will draw against reserve funds. The initial reserve account, augmented by regular contributions from routine homeowner assessment payments, should provide sufficient funding to pay for replacements as they are needed. In some cases, though, the reserve account will not be enough. The cash flow analysis will identify instances where expenditure projections for a given year exceed projected reserve cash balances. In these cases, additional funds from special assessments (or other sources, if any) would be needed to increase the reserve accounts to desired levels.

Some replacement expenses will be impossible to estimate. This may be due to unexpected breakage or destruction, failure in a “life-of-the-project” system, reduced useful life of a component, or other unexpected component cost. A line item in the cost estimates might be established as a contingency. This amount might be limited to 3% to 5% of the first-year budget in a new association. In a conversion, or older associations with incomplete documentation, larger contingency levels may be necessary. One useful way to establish estimates for contingency funding in on-going associations is to review prior year spending for contingency-type replacements or continuing repairs. For instance, if there is routine work done annually on

underground utilities, then some funds for expected annual levels might be budgeted under the contingency category.

Appendix F contains a sample financial analysis which summarizes these income and cost concepts. The rows of the spreadsheet show individual component costs and association income sources. The columns show the years included in the financial analysis. The sample assumes a funding plan period of 30 years and mixed funding model which uses regular and special assessments to maintain a positive cash balance. Because the model is not fully funded, inflation factors are employed in determining component costs.

Statement of Limitations and Assumptions

The funding analysis should document (i) all limitations to the estimate, (ii) assumptions made in order to conduct the estimates, (iii) the model used to make the estimates.

Disclose Reserve Study Information in the Annual Budget; Updating

An association, once it has successfully completed a reserve study (both physical and financial analysis), can use the resulting information in its annual budget. Indeed, state law requires that to the extent a reserve study indicates the need for an association to budget reserves, the budget must include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components;
2. The current amount of accumulated cash reserves set aside, to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for the fiscal year (as of the beginning of the fiscal year for which the budget is prepared);
3. A statement describing the procedures used for estimation and accumulation of cash reserves; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

An association governing board is required to review the results of the reserve study at least annually to determine if reserves are sufficient, and make appropriate adjustments to ensure reserves are maintained. How often, though, does the reserve study need to be updated?

Annual updates of the financial analysis can be carried out at the same time as preparation of the operating budget, and can call for required adjustments within the original planning period. The assumptions in the reserve study (e.g. remaining life and cost of components) should be reviewed and updated as necessary. The frequency of updates of component data will depend on the soundness of the original data and estimates, the preparer's recommendations, and the association's ability to adequately maintain its components. Even

though the methodology calls for a financial study covering a time frame of twenty years or more, annual planning and periodic reviews of the reserve study can rely on updated estimates.

Hiring a Professional to Perform a Reserve Study

Members of an association governing board must decide whether to conduct a reserve study by themselves, or hire qualified professionals to perform the task. Some associations elect to hire outside consultants to perform certain tasks, but not others. In making this decision, a governing board should consider several factors, to include:

1. The level of expertise within the board or the community for this kind of study;
2. The willingness of board or community members to volunteer their time;
3. The cost of hiring outside consultants to conduct the reserve study;
4. Whether a previous reserve study is available for use as a guideline;
5. The quality of existing documentation of components and replacement costs;
6. The association's previous history regarding special assessments;
7. The current financial state of the association's reserve account; and
8. The degree to which board members can be held personally liable for a defective reserve study.

If the governing board wishes to have all or part of the study performed by professionals, it must still make several important decisions. These include interviewing and hiring the consultants, assisting them in obtaining association data, reviewing the **work product** delivered by the consultants, and following up on consultants' recommendations for the reserve funding account. Should a governing board elect to use consultants, the following should be established by the board:

- Identification of common area components, exclusive use components, quasi-structural components, and life-of-the-project components (with the assistance of association management);
- The interest rate for estimating income earned on reserve balances; and
- The funding goal of the reserve study, including the degree to which reserves are to be funded by annual assessments, and the need for special assessments.

As the governing board is accountable for quality of the study itself, it should carefully specify the work tasks and carefully review potential consultants with respect to previous experience, price, and recommendations from other associations. Following are some or all of the work tasks that may be performed by professionals.

Physical Analysis Products for Consultants

- Quantification of components;
- Documentation of maintenance assumptions and recommendations;

- Identification of useful life and remaining life of components, and replacement year; and
- Estimation of replacement cost in current and future dollars.

Financial Analysis Products for Consultants

- Spreadsheet modeling of reserve funding, and development of solution(s) meeting the funding goals of the association;
- Calculation of cash balance of reserve account by year;
- Estimation and explanation of reserve deficit;
- Recommendation of needed increases in reserve portion of assessment;
- Preparation of statement of limitations and assumptions of reserve analysis; and
- Preparation of reserve study information for association budget.

After determining the work tasks, the board must select the consultants or contractors, if any, who will perform all or part of the work. Possible outcomes of this decision-making process include:

- Hiring an independent engineering, appraisal, or construction cost-estimating firm to perform the physical analysis, and hiring an independent accountant experienced with community associations to produce the financial analysis and association budget;
- Hiring an organization with staff expertise to perform an integrated component and financial analysis;

The type of assistance that will be needed depends upon the nature of the product desired, the budget, and expertise available to the governing board. The governing board is ultimately responsible for the reserves study disclosures. The board should also consider its potential legal liability if the study does not meet statutory information requirements.

Recommendations from other community associations can often be helpful in determining which company or companies to hire for the reserve study. Organizations of CICs and related professionals can also be a resource to find qualified professionals. It is helpful to talk with people who have worked with any firm or consultant under consideration and to examine samples of related work.

The governing board should interview several companies and obtain samples of their work in order to get a sense of each company's qualifications, experience, and pricing structures. Appendix E contains partial lists of questions a governing board may use to ask a reserve study preparer as part of the interview process. The questions may be used in interviews with potential consultants, or used a written ***request for proposal***, along with a clear specification of the work tasks to be performed. Answers to these questions, as well as price, should help in the selection of any needed professionals.

Information the Governing Board Should Provide

Before it can provide a cost estimate, a consulting firm will need information from the governing board regarding the community and the scope of work. The governing board should provide potential consultants with the following:

- The size of the community – area and number of lots/units;
- Types of improvements in the common area/common elements – pools, clubhouses, etc.;
- Which portions of the reserve study the consulting firm is being asked to perform;
- A list and definition of major components;
- A statement of board policy about major components for which it is not requesting an estimate of replacement costs;
- Maintenance records, warranties, and other information regarding the condition of components;
- Information on planned changes or additions to major components;
- Copy of as-built construction drawings, if they exist;
- A copy of the previous reserve study, if one was conducted;
- Estimated replacement cash balance at beginning of next (nearest) fiscal year;
- A copy of the current or proposed association budget;
- A board estimate of long-term interest rate to be earned on reserve account cash balance; and
- Anticipated reserve expenses for the remaining year.

In some cases, a consulting firm might need further information to make its estimate. It will save time to ascertain a company's information requirements before the actual interview takes place.

Potential Problems

Many associations, especially if conducting a reserve study for the first time, may find they are lacking certain information that is necessary to complete the study. If so, they will need to retrieve and document this information either before the study is begun, or during the study itself. Here is a list of the more common problems that can be addressed during the course of doing a reserve study:

- The association does not have an established master list of major components;
- If a master list of components exists, it does not include all significant common area/common element components listed in the governing documents or developer's drawings;
- Information on remaining life and current replacement cost has not been prepared for all major components;
- The association does not have a documented maintenance schedule and related assumptions for each major component;

- “Life-of-the-project” components are not mentioned in assumptions, or included in reserve budgeting;
- The association budget does not contain reserve study information or assumptions;
- There is no policy to distinguish reserve expenditures from operating expenses;
- No reserve funding goal has been established;
- There is no separate bank account(s) for reserve funds;
- No previous physical analysis or financial analysis has been conducted;
- The reserve deficit is staying constant or increasing over time;
- Special assessments are required to fund major repairs; and
- Current income from assessments does not equal or exceed dollar value of annual component wear.

Resources Used in Developing the Guidelines

California Department of Real Estate. (August 2010). *Reserve Study Guidelines for Homeowner Association Budgets*. State of California.

Community Associations Institute. (2018). *Reserve Specialist (RS) Designation: National Reserve Study Standards*. Community Associations Institute. <https://www.caionline.org/pages/default.aspx>.

Foundation for Community Association Research (FCAR). (2014). *Best Practices: Reserve Studies/Management*. Foundation for Community Association Research. Falls Church, Virginia.

Moss, J. R. (2018). *Virginia Common Interest Communities: A Resource for Volunteer Leaders, Members, Managing Agents and Business Partners* (2nd ed.). Jeremy Moss.

Nevada Department of Business and Industry. (2003). *Reserve Study Guidelines*. Prepared by the Lied Institute for Real Estate Studies. UNLV. State of Nevada.

Additional Resources

Community Associations Institute. (1994). *A Guide to Replacement Reserve Funds and Long-Term Reserve Funding*. Community Associations Institute. Falls Church, Virginia.

Community Associations Institute. (2013). *Reserve Funds: How and Why Community Associations Invest Assets*. 2nd Edition. CAI Press. Falls Church, Virginia.

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

Appendix A – Excerpts from Code of Virginia

Effective Until September 30, 2019	
§ 55-79.41	Condominium Act – Definitions
§ 55-79.93:1	Condominium Act - Annual budget; reserves for capital components
§ 55-509	Property Owners' Association Act – Definitions
§ 55-514.1	Property Owners' Association Act - Annual budget; reserves for capital components
§ 55-426	Virginia Real Estate Cooperative Act – Definitions
§ 55-471.1	Virginia Real Estate Cooperative Act – Annual budget; reserves for capital components

Effective October 1, 2019	
§ 55.1-1800	Property Owners' Association Act – Definitions
§ 55.1-1826	Property Owners' Association Act - Annual budget; reserves for capital components
§ 55.1-1900	Virginia Condominium Act - Definitions
§ 55.1-1965	Virginia Condominium Act - Reserves for capital components
§ 55.1-2100	Virginia Real Estate Cooperative Act – Definitions
§ 55.1-2147	Virginia Real Estate Cooperative Act – Annual budget; reserves for capital components

§ 55-79.41. Definitions

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 55-1-2345.

"Condominium" means real property, and any incidents thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of unit, *infra*.)

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

"Conversion condominium" means a condominium containing structures which before the recording of the declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of unit, *infra*).

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to § 55-70.74.5; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55-70.74.5. The term "declarant" shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59-1-180 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Executive organ" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

"Financial update" means an update of the financial information referenced in subdivisions C 2 through C 7 of § 55-70.97.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending *ab solo usque ad coelum*. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter

of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Meeting" or "meetings" means the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

"Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

"Officer" means any member of the executive organ or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Resale certificate update" means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of § 55-79.07. The update shall include a copy of the original resale certificate.

"Settlement agent" means the same as that term is defined in § 55-79.16.

"Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § 55-79.06.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of condominium unit, supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § 55-79.02.

"Unit owner" means one or more persons who own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person or persons holding an interest in a condominium unit solely as security for a debt.

1974, c. 416; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977; 2001, c. 715; 2002, c. 459; 2003, c. 442; 2008, cc. 851, 871; 2015, cc. 93, 110.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-79.83:1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

- A. Except to the extent provided in the condominium instruments, the executive organ shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.
- B. Except to the extent otherwise provided in the condominium instruments, the executive organ shall:
1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55-79.41;
 2. Review the results of that study at least annually to determine if reserves are sufficient; and
 3. Make any adjustments the executive organ deems necessary to maintain reserves, as appropriate.
- C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:
1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-79.41;
 2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;
 3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
 4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459; 2019, cc. 35, 41.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-509. Definitions

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Common interest community" means the same as that term is defined in § 55-528.

"Common interest community manager" means the same as that term is defined in § 55-1-315.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"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 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 in connection with the provision of maintenance and/or services 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. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this 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.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through A 9 of § 55-509.5. The update shall include a copy of the original disclosure packet.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through A 7 of § 55-509.5.

"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 if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 55-325.16.

1989, c. 679; 1991, c. 667; 1996, c. 618; 1998, c. 625; 2001, c. 715; 2002, c. 459; 2003, c. 422; 2008, cc. 98, 97; 2011, c. 334; 2015, cc. 98, 110.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-514.1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § ~~55-507~~;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § ~~55-509~~;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. ~~159~~;2019, cc. ~~33~~, ~~44~~.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-426. Definitions

When used in this chapter or in the declaration and bylaws, unless specifically provided otherwise or the context requires a different meaning, the following terms shall have the meanings respectively set forth:

"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55-458.

"Capital components" means those items, whether or not a part of the common elements, for which the association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of a cooperative other than the units.

"Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55-114.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"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.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this act, a declarant is treated as the

owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55-111 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ 55-196 et seq.) of this chapter.

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of § 55-159 paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.

"Master association" means an organization described in § 55-156, whether or not it is also an association described in § 55-158.

"Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person who owns a cooperative interest, other than as security for

an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § ~~55-174~~ until that cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, who by means of a voluntary transfer acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures, and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, which secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to: (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § ~~55-178~~; (ii) exercise any development right pursuant to § ~~55-144~~; (iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate which may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § ~~55-156~~; or (vii) appoint or remove any officer of the association, any master association or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion thereof.

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

1982, c. 277; 2005, c. ~~11~~.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-471.1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55-130;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-426;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2005, c. 156; 2019, cc. 33, 44.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55.1-1800. (Effective October 1, 2019) Definitions

As used in this chapter, unless the context requires a different meaning:

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association or a committee that is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement, or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased, or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as a common area in the declaration.

"Common interest community" means the same as that term is defined in § 55.1-2345.

"Common interest community manager" means the same as that term is defined in § 55.1-2347.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part of such development is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance or services 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. "Declaration" does not include a declaration of a condominium, real estate cooperative, time-share project, or campground.

"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.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through 9 of § 55.1-1809. The update shall include a copy of the original disclosure packet.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § 59-1-180 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through 7 of § 55.1-1809.

"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 if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 55.1-1000.

1989, c. 679, § 55-509; 1991, c. 667; 1996, c. 618; 1998, c. 623; 2001, c. 715; 2002, c. 159; 2003, c. 428; 2008, cc. 851, 871; 2011, c. 334; 2015, cc. 93, 110; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55.1-1826. (Effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1800 ;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components defined in § 55.1-1800;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 450, § 55-514.1; 2019, cc. 33, 44, 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55.1-1900. (Effective October 1, 2019) Definitions

As used in this chapter, unless the context requires a different meaning:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 55.1-1942.

"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. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" means, collectively, the declaration, bylaws, and plats and plans recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification recorded with a condominium instrument shall be deemed an integral part of that condominium instrument. Once recorded, any amendment or certification of any condominium instrument shall be deemed an integral part of the affected condominium instrument if such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit.

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium.

"Conversion condominium" means a condominium containing structures that before the recording of the declaration were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a portion of the common elements within which additional units or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium that a declarant may convert into one or more units or common elements, including limited common elements, in accordance with the provisions of the declaration and this chapter.

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of its interest in a condominium unit not previously disposed of, including an institutional lender that may not have succeeded to or accepted any special declarant rights pursuant to § 55.1-1947; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), "declarant" does not include an institutional lender that acquires title by foreclosure or deed in lieu of foreclosure unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55.1-1947. "Declarant" does not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but does not include the transfer or release of security for a debt.

"Electronic means" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient of such communication. Any term used in this definition that is defined in § 57.1-100 of the Uniform Electronic Transactions Act has the meaning set forth in that section.

"Executive board" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and this chapter.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest in such land, within which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser that is in no way binding on the prospective purchaser and that may be canceled without penalty at the sole discretion of the prospective purchaser.

"Offer" means any inducement, solicitation, or attempt to encourage any person to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing that expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered shall be considered an "offer."

"Officer" means any member of the executive board or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value may be considered substantially identical within the meaning of §§ 55.1-1917 and 55.1-1918.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person, other than a declarant, that acquires by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Settlement agent" means the same as that term is defined in § 55.1-1900.

"Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the plat and plans and rounded to the nearest whole number. Certain spaces within the units, including attic, basement, or garage space, may be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium; (ii) contract a contractable condominium; (iii) convert convertible land or convertible space or both; (iv) appoint or remove any officers of the unit owners' association or the executive board pursuant to subsection A of § 55.1-1943; (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer, or the executive board; or (vi) maintain sales offices, management offices, model units, and signs pursuant to § 55.1-1929.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection D of § 55.1-1925.

"Unit owner" means one or more persons that own a condominium unit or, in the case of a

leasehold condominium, whose leasehold interest in the condominium extends for the entire balance of the unexpired term. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person holding an interest in a condominium unit solely as security for a debt.

1974, c. 416, § 55-79.41; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 477; 2001, c. 715; 2002, c. 459; 2003, c. 442; 2008, cc. 851, 871; 2015, cc. 95, 110; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55.1-1965. (Effective October 1, 2019) Reserves for capital components

A. Except to the extent provided in the condominium instruments, the executive board shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments the executive board shall:

1. Conduct a study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1900 ;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1900;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-79.83:1; 2019, cc. 55, 44, 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55.1-2100. (Effective October 1, 2019) Definitions

As used in this chapter or in the declaration and bylaws, unless provided otherwise or unless the context requires a different meaning:

"Affiliate of a declarant" means any person that controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (a) is a general partner, officer, director, or employer of the person; (b) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (c) controls in any manner the election of a majority of the directors of the person; or (d) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this definition are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55.1-2122.

"Capital components" means those items, whether or not a part of the common elements, for which the association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of a cooperative other than the units of such cooperative.

"Common expenses" means any expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55.1-2116.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"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.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this chapter, a declarant is treated as the owner of any cooperative interests or potential cooperative interests to which allocated

interests have been allocated pursuant to § 55.1-2118 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert that (i) as part of a common promotional plan, offers to dispose of its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ 55.1-2173 et seq.).

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of subdivision 2 or 4 of § 55.1-2113 for the exclusive use of at least one unit but fewer than all of the units.

"Master association" means an organization described in § 55.1-2130, whether or not it is also an association described in § 55.1-2132.

"Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person that owns a cooperative interest, other than as security for an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55.1-2118 until that

cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, that, by means of a voluntary transfer, acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes (i) parcels with or without upper or lower boundaries and (ii) spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, that secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 35.1-2155; (ii) exercise any development right pursuant to § 55.1-2120; (iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate that may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § 55.1-2130; or (vii) appoint or remove any officer of the association, any master association, or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion of such estate or interest.

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

1982, c. 277, § 55-426; 2005, c. 456; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55.1-2147. (Effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-2100;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-2100;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2005, c. 436, § 55-471.1; 2019, cc. 33, 44, 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

APPENDIX B - GLOSSARY

The following definitions are for common terms related to reserve studies.

Accrual Method: A means of saving for an upcoming expense at a constant rate, so that all money will be available when needed.

Accrued Fund Balance (AFB): The total accrued depreciation. It is an indicator against which the actual or projected reserve balance can be compared to identify the direct proportion of the “used up” life of the current repair or replacement cost. This number is calculated for each component, and the summed together for the association total. The following formula can be used to determine AFB: $AFB = \text{Current Cost} \times \text{Effective Age/Useful Life}$.

As-built Plans: Drawings produced by the developer that show the actual characteristics of a community at the time when construction was completed.

Assessment: Monetary contribution required of each member of common interest community association to meet the association’s expenses. Assessments are typically due once a month.

Association: A legal entity that manages a common interest community and enforces its governing documents. These include property owners’ associations, condominium unit owners’ associations, and proprietary lessees’ associations in real estate cooperatives.

Capital Improvements: Additions to the association’s common elements that previously did not exist. While these components should be added to the reserve study for future replacement, the cost of construction should not be taken from the reserve fund.

Cash Flow: The amount of money deposited into and withdrawn from a reserve account over a certain period of time.

Cash Flow Method: A method of developing a reserve funding plan where contributions to the reserve fund are designed to offset the variable annual expenditures from the reserve fund. Different reserve funding plans are tested against the anticipated schedule of reserve expenses until the desired funding goal is achieved.

Common Area or Common Elements: The portion of a common interest community that is owned jointly by all members of the association. In a property owners’ association this portion is called a common area. In a condominium or real estate cooperative, these are called common elements.

Component: The individual line items in the reserve study developed or updated in the physical analysis. These elements form the building blocks for the reserve study. These components comprise the common elements of the community and typically are: 1. association responsibility,

2. with limited useful life expectancies, 3. predictable remaining useful life expectancies, and 4. above a minimum threshold cost. It should be noted that in certain jurisdictions there may be statutory requirements for including components or groups of components in the reserve study.

Component Full Funding: When the actual or projected cumulative reserve balance for all components is equal to the fully funded balance.

Component Inventory: The task of selecting and quantifying reserve components. This task can be accomplished through on-site visual observations, review of association design and organizational documents, a review of established association precedents, and discussion with appropriate association representatives.

Component Method: A method of developing a reserve funding plan where the total contribution is based on the sum of contributions for individual components.

Condition Assessment: The task of evaluating the current condition of the component based on observed or reported characteristics.

Contingency Fund: The portion of reserves allocated for unanticipated expenses, such as damage to components or unexpected cost increases.

Current Replacement Cost: See “replacement cost.”

Deficit: An actual or projected reserve balance less than the fully funded balance.

Developer Drawings: Drawings produced by the developer before or during construction of the community. Such drawings may or may not match the community’s actual attributes. (Also see “As-built Plans.”)

Effective Age: The difference between useful life and remaining useful life. Not always equivalent to chronological age, since some components age irregularly. Used primarily in comparisons.

Financial Analysis or Funding Analysis: The portion of a reserve study where the current status of the reserves (measured as cash or percent funded) and a recommended reserve contribution rate (reserve funding plan) are derived, and the projected reserve income and expense over time is presented. The financial analysis is one of the two parts of a reserve study.

Fund Status: The status of the reserve fund as compared to an established benchmark such as percent funding.

Funding Goals: Independent of methodology utilized, the following represent the basic categories of funding plan goals:

- *Baseline Funding:* Establishing a reserve funding goal of keeping reserve cash balance above zero.
- *Component Funding:* Setting a reserve funding goal of attaining and maintaining cumulative reserves at or near 100% funded.
- *Statutory Funding:* Establishing a reserve funding goal setting aside the specific minimum amount of reserves of component required by local statutes.
- *Threshold Funding:* Establishing a reserve funding goal of keeping the reserve balance above a specified dollar or percent funded amount. Depending on the threshold, this may be more or less conservative than component full funding.

Funding Plan: An association's plan to provide income to a reserve fund to offset anticipated expenditures from that fund.

Funding Principles:

- *Sufficient Funds When Required*
- *Stable Contribution Rate over the Years*
- *Evenly Distributed Contributions over the Years*
- *Fiscally Responsible*

Governing Documents: Legal documents that organize the common interest community, establish contractual relationships between the parties, and establish the rights and responsibilities of individual owners, the association, authorized occupants, and the governing board. Governing documents typically consist of a declaration for the community, including a legal description of the property, plat(s) of the development, plans for development structures, and bylaws for the operation of the association. Governing documents may also include rules and regulations for the community. In a condominium, the governing documents are called *condominium instruments*.

Inflation: The rate at which the cost of components are expected to rise over time.

Interest: Money earned from reserve funds deposited into an account at a financial institution.

Inventory: A list of community-owned components and their attributes, such as age, quality, manufacturer, degree of wear, and useful life.

Life and Valuation Estimates: The task of estimating useful life, remaining useful life, and repair or replacement costs for the reserve components.

Maintenance Responsibilities Chart: A table or chart often included in association governing documents that details maintenance responsibilities in a common interest community between the association and individual owners.

Management Company or Common Interest Community Manager: An outside company hired by an association to perform some of the association's functions. These can include collection of assessments, and maintenance of the common area or common elements.

On-site Inspection: Physical inspection of one or more components to help determine their current physical state and remaining useful life.

Operating Budget: The portion of an association's budget that is allocated for frequently-occurring or minor expenses.

Percent Funded: The ratio, at a particular point of time (typically the beginning of the fiscal year), of the actual (or projected) reserve balance to the accrued fund balance, expressed as a percentage.

Physical Analysis: The portion of the reserve study where the component inventory, condition assessment, and life and valuation estimate tasks are performed. This represents one of the two parts of the reserve study.

Remaining Useful Life (RUL): The estimated time, in years, that a reserve component can be expected to continue to serve its intended function. Projects anticipated to occur in the initial year have "zero" remaining useful life. RUL is also referred to as remaining life (RL).

Replacement Cost: The cost of replacing, repairing, or restoring a reserve component to its original functional condition. The current replacement cost would be the cost to replace, repair, or restore the component during that particular year.

Reserve Account: An account at a bank or other financial institution containing funds intended solely to pay reserve expenses.

Reserve Balance or Reserve Funds: Actual or projected funds as of a particular point in time that the association has identified for use to defray the future repair or replacement of those major components which the association is obligated to maintain. Also known as reserves, reserve accounts, cash reserves. Based upon information provided and not audited.

Reserve Component: The individual line items in the reserve study developed or updated in the physical analysis. These elements form the building blocks for the reserve study. Components typically are the association responsibility, have limited useful life expectancies, have predictable remaining useful life expectancies, are above a minimum threshold cost, and are as required by local codes.

Reserve Provider: An individual that prepares reserve studies.

Reserve Study: A capital budget planning tool that can be used by an association to determine the physical status and repair/replacement cost of an association's capital components, and an analysis of an association's funding capacity to maintain, repair, and replace capital components.

Special Assessment: An assessment levied on the members of an association in addition to regular assessments. Governing documents or local statutes often regulate special assessments.

Surplus: An actual or projected reserve balance greater than the fully funded balance.

Useful Life (UL): Total useful life or depreciable life is the estimated number of years that a reserve component can be expected to serve its intended function if it is properly constructed in the present application and/or installation.

Work Product: The output from a reserve study, such as reports, tables, and charts.

Appendix C – List of Common Area/Common Elements Components

Note: The following is a list of components typically found in common interest communities. Please be advised this is not an exhaustive list, and does not include every type of component that may be found in an association.

A
Alarm systems, fire and intrusion
Antennas, satellite dish and other
Appliances
Asbestos encapsulation or removal
Awnings and other overhead coverings
B
Balconies (see also decks)
Benches
Boilers
Bulkheads
C
Concrete (walls, patios, sidewalks, curbs, and gutters)
D
Decks, pool and spa
Decks, residential
Display cases
Docks
Doors
Drainage systems
E
Electrical transformers
Electrical wiring and related fixtures in common area
Elevator, cab
Elevator, hydraulic, traction, etc.
Equipment, cleaning and maintenance
Equipment, communication and telephone
Equipment, entertainment, music/video systems
Equipment, exercise, recreational, etc.
Equipment, office
Equipment, pool, pumps, motors and filters
F
Fans, exhaust, garage, and other
Fences, chain link, wood, etc.
Fire escapes
Fire sprinklers and related equipment
Floor covering, carpet, tile, vinyl, etc.
Floor covering, wood replacement and refinishing

Fountains
Furnishings, lobby, clubhouse, etc.
G
Gates, iron, wood, etc.
Garage doors and hardware
Garbage enclosures
Gazebo
Generator
Gutters and downspouts
H
HVAC, air conditioning
HVAC, heating systems
I
Irrigation system, controllers
Irrigation system, piping, valves and sprinkler heads, pumps
K
Kiosks and message/communication centers
L
Lakes, ponds, and waterways
Landscaping, replacement of major trees and plants
Life safety system (exit signs, emergency lights)
Light fixtures, exterior
Light fixtures, interior
M
Mailboxes and centers
Masonry
Monitoring system, carbon monoxide
P
Paint and stain, exterior
Paint and stain, interior common area
Parking garages
Pavers
Paving
Perimeter walls
Planter boxes
Plumbing fixtures, exterior and interior
Plumbing, piping systems
Pool (plaster, mechanical equipment, deck,

furniture)
Posts, deck, lamp, etc.
Pumps, lakes, ponds, waterways, building systems
R
Racquetball courts
Railings
Retaining wall
Roof
S
Seawalls
Security gates, gate operator and motor, entry system
Septic tanks
Sewage ejector equipment
Siding and trim
Skylights
Slopes
Solar heating system, pool and spa
Solar heating system, residential
Spas
Stables and tack rooms
Stairs
Stormwater systems
Streets and drives, parking areas
Stucco, sandblasting and resurfacing
Subsurface utility piping
Sump pump equipment
Swimming pools
T
Tennis courts, resurfacing, lighting, fencing
Trash compactor
Trellises
V
Valves
Vehicles
Ventilation system, garage
W
Walkways, wood, brick, tile, etc.
Water heaters
Waterproof membranes
Windows

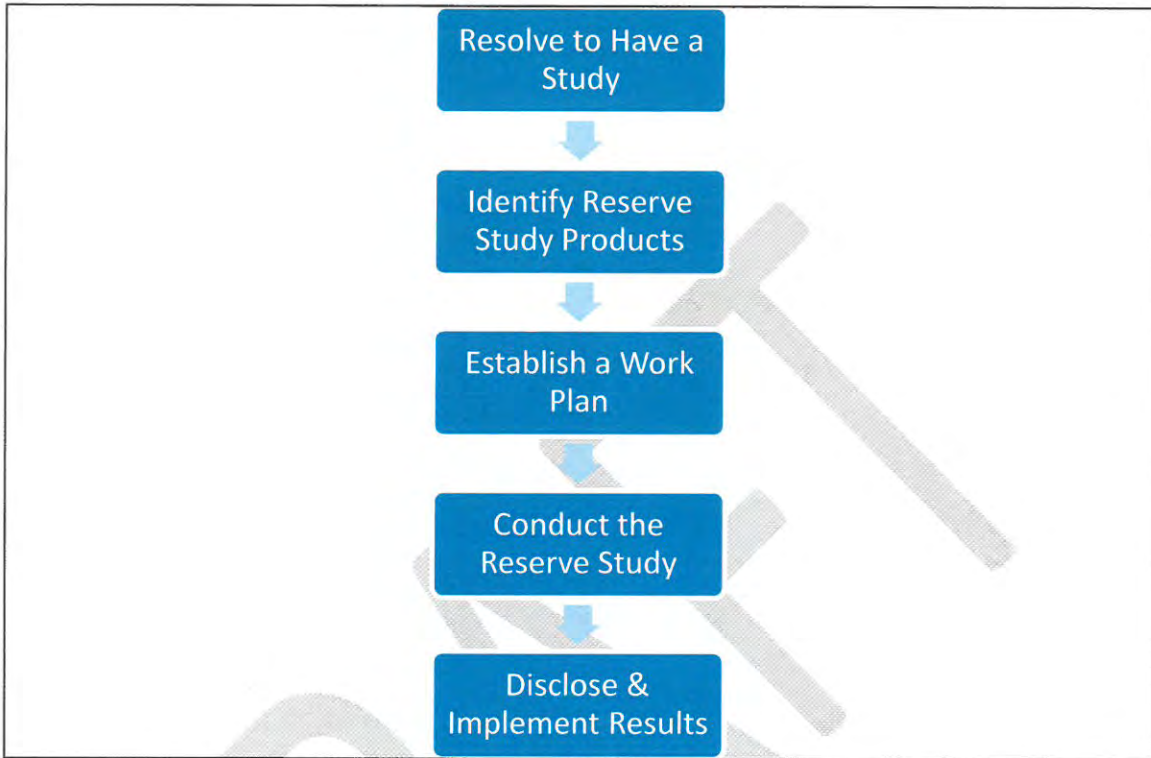
Appendix D – Flowcharts

Steps to Provide for Adequate Reserves

Steps in Physical Analysis

Steps in Financial Analysis

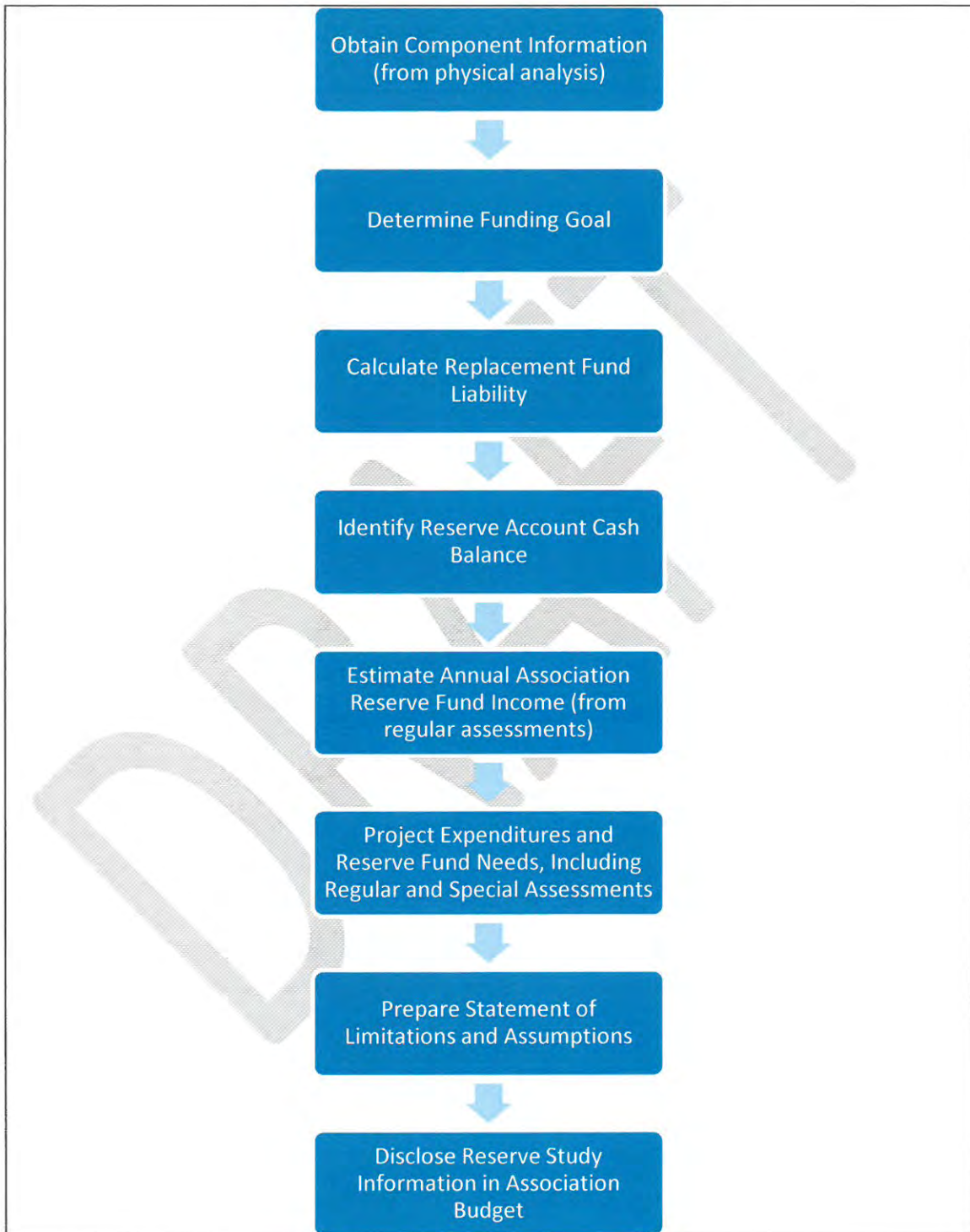
Steps to Provide for Adequate Reserves



Steps in the Physical Analysis Process



Steps in the Financial Analysis Process



Appendix E – Checklists and Interview Questions

Checklist	Physical Analysis
Checklist	Financial Analysis
Interview Questions	Physical Analysis Preparers
Interview Questions	Financial Analysis Preparers

Physical Analysis Checklist

Deciding which components to include:

- Relevant components mentioned in developer budget have been reviewed.
- Components mentioned in the governing documents have been reviewed.
- An on-site inspection for possible additional components has been made.
- The governing board has had a public discussion and has determined a policy stating its position on life-of-the-building, exclusive use, and quasi-structural components.
- The governing board has communicated the component list to the preparer of the physical analysis.

Specifying quantities of each component:

- As-built drawings have been consulted, if possible.
- An on-site inspection of each component and on-site count of each type of component have been made.
- The quality of each component has been determined and expressed in terms that identify a specific grade of material.

Determining the useful life (UL) of each component:

- Manufacturer warranties have been consulted whenever possible.
- Environmental factors that might affect useful life have been taken into account.
- Installation and materials have been determined to be consistent with each manufacturer's description; if not, an adjustment has been made to the remaining useful life estimated by the warranty or by the manuals.
- A standard manual has been consulted.
- Maintenance assumptions have been documented.

Assessing the remaining useful life (RUL) of each component:

- An on-site inspection of each component has been made.
- Past maintenance has been taken into account.
- Individuals with knowledge of the components have participated in the assessment of remaining life.
- The governing board has determined what level of maintenance is expected to achieve the remaining life estimated.

Determining the cost of replacement:

- A standard costing manual has been consulted or more than one tradesperson asked for a price for each component.
- If a manual is used, the "current" price of each component has been adjusted for the age of the data in the manual.
- If a manual is used, regional variations in price are taken into account.
- Cost of replacement includes cost of removing old component, if necessary.
- Adjustments have been made for grade or quality of materials or levels of maintenance of materials.

Financial Analysis Checklist

Funding goal:

- The association's funding goal for reserve replacement is clearly specified.

Budget information

- The budget contains estimated revenue and expenses on an accrual basis.
- The budget identifies total cash reserves currently set aside.
- The budget shows funds set aside for reserves in a separate account(s).
- The estimated remaining life of all major components is shown.
- The estimated current replacement cost of all major components is shown.
- The budget includes identification of methods of funding for future repair, replacement, or additions.
- The budget includes a statement on methods used to develop estimates and funding plan.

Association income and expense estimates:

- An appropriate component inflation factor has been used to estimate replacement costs in future years.
- The interest rate applied to association cash reserves is reasonable, and is an after-tax estimate.
- Needed special assessments are clearly identified.
- Assumptions about increases in the portion of regular assessments allocated to reserves are clearly specified.
- Income and expenditures are shown annually for the plan period.

Association cash balances:

- With reserve assessments, the cash balance (assets-planned reserve expenditures) is greater than zero in every year.
- The reserve deficit is estimated for the current year.
- The model shows a stable or decreasing reserve deficit (in constant dollars) over the plan period.

Physical Analysis Preparer Interview Guide

1. Do you have any personal or professional ties to this association? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
2. Do you have any personal or professional ties to the developer? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
3. If hiring an individual or sole practitioner: Do you do all the work yourself, or will you use subcontractors? (The association should approve all subcontractors.) Are you a Professional Reserve Analyst (an Association of Reserve Analysts designation) or a Reserve Specialist (a Community Associations Institute designation) or do you hold other professional designations? What is your training (formal education and workshops)?
4. If hiring a firm: Will work be done by employees of your firm? How do you train your employees?
5. With what professional associations are you actively involved?
6. What experience have you had with performing component studies?
7. What experience have you had in this locale?
8. May we see an example of a similar product done for another association?
9. What information do you require from the association in order to start?
10. When will you begin the study?
11. Will you be measuring the components or using drawings?
12. Will you make a physical inspection of each component? What percentage of components will you inspect for fences, walls, controllers, buildings, etc.?
13. How will you determine the cost of replacement?
14. What written sources will be used?
15. How long will it be before we have the final product?
16. Will the report provide the estimated useful life of each component?
17. Will the report provided the estimated remaining life of each component?
18. Will the report provide the current costs of repair or replacement of each component?
19. Will the report provide the future costs of repair or replacement for each component and/or the inflation rate to be applied to each component?
20. Will the report provide information on proper maintenance to help assure realization of the estimated remaining life of each component? Will the report include visuals such as photographs or video?
21. Do you have liability insurance?
22. Do you have workers' compensation insurance?
23. Please provide three references (name, phone, nature of work).
24. Cost for revisions and/or updates.

Financial Analysis Preparer Interview Guide

1. Do you have any personal or professional ties to this association? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
2. Do you have any personal or professional ties to the developer? (Note: Such a tie does not necessarily indicate a conflict of interest, but should be disclosed and considered.)
3. If hiring an individual or sole practitioner: Do you do all the work yourself, or will you use subcontractors? (The association should approve all subcontractors.) Are you a Professional Reserve Analyst (an Association of Reserve Analysts designation) or a Reserve Specialist (a Community Associations Institute designation) or do you hold other professional designations? What is your training (formal education and workshops)?
4. If hiring a firm: Will work be done by employees of your firm? How do you train your employees?
5. With what professional associations are you actively involved?
6. What experience have you had with community association budgeting?
7. May we see an example of a completed financial analysis?
8. What information do you require from the association in order to start?
9. When will you begin the study?
10. How long will it be before we have the final product?
11. Will the report provide current and future estimated liability computations?
12. Will the report provide current and future estimated cash balances by year?
13. Will the report provide current and future repair replacement costs?
14. Will the report present alternative funding plans?
15. Will the report provide a description of assumptions and methodology, a narrative funding plan, and a graphic depiction for easier board and member understanding?
16. Will the report tell how much of a monthly contribution is needed for the reserves?
17. Do you have professional liability insurance?
18. Please provide three references (name, phone, nature of work).

Appendix F – Sample Financial Analysis

Sample Financial Analysis – Estimated Cash Requirements by Year

(30 year plan – 3 components; values shown for years 1-5, 15, and 30 only)

Major Component	Estimated Useful Life	Estimated Remaining Life	Estimated Current Cost to Replace	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Painting	5	2	\$10,000			\$10,000					
Paving	7	3	\$14,000				\$14,000				
Roofing	15	4	\$30,000					\$30,000			
Total Costs			\$54,000			\$10,000	\$14,000	\$30,000	\$0	\$0	\$0
Component cost increase factor @ 4.6% per annum					1.00	1.046	1.094	1.144	1.197	1.877	3.685
Estimated replacement cost, in scheduled year (apply cost factor to total replacement costs)				\$0	\$0	\$10,460	\$15,318	\$34,333	\$0	\$0	\$0

<i>Cash Flow Forecasts</i>											
	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30			
Assessments, regular		\$1,500	\$1,800	\$2,160	\$2,592	\$3,110	\$10,906	\$30,515			
Assessments, special		\$0	\$0	\$0	\$30,000	\$0	\$0	\$0			
After-tax interest reserve account income, @ 5.775%		\$1,271	\$1,430	\$1,013	\$312	\$229	\$1,519	\$6,482			
Total cash receipts		\$2,771	\$3,230	\$3,173	\$32,904	\$3,339	\$12,426	\$36,997			
Major component costs (from total above)		\$0	\$10,460	\$15,318	\$34,333	\$0	\$0	\$0			
Cash receipts – cash disbursements		\$2,771	(\$7,230)	(\$12,145)	(\$1,430)	\$3,339	\$12,426	\$36,997			
Cash balance, beginning of year		\$22,000	\$24,771	\$17,541	\$5,396	\$3,967	\$26,311	\$112,241			
Cash balance, end of year		\$24,771	\$17,541	\$5,396	\$3,967	\$7,306	\$38,737	\$149,238			

<i>Summary</i>											
	End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30			
Estimated liability (total from next page)		\$43,932	\$52,518	\$50,461	\$43,095	\$15,026	\$74,602	\$154,173			
Less cash balance		\$24,771	\$17,541	\$5,396	\$3,967	\$7,306	\$38,737	\$149,238			
Estimated unfunded liability		\$19,162	\$34,977	\$45,065	\$39,128	\$7,720	\$35,865	\$4,935			
Estimated unfunded liability per unit (35 units)		\$547	\$999	\$1,288	\$1,118	\$221	\$1,025	\$141			

Sample Financial Analysis – Computation of Major Component Liability by Year

<i>Major Component Replacement Liability</i>		End of Year 0	End of Year 1	End of Year 2	End of Year 3	End of Year 4	End of Year 5	End of Year 15	End of Year 30
Painting	Useful life	5	5	5	5	5	5	5	5
	Remaining life	2	1	0	4	3	2	2	2
	Replacement cost	\$10,000	\$10,460	\$10,941	\$11,971	\$11,971	\$12,522	\$19,632	\$38,543
	Liability	\$6,000	\$8,368	\$10,941	\$2,394	\$4,788	\$7,513	\$11,779	\$23,126
Paving	Useful life	7	7	7	7	7	7	7	7
	Remaining life	3	2	1	0	6	5	2	1
	Replacement cost	\$14,000	\$14,644	\$15,318	\$16,022	\$16,759	\$17,530	\$27,485	\$53,961
	Liability	\$8,000	\$10,460	\$13,130	\$16,022	\$2,394	\$5,009	\$19,632	\$46,252
Roofing	Useful life	15	15	15	15	15	15	15	15
	Remaining life	4	3	2	1	0	14	4	4
	Replacement cost	\$30,000	\$31,380	\$32,823	\$34,333	\$35,913	\$37,564	\$58,897	\$115,630
	Liability	\$22,000	\$25,104	\$28,447	\$32,044	\$35,913	\$2,504	\$43,191	\$84,795
	Total liability	\$36,000	\$43,932	\$52,518	\$50,461	\$43,095	\$15,026	\$74,602	\$154,173

Appendix G – Sample Summary Report

**Reserve Study Summary for (Name of Association)
(Date)**

This reserve study is an assessment of the property and contains projections regarding anticipated future projects and expenses necessary to maintain the property in good condition. Included are the major components of the community's property that are likely to require repair, restoration, or replacement during the next (##) years. Excluded are items covered in the annual operating budget and items that are not community property.

The reserve study and this summary were prepared by (name of individual(s)). The previous reserve study was done by (name of individual(s)) in (date). The property was originally constructed in (date).

This study provides a rational basis for the Board of Directors to make decisions about annual budgets and future funding. The report contains a financial analysis of possible methods of funding the projected future expenses. These are to be understood as examples only, not as mandated solutions. Only the Board has the responsibility and authority to decide funding.

A reserve study is not a spending plan. The Board should assess the condition of the property each year and make spending decisions based on current circumstances. The Board will review the preparer's recommendations and make decisions accordingly. The reserve analyst has no authority to decide assessments or spending.

In calculating funding requirements for reserves, the following factors were considered:

- All common element components, their quantities, and expected service lives
- The current conditions, remaining service lives, and values of the components
- The impact of cost inflation over time

Reserve funding needs were calculated by estimating the cost and timing for repair, restoration, or replacement projects during the next (##) years. After accounting for cost inflation, assumed to be (# percent) annually, the total reserve expenses by year were estimated for the next (##) years.

Funding for these estimated expenses was calculated using the (type of method of used) by taking the current amount in reserves (\$dollars) and the current annual assessment for reserves (\$dollars), and calculating the future assessments needed to pay for the future expenses.

The following is a summary of the projected reserve expenses and assessments for the next five years.

<u>Year</u>	<u>Expenses</u>	<u>Assessments</u>	<u>Amount in Reserves</u>	<u>Comments</u>
20##	\$####	\$####	\$####	
20##	\$####	\$####	\$####	
20##	\$####	\$####	\$####	
20##	\$####	\$####	\$####	

Details are in the full reserve study report dated (date). The estimates prepared are subject to review and revision by the Board. The (applicable statute) requires that a reserve study must be done at least every five years.

§ 55-79.41. (Repealed effective October 1, 2019) Definitions

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument, so long as such amendment or certification was made in accordance with the provisions of this chapter.

"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of unit, *infra*.)

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

"Conversion condominium" means a condominium containing structures which before the recording of the declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of unit, *infra*.).

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to § 55-79.74:3; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55-79.74:3. The term "declarant" shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Executive organ" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

"Financial update" means an update of the financial information referenced in subdivisions C 2 through C 7 of § 55-79.97.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending *ab solo usque ad coelum*. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter

of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Meeting" or "meetings" means the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

"Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

"Officer" means any member of the executive organ or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.

"Resale certificate update" means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of § 55-79.97. The update shall include a copy of the original resale certificate.

"Settlement agent" means the same as that term is defined in § 55-525.16.

"Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § 55-79.66.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of condominium unit, supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § 55-79.62.

"Unit owner" means one or more persons who own a condominium unit or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. "Unit owner" includes any purchaser of a condominium unit at a foreclosure sale, regardless of whether the deed is recorded in the land records where the unit is located. "Unit owner" does not include any person or persons holding an interest in a condominium unit solely as security for a debt.

1974, c. 416; 1975, c. 415; 1981, c. 480; 1982, c. 545; 1991, c. 497; 1993, c. 667; 1996, c. 977; 2001, c. 715; 2002, c. 459; 2003, c. 442; 2008, cc. 851, 871; 2015, cc. 93, 410.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-79.83:1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the condominium instruments, the executive organ shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments, the executive organ shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55-79.41;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive organ deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-79.41;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459;2019, cc. 33, 44.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia

Title 55. Property and Conveyances [Repealed Effective October 1, 2019]

Chapter 26. Property Owners' Association Act

§ 55-509. (Repealed effective October 1, 2019) Definitions

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.

"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Common interest community" means the same as that term is defined in § 55-528.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"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 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 in connection with the provision of maintenance and/or services 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. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this 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.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through A 9 of § 55-509.5. The update shall include a copy of the original disclosure packet.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through A 7 of § 55-509.5.

"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 if the condominium or cooperative is a part of a development.

"Lot owner" means one or more persons who own a lot, including any purchaser of a lot at a foreclosure sale, regardless of whether the deed is recorded in the land records where the lot is located. "Lot owner" does not include any person holding an interest in a lot solely as security for a debt.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 55-525.16.

1989, c. 679; 1991, c. 667; 1996, c. 618; 1998, c. 623; 2001, c. 715; 2002, c. 459; 2003, c. 422; 2008, cc. 851, 871; 2011, c. 334; 2015, cc. 93, 410.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-514.1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55-509;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-509;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459; 2019, cc. 33, 44.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-426. (Repealed effective October 1, 2019) Definitions

When used in this chapter or in the declaration and bylaws, unless specifically provided otherwise or the context requires a different meaning, the following terms shall have the meanings respectively set forth:

"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

"Allocated interests" means the common expense liability and the ownership interest and votes in the association allocated to each cooperative interest.

"Association" or "proprietary lessees' association" means the proprietary lessees' association organized under § 55-458.

"Capital components" means those items, whether or not a part of the common elements, for which the association has the obligation for repair, replacement, or restoration and for which the executive board determines funding is necessary.

"Common elements" means all portions of a cooperative other than the units.

"Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

"Common expense liability" means liability for common expenses allocated to each cooperative interest pursuant to § 55-444.

"Conversion building" means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

"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.

"Cooperative interest" means an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease. For purposes of this act, a declarant is treated as the

owner of any cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55-444 until that cooperative interest has been created and conveyed to another person.

"Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his or its cooperative interest not previously disposed of; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of a cooperative under Article 5 (§ 55-496 et seq.) of this chapter.

"Declaration" means any instruments, however denominated, that create a cooperative and any amendments to those instruments.

"Development rights" means any right or combination of rights reserved by a declarant in the declaration to (i) add real estate to a cooperative; (ii) create units, common elements, or limited common elements within a cooperative; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a cooperative.

"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a cooperative interest, but does not include the transfer or release of a security interest.

"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

"Identifying number" means a symbol or address that identifies only one unit in a cooperative.

"Leasehold cooperative" means a cooperative in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the cooperative or reduce its size.

"Limited common element" means a portion of the common elements allocated by the declaration or by operation of § 55-439 paragraph 2 or 4 for the exclusive use of one or more but fewer than all of the units.

"Master association" means an organization described in § 55-456, whether or not it is also an association described in § 55-458.

"Offering" means any advertisement, inducement, solicitation or attempt to encourage any person to acquire any interest in a cooperative interest, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a cooperative not located in the Commonwealth, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the cooperative is located.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity. In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

"Proprietary lease" means an agreement with the association pursuant to which a proprietary lessee has a possessory interest in a unit.

"Proprietary lessee" means a person who owns a cooperative interest, other than as security for

an obligation, and the declarant with respect to cooperative interests or potential cooperative interests to which allocated interests have been allocated pursuant to § 55-444 until that cooperative interest has been created and conveyed to another person.

"Purchaser" means any person, other than a declarant or a person in the business of selling cooperative interests for his own account, who by means of a voluntary transfer acquires or contracts to acquire a cooperative interest other than as security for an obligation.

"Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures, and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Residential purposes" means use for dwelling or recreational purposes, or both.

"Security interest" means an interest in real or personal property, created by contract or conveyance, which secures payment or performance of an obligation. "Security interest" includes a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

"Special declarant rights" means rights reserved for the benefit of a declarant to: (i) complete improvements described in the public offering statement pursuant to subdivision A 2 of § 55-478 ;(ii) exercise any development right pursuant to § 55-446;(iii) maintain sales offices, management offices, signs advertising the cooperative, and models; (iv) use easements through the common elements for the purpose of making improvements within the cooperative or within real estate which may be added to the cooperative; (v) make the cooperative part of a larger cooperative or group of cooperatives; (vi) make the cooperative subject to a master association as specified in § 55-456;or (vii) appoint or remove any officer of the association, any master association or any executive board member during any period of declarant control.

"Time share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with an estate or interest in a cooperative or a specified portion thereof.

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

1982, c. 277; 2005, c. 436.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 55-471.1. (Repealed effective October 1, 2019) Annual budget; reserves for capital components

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration, the executive board shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55-426;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitations:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55-426;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2005, c. 436; 2019, cc. 33, 44.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



DPOR Common Interest Community Board, rr <cic@dpor.virginia.gov>

Comment on Reserve Study Guidelines

1 message

Andrea Konstant [REDACTED]
To: "CIC@dpor.virginia.gov" <CIC@dpor.virginia.gov>

Tue, Aug 20, 2019 at 11:55 AM

Dear Sir-

I see two major issues with these documents. The information you are asking to be included in budgets is well beyond what an average homeowner can grasp, and will further alienate homeowners from their associations. I see this leading to a further decrease in owner participation in their associations. The budget should very simply include only the capital components scheduled for replacement the year of the budget, as well as the recommended amount for 100% reserve funding, and the percentage of funding the association plans to have by the close of year.

Secondly, there are lots of very small, self-managed associations that can't afford professional studies, but won't understand what you are requiring when they create their reserve study. They have been saving their reserves, and keeping studies on excel sheets for years, and are financially healthy, yet you are insisting on over complicating their process.

Please simplify this document for the average homeowner. These overly wordy regulations are making it harder and harder for community managers to get active participants and board volunteers. All these words scare and confuse average homeowners and they don't want to get involved any longer.

Thank you for your consideration,

Andrea S. Konstant, CMCA

Director of Association Management

p: 540-434-5150 x 133

www.MyPOA.com

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Harrisonburg, VA 22802



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DPOR Common Interest Community Board, rr <cic@dpor.virginia.gov>

Reserve Study guidelines

1 message

Ed Bosiger [REDACTED]
To: "CIC@dpor.virginia.gov" <CIC@dpor.virginia.gov>

Tue, Aug 27, 2019 at 8:20 AM

Please see the attached. Our Assoc. (The Crossings in Forest, Va.) is responsible for regular, systematic maintenance and upkeep of a septic system.

The attached memo to your CIC Ombudsman with attachments is self explanatory as is her reply.




I apologize that I haven't been able to read the draft. However, if septic systems aren't included, it is imperative that they are.

Thank You.

Carolyn F. Bosiger

Sent from Mail for Windows 10

3 attachments

-  **Scan_20190827.pdf**
602K
-  **Scan_20190826.pdf**
624K
-  **Scan_20190826 (2).pdf**
1242K

From: DPOR CIC Ombudsman, rr
Sent: Monday, August 26, 2019 2:24 PM
To: Ed Bosiger
Subject: Re: Decision

Hi Carolyn, thanks for your email.

We can't determine if your reserve study properly accounts for particular capital components in your association. The only thing we can do is make sure a reserve study has been completed. The statute related to reserves studies provides very little in the way of information about what the reserve study should contain and what portions of the association common elements should be included. The only way to address this would be through legal channels.

Heather

Heather S. O'Brien

Executive Director, Department of Public Safety

Director of Public Safety, Department of Public Safety

Public Safety, Department of Public Safety

Public Safety, Department of Public Safety

Public Safety, Department of Public Safety

Public Safety, Department of Public Safety

Public Safety, Department of Public Safety

Governmental entities (generally referred to as public entities) are required to provide a certain amount of information. However, they are not required to disclose information that would reveal the identity and ability of the [message as well as all attachments].

On Mon, Aug 26, 2019 at 1:07 PM Ed Bosiger < > wrote:

Pls. see attached and advise if any action is required on our part.

Tnx.

August 26, 2019

To: H. Gillespie, CIC Ombudsman - by email
cc: The Crossings BOD
A. Armfield, Atty.
Environmental Control, Campbell County

Re: Septic System

Please see the attached. Homewowner E. R. Whitmore gave me a copy of his letter to the Bd. of Directors regarding maintenance here.

My concern is the following statement: "Had raw sewage from the septic system, stayed for over two weeks when my wife called President Thomas, she said she knew about same but did not know what to do..."

Since receiving Mr. Whitmore's letter, we have learned of at least one other instance when raw sewage was seen in the common area.

Please review the reserve study requested and submitted to you by the Crossings BOD to be sure that regular and systematic maintenance and upkeep septic system, including the pumps is contained in the study.

If it isn't, please advise me if there is anything I can do to have the study revised to include the septic system.

We have a small creek that runs throughout the property here. Should raw sewage seep into the creek, contamination here and downstream would occur. We would like to prevent any such occurrence if at all possible.

Thank You.



EP and Carolyn Bosiger

TO THE CROSSINGS HOME OWNERS ASSOCIATION BOARD OF DIRECTORS Tuesday, July 02,
2019

MAINTENANCE--THE UPKEEP OF PROPERTY etc

MAINTAIN-TO CONTINUE WITH; TO CARRY ON; AS TO MAINTAIN PROPERTY.

THIS IS THE RESPONSIBILITY OF THE B.O.D. OF THE CROSSINGS HOME OWNERS ASSOCIATION.
THE ASSOCIATION IS SUPPORTED BY ALL RESIDENCES OF THE CROSSINS TOWNHOME
SUBDIVISION, OF WHICH I AM AN ASSESSED MEMBER. OUR MONTHLY ASSESSMENT IS TO BE
USED IN VARIOUS WAY'S AS DETERMINED BY THE B.O.D. OF THE CROSSINGS H.O.A.

I AS A MEMBER AND HOME OWNER OF THIS ASSOCIATION, MEANS THAT EVERYTHING THAT IS
DONE BY THIS BOARD AF DIRECTORS IS MY BUSINESS,AND EVERY PIECE OF MATERIAL
PURCHASED BY THIS B.O.D. IS PARTLY MINE. I PUT IN A REQUEST TO HAVE POSTS REMOVED
FROM CLOSE TO MY HOME, THAT WERE CEMENTED IN SO AS TO REMAIN IN PLACE
PERMANTLY, TO BE REMOVED SO AS NOT TO BLOCK ENTRANCE TO BACK OF MY HOUSE.THIS
REQUEST WAS DENIED, SO I CUT DOWN POSTS MYSELF. SOMEONE ON THE BOD WROTE ON
THE FORM THAT I HAD NO BUSINESS DAMAGING THE POST AND REMOVING SAME, BECAUSE
THEY DID NOT BELONG TO ME BUT BELONGED TO THE B.O.D. I AM NOW ASKING THAT THE
CEMENT BE REMOVED FROM AREA, I CANNOT DO THIS MYSELF, BUT I STILL OWN PART OF
CEMENT AND HELPED PAY FOR SAME.

I HAVE HAD NOTHING BUT PROBLEMS, CONCERNING SIMPLE REQUESTS THAT I HAVE MADE
OVER THE LAST SEVERAL YEARS, TO MANY TO GO INTO AT THIS TIME, HOWEVER I GETTING FED
UP WITH PROBLEMS, AND THEY JUST CONTINUE, AND SOMETHING HAS TO BE DONE.

YOU CAN THAK YOUR LUCKY STARS FOR MY WIFE---SHE TALKED ME OUT OF WRITING TO THE
NEWS PAPER AND OTHER NEWS SOURCES--HOWEVER IT IS STILL ON THE TABLE.

THE DANGEROUS TREE BEHIND MY HOUSE, THE MUDDY YARD, THE FLOODED BACK YARD THAT
HAS LEFT YARD IN DIS REPAIR; DUE TO RUTS--NO ONE EVER CHECKED OUT SAME--IN BAD NEED
OF LANDSCAPING WORK AROUND ENTIRE HOME --INCLUDING WEEDS ETC--HAD RAW SEWAGE
FROM SEPTIC SSYSTEM, STAYED FOR SVER TWO WEEKS. WHEN MY WIFE CALLED PRESIDENT
THOMAS, SHE SAID SHE KNEW ABOUT SAME BUT DID NOT KNOW WHAT TO DO---JUST TO
MENTION A FEW.

I AM ASKING THAT MY HOME AND GROUNDS OF THIS H.O.A. BE MAINTAINED AS IN
COMPLIANCE WITH BY-LAWS OF SAME.

Edgar R. and Betty B. Whitmore



Comments on reserve study guidelines

1 message

gregolsen <[REDACTED]>
To: CIC@dpor.virginia.gov

Tue, Jul 30, 2019 at 12:53 PM

After 35 years of CIC ownership and 20 years of board service, my comments on reserve study guidelines and processes follow.

1. Reserve studies are costly endeavors that the vast majority of CIC board members neither understand nor are qualified or competent to evaluate. As a result, most reserve studies are rarely, if ever, reviewed let alone comprehended.
2. As such, reserve funding is rarely adjusted to reflect the study's results, and the funds that paid for the study are often taken from reserves.
3. Reserve studies are often dozens or hundreds of pages long and written in technical language that is rarely read and even more rarely comprehended.
4. Few, if any, CIC managers understand reserve reports.
5. CIC managers have no effective means to enforce the reserve study results.
6. Annual "reviews" of the reserve study are rarely done and, if done, usually result in little or no action.
7. Most CIC's have underfunded reserves. There is no effective way to address or enforce this unfortunate fact.
8. As such, most CIC's defer needed maintenance, upgrades, and improvements, or resort to unfair and burdensome special assessments.
9. The vast majority of CIC unit owners never see a reserve study.
10. The vast majority of prospective CIC unit owners may see but will likely neither read nor comprehend a reserve study.
11. It's very hard if not impossible to predict beyond a few years how a CIC reserve study element will perform.
12. Changes in technology, regulation, and the economy are impossible to predict but will often materially affect reserve-study components. For example, solar rooftops are popular in MD, but not in VA because of VA's unfavorable regulation. Increasing efficiency mandates for HVAC apparatus. Obsolescence of refrigerants. Storm water management. Utility costs.
13. A CIC's ability to invest its reserves and borrow money are unpredictable as are the rates of return and cost of money.
14. (Re)constriction costs are impossible to predict.
15. In older CIC's functionally obsolete reserve study components are not fully evaluated. For example, two-pipe common HVAC systems are terribly inefficient, they do not encourage conservation, they are extremely wasteful, and they poorly accommodate swing seasons and varying thermal efficiencies of the units.

Reserve studies will evaluate replacement of like kind, rather than modernization. Single-pane windows are another good example.

16. In newer CIC's it's impossible to discover construction or material defects or how long any given component will last.
17. Few, if any, reserve studies evaluate alternative solutions such as performance-based contracts, outsourced O&M of common elements, sale-leaseback, and alternative revenue streams from things like clubhouse rentals, antenna locations, and sole-source providers like CATV and other utilities.
18. There is very little that either the DPOR or the CIC Ombudsman does that assists CIC's with properly and fully funding CIC reserves. Few board members understand what either of these entities do, how to reach out to them, and how they do what they do. Fewer CIC members not on boards do.
19. Fairfax County has some sort of CIC liaison whose function is unclear. Apparently, Fairfax County is the only VA county to have this function, but we do not see its value in any way, and in reserve studies in particular.
20. In general, the Code of Virginia (and related regulatory matters and communications to citizens) is written in language that is cumbersome to read, archaic, and full of legal language that most do not understand. It should be simplified, written in clear English with fewer long, compound sentences.



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

Reserve Study Appendix C

1 message

Gregory Baldwin [REDACTED]

Mon, Aug 19, 2019 at 12:05 PM

To: "Joseph.Haughwout@dpor.virginia.gov" <Joseph.Haughwout@dpor.virginia.gov>

Cc: Marino Joyce <[REDACTED]>

Mr. Houghwout,

In reviewing the proposed Reserve Study document, it references Appendix C several times, but it is not included with the main document. Please forward it to me at [REDACTED] I find the document to be very well written and useful.

Thanks,

G. Joe Baldwin
President, Winterhaven Property Owners Association



Reserve study HOA

1 message

Joyce Marino [REDACTED]
Reply-To: [REDACTED]
To: cic@dpor.virginia.gov

Wed, Aug 7, 2019 at 4:17 PM

Hello. 3 comments.

A) on Sample Replacement Schedule, terms used are UL (Useful Life) and RUL(Remaining Useful Life). Then later page 15, in calculations the term used is "Effective age" which I am assuming is UL-RUL. eg, roof UL is 15 yrs, effective age is 11 so the RUL is 4 years. Would be nice to stick to same terminology or else define "Effective Age".

B) I never was able to do the computation using estimated inflation and interest rates. Am I correct that you really mean in the example of the roof, that the formulae are using the interest rate to the 4th power and inflation rate to the 4th power (i.e. the power of each is to the RULth. power)? I've never tried to use Excel formula functions to do "y" to the "xth" power, but it probably is there somewhere.

C) In example page 13, UL is 10 years, Current Value is \$10,000. Might be better to use what would be needed at say year 7 (which would be \$7,000). If the term Effective Age were used, the Effective Age would be 7 and the RUL 3? By having the example at 5 years, if I am understanding correctly, the Effective Age and the RUL would be the same therefore the example perhaps could be improved if later you are going to use the Effective Age in formulae.

Hope I have been able to explain myself. I was sent the link, by the HOA president (I'm the Treasurer) but I did not get any exhibit G or appendix. Maybe I just missed something. I would have liked to have seen examples of components.

Thanks Joyce



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

Reserve Studies

1 message

M Page

Fri, Jul 26, 2019 at 10:14 PM

To: Joseph.Haughwout@dpor.virginia.gov

Mr. Haughwout:

I appreciate that DPOR/CIC Board is attempting to make real estate disclosure packets uniform. I have seen some pretty sketchy ones the last few years, including where I currently reside. So I am happy to see some consistency. I have been closely following the rules, regs, and what is required in a real estate disclosure packet since 2006 because I prepare them for 2 **self-managed** HOA's. I have served on the board of both HOA's from their very inception. (One we had to come up with everything except the C&R's the developer set up.)

My point in writing is to ask that whatever is done regarding standardizing the reserve statements, *please* keep it simple and clearly stated for a lay person. Not all associations have a professional doing the disclosure packet, and we lay persons need to have a clear understanding of what is required in the packet. So far, so good for me, however.

That is my 2 cents worth...thanks!

Mary Page



Agency

Department of Professional and Occupational Regulation

Board

Common Interest Community Board

[Back to List of Comments](#)

Commenter: Michael D. Boyd

7/30/19 1:15 pm

Capital Reserve Components (Appendix C)

Recognize that Appendix C is not exhaustive, but our association specified "sidewalks" and "aprons" as capital components, and know that a neighboring HOA is specifying "trees" as a capital component.

Mike Boyd



DPOR Common Interest Community Board, rr <cic@dpor.virginia.gov>

Comments on Draft Reserve Study Guidelines

1 message

Rdten1 <[REDACTED]>
To: CIC@dpor.virginia.gov, [REDACTED]

Mon, Jul 29, 2019 at 8:49 PM

I'm the acting President for a small homeowners associated located in Reston, Virginia, If approved, this 27 page document will require we hire professional advice to ensure we are meeting the requirements for a reserve study. As currently drafted, the document will be meaningless to the majority of associations that are run by homeowners themselves. While the proposed guidelines may have some relevance for large communities with a great deal of infrastructure to worry about, it appears to be overkill for smaller groups that have minimal infrastructure to worry about. As an example, my community has one capital project that we budget for - repaving a private road that accesses our small community of 17 homes. On a regular basis we reseal the road and get an estimate for the cost of repaving the road at the end of its projected life span. We then include a reserve for this project in our annual budgets with a goal of having sufficient funds to cover the next resealing/repaving requirement. As you can tell, this is not an elaborate reserve study, but it has worked for our community.

Given its length and complexity, the draft proposal will basically force us to turn to a professional consultant, requiring us the raise our annual homeowners assessments to cover the resulting costs.

Bottom line is I would strongly suggest there be a streamlined process for smaller associations with minimal infrastructure and capital project investments. There is simply no need for a 27 page document covering this requirement.

V/R
Scott Blackerby
[REDACTED]

Joseph C. Haughwout, Jr., Board Administrator
Common Interest Community Board
Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, Virginia 23233-1485

Dear Mr. Haughwout, Jr.:

Re: Draft Reserve Study Guidelines

Per the Common Interest Community Board Draft Reserve Study Guidelines for Public Comment notice attached is a copy of my comments on the Draft Reserve Study Guidelines. These comments are being emailed and mailed to you. The last six pages containing Examples 1 - 3 are more readable if they are printed on legal size paper.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael Blivess".

Michael Blivess

Date: August 23, 2019
To: Common Interest Community Board
From: Michael Blivess
Subject: Draft Reserve Study Guidelines Comments

The purpose of this memo and its appendices is to provide comments on the Virginia Common Interest Community Board's Draft Reserve Study Guidelines for Public Comment.

Attached as Appendix 1 are the comments I presented and distributed at the June 20, 2019 Reserve Study Guidelines Subcommittee meeting. At that meeting, I heard that the Virginia reserve legislation is considered to be a leader in the national arena. I also heard the desire for the Reserve Study Guidelines to also be a national leader.

At that meeting, I offered the following four items that I believe should be reflected in the guidelines; especially to keep Virginia in a national leadership position:

1. replacement cost should be clearly defined and should be based on the estimated cost at time of replacement, i.e., reflect inflation.
2. inflation should be reflected in the study
3. a full funding measuring stick should included in the study
4. the funding goal underlying the basis for the funding recommendation should be clearly stated.

The published draft guidelines attempt to address inflation but I believe have not sufficiently addressed numbers 1, 3 and 4 above. Appendix 2 provides specific comments on the draft guidelines. Appendix 3 looks at seven different methods for three different examples that reflect varying the relationship between interest and inflation.

Inflation

With respect to inflation, I believe this draft gives mixed messages on recognizing inflation. I also believe it is imperative that for the guidelines to be viewed as a leader in the industry, it must unambiguously define replacement cost to be the cost at the time of replacement, i.e., reflect a reasonable estimate of inflation. All of the calculations and examples should be based on this definition of replacement cost. I believe the mixed message comes from discussing the importance of inflation after showing the non-inflation adjusted approach and not clearly defining replacement cost to be at the time of replacement. Below are examples of what I perceive to be mixed messages.

1. On Page 16, the last paragraph states "Interest rates and inflation play a significant role in whether a reserve fund can meet its goals" and proceeds to offer an alternative reserve deficit model. Given interest rate and inflation play a significant role in a reserve fund meeting its goals, they should be the basis for the study. Why show an alternative model not reflecting these significant items?
2. On Page 17, the draft states "failure to properly take interest and inflation into account can unfairly lead to unrealistically high calculations of the reserve deficit." While I would submit it could be unrealistically low depending on

Date: August 23, 2019
To: Common Interest Community Board
From: Michael Blivess
Subject: Draft Reserve Study Guidelines Comments
Page 2

the assumptions, why should the standard elaborate on methods that do not reflect interest and inflation?

3. On Page 19, the draft notes the use of current costs or estimated future costs is an important policy decision for a governing board. It goes on to say using current costs makes it "essential" to revise the plan annually. By showing current costs methods, the guidelines are making annual revisions essential even though Virginia requires a study once every five years.
4. On Page 21, the last paragraph notes cost of components should be reviewed and updated as necessary. Without an inflation assumption, the cost must almost always be updated annually - unless inflation is very low or we have deflation..
5. On Page 23, the second bullet at the top indicates the physical analysis products for consultants should include estimation of replacement cost in current and future dollars.

At the June 20, 2019 meeting, I heard discussion of how using inflation would produce a high number and would be difficult to project over a long time period. I do not believe these are valid reasons to not reflect inflation. As noted on Page 19, "the use of inflation will generally result in higher estimates of future costs," but I believe it is better to know the number sooner so the reserve study can be used as a planning and budgeting tool. Long term inflation forecasts are done for many financial projections and again I believe this enhances the usefulness as a planning and budgeting tool. In addition, since Virginia requires a reserve study every five years, it will be updated in no less than five years. Lastly, to the extent the actual inflation and interest are close to the respective assumptions and there are no other big surprises, the reserve study should be good for at least another year without having to be repeated.

I also note that including interest and inflation in the reserve study provides the data needed to develop a more equitable funding approach so that members are paying their fair share, which the guidelines indicate is desirable.

In Appendix 3, I compare seven different approaches to computing funding and only the methods reflecting interest and inflation result in no special assessments in each example. As mentioned in the guidelines on Pages 4 and 16, equitable funding is desirable and what is more equitable than a funding plan that by design funds the cost of living there at the time one is living there and does not require a special assessment?

Full Funding Measuring Stick

As I indicated in my June 20 comments, I believe showing the relationship of the projected reserve balance to the fully funded balance provides a useful measuring stick of the funding level over time for an association and allows potential purchasers to compare funding levels among different communities. I recognize that governing boards

Date: August 23, 2019
To: Common Interest Community Board
From: Michael Blivess
Subject: Draft Reserve Study Guidelines Comments
Page 3

will determine the appropriate funding levels for their association's particular situation. Thus, I am suggesting the reserve study guidelines call for the fully funded balance and the comparison of projected reserves to the fully funded balance be included as a measuring stick. I recognize it may take a significant explanation to make it clear to the readers.

Funding Goal

On Page 14, the guide indicates that the association budget should describe the funding goal, funding models are discussed on Page 14 and on Page 15, "assessment calculations are then made sufficient to reach the governing board's funding goals." As a reserve study guideline, I believe it appropriate for the guideline to explicitly state the funding goals should be clearly stated in a separate section of the reserve study.

Conclusion

What is a reserve study guideline? A reserve study guideline should be setting forth the principles or standards that should be followed when completing a reserve study. I urge you to request the document be rewritten to only include replacement cost at time of replacement, i.e., inflation and to include interest. I also believe the guideline should clearly indicate the funding goal should be stated and the fully funded measuring stick should be included in the guidelines, even if it is not the funding goal.

I am available to answer any questions and will gladly assist drafting or reviewing any related sections of the document. Thank you for this opportunity to provide these comments.

Michael Blivess

June 20, 2019

To: Reserve Study Guidelines Committee of the Common Interest Community Board
 From: Michael Blivess
 Subject: Reserve Study Guidelines

As the Reserve Study Guidelines Committee deliberates and develops its guidelines, I would like the Committee to consider the following four beliefs.

Replacement Cost Clearly Defined

I believe it is imperative that "replacement cost" be clearly defined and, as discussed below, be based on the future estimated replacement cost.

Much of the literature uses terms like "estimated current replacement costs" (e.g., Page 170 - all page numbers refer to the pdf file page) or defines "the current replacement cost to be the cost to replace, repair or restore the component during that particular year." (Page 203) While I may be stretching, it seems to me there is more than one interpretation of these terms.

Are these definitions referring to:

1. estimated current, i.e. year of the study, replacement cost, or
2. the current estimate of the replacement cost in the year the study anticipates the replacement will occur?

Nevada (Page 153) is very clear in its definition of replacement cost, i.e., "the cost for replacing a component at the time such replacement is necessary." I agree with Nevada and propose that this definition be adopted.

Inflation

As does Nevada, I believe inflation should be reflected in the study by defining the replacement cost as the cost at the time of replacement.

Unless inflation is reflected in the replacement cost calculation, the assessment will not meet the optimal California criteria discussed on Page 175 where it states: "Ideally, the replacement reserve should be built through regular (usually monthly) assessments paid by association members." California notes this spreads the responsibility of replacement cost over time as opposed to allocating cost to who ever happens to be in the association, "a more equitable distribution." As noted on Page 175, it provides owners "with more certainty as to the true costs of the property."

If inflation is not reflected in the replacement cost calculation, California points out on Page 176 the study must be repeated each year. Thus, all else being equal, the assessments will increase each year with inflation. This is particularly important since Virginia requires a study every five years and an annual review of the study.

I believe the discussion on the formula (Page 174) to take into consideration interest and inflation is misleading. But first, I believe the following terms in the formula are stated wrong:

$1 + \text{Interest Rate}^{\text{Remaining Life}}$ is intended to be $(1 + \text{Interest Rate})^{\text{Remaining Life}}$ and
 $1 + \text{Inflation Rate}^{\text{Remaining Life}}$ is intended to be $(1 + \text{Inflation Rate})^{\text{Remaining Life}}$.

Applying the intended terms results in the Desired Fund Balance shown in the chart below the formula for Painting and Paving. Neither formula produced the Roofing Desired Fund Balance.

While the intended formula does reflect inflation and interest, it does not result in a fully funded reserve balance based on replacement cost at time of replacement and it does not attain California's optimal level. Inflation affects the total replacement cost while interest only applies to the reserve balance. For example, if there is a component with a current cost of \$30,000 and a useful life of 15 years, at the end of the first year, one might compute the needed reserve balance as \$2,000. One year later, the entire \$30,000 will increase by inflation while interest would only be earned on \$2,000. The result of using this formula results in annual increases in the funding per the attached appendix, inconsistent with the optimal criteria ideal laid out by California.

Full Funding Measuring Stick

I believe it is important to have a measuring stick of the adequacy of the reserve balance that is based on the replacement cost at the time of replacement.

This allows members of the association to compare funding across time within a study as well as compare various funding analysis developed over time to each other. It also allows potential purchasers to compare funding levels between different communities.

I would propose reserve studies include both:

1. the fully funded balance based upon the estimated replacement cost at the time of replacement, and
2. the relationship of the reserve balance, which will include interest, to the fully funded balance.

Within the literature provided for this meeting, Page 200, it is suggested that actual or projected reserve balances be compared to the Accrued Fund Balance. However, the AFB is based on current cost, which I believe is lacking.

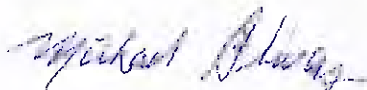
A measuring stick based on level funding of replacement cost at the time of replacement is consistent with California's ideal funding criteria.

Funding Goal

I believe the reserve study should clearly state the funding goal underlying the basis for the funding recommendation.

Regardless of the funding strategy, e.g., full funding, baseline funding, threshold funding or statutory funding, the funding strategy and parameters should be explicitly stated. For example, it might say the assessment is based on a threshold funding model with the fund projected to always be at least \$xxx throughout the period shown in the study.

I am available to answer any questions and thank you for this opportunity to provide these comments to the Committee.



Appendix - Reserve Study Guidelines

As noted in the memo, the Alternative Reserve Deficit Model (ARDM) noted on pdf Page 174, results in annual increases in the funding amount. The attached exhibits show the result of applying the ARDM under the following three different sets of inflation and interest assumptions to the Paving component as shown on Page 174:

1. Exhibit 1 - inflation equals interest.
2. Exhibit 2 - interest exceeds inflation
3. Exhibit 3 - inflation exceeds interest

With each set of assumptions, the annual funding amount increases each year.

Within each exhibit, there is a comparison of how much funding is needed annually for the following three models:

1. Inflation Only (Columns 2 - 3) - shows a constant annual funding amount considering only inflation
2. Inflation & Interest (Columns 4 - 7) - shows a constant annual funding amount considering both inflation and interest
3. Alternative Reserve Deficit Model with Interest & Inflation (Columns 8 -12) - determines the annual funding under the ARDM considering both inflation and interest

The Original Current Cost of \$12,439 is computed from the \$14,000 current cost at effective year 4, $\$14,000 \div (1.03^4) = \$12,439$.

Exhibit 1- inflation equals interest

It is sometimes noted that when interest equals inflation, the result of the ARDM including inflation and interest is the same as the Accrued Fund Balance, which does not consider inflation and interest (Page 173). While this is true, it is misleading in that it still does not result in a level annual funding. Inflation applies to the replacement cost while interest only applies to the accumulated funds, so the resulting annual funding under ARDM when inflation equals interest must be increased each year (Col 9). As previously discussed, California does not consider this to be ideal. Under this assumption as displayed in Exhibit 1, the annual percentage increase in the funding equals the inflation assumption.

Exhibit 2 - interest exceeds inflation

When interest exceeds inflation, the constant annual funding amount (Col 5) is lower than when inflation equals interest in Exhibit 1 but the ARDM still requires annual increases in funding (Col 9).

Exhibit 3 - inflation exceeds interest

When inflation exceeds interest, the constant annual funding amount (Col 5) is higher than when inflation equals interest in Exhibit 1 but the ARDM still requires annual increases in funding (Col 9).

Alternative Reserve Deficit Model with Interest & Inflation
Fully Funded Balance (FFB) Inflation & Interest Sensitivity

Exhibit 1

Paving (PDF Page 174)

Original Current Cost	\$	12,439
Useful life		7
Future Replace cost	\$	15,298
Inflation		0.030
Interest		0.030

(1) Time	(2) Inflation Only		(3)		(4)		(5) Inflation & Interest		(6)		(7) End Fund		(8) FFB w/ Int & Int		(9) Alternative Reserve Deficit Model with Interest & Inflation		(10)		(11) End Fund		(12) % Change in Funding		
	Funding	Fund Balance	Beg Fund Balance	Funding	Interest	End Fund Balance	Funding	Interest	End Fund Balance	Funding	Interest	End Fund Balance	Funding	Interest	End Fund Balance	Funding	Interest	End Fund Balance	Funding	Interest	End Fund Balance	Funding	Interest
1	2,185	2,185	2,185	1,938	58	1,996	1,938	58	1,996	1,938	58	1,996	1,938	58	1,996	1,777	53	1,830	1,777	53	1,830	1,777	53
2	2,185	4,371	1,996	1,938	118	4,053	1,938	118	4,053	1,938	118	4,053	3,770	110	3,770	1,830	110	3,770	1,830	110	3,770	1,830	110
3	2,185	6,556	4,053	1,938	180	6,171	1,938	180	6,171	1,938	180	6,171	5,825	170	5,825	1,885	170	5,825	1,885	170	5,825	1,885	170
4	2,185	8,742	6,171	1,938	243	8,353	1,938	243	8,353	1,938	243	8,353	8,000	233	8,000	1,942	233	8,000	1,942	233	8,000	1,942	233
5	2,185	10,927	8,353	1,938	309	10,600	1,938	309	10,600	1,938	309	10,600	10,300	300	10,300	2,000	300	10,300	2,000	300	10,300	2,000	300
6	2,185	13,113	10,600	1,938	376	12,914	1,938	376	12,914	1,938	376	12,914	12,731	371	12,731	2,060	371	12,731	2,060	371	12,731	2,060	371
7	2,185	15,298	12,914	1,938	446	15,298	1,938	446	15,298	1,938	446	15,298	15,298	446	15,298	2,121	446	15,298	2,121	446	15,298	2,121	446
Total	15,298			13,568	1,730		13,568	1,730		13,568	1,730		13,616	1,682		13,616	1,682		13,616	1,682		13,616	1,682

Notes

1. Original Current Cost Based on $\$14,000 \div 1.03^{*4} = \$12,439$; Future Replace Cost = $\$12,349 \times 1.03^{*7} = \$15,298$
2. Col 2 is funding considering inflation only and spreads future replacement cost evenly over all years: $15,298 \div 7 = 2,185$
3. Col 3 accumulates Col 2 over time showing the balance equals future replacement costs
4. Col 4 - 7 targets a constant payment considering inflation and interest
5. Col 4 is the fund balance at the beginning of the year
6. Col 5 is the constant annual contribution
7. Col 6 is interest earned assuming current year funding is available at the beginning of the year.
8. Col 7 is the fund balance at the end of the year and shows the accumulation to the future replacement cost
9. Col 8 - 12 uses the formula underlying the Alternate Reserve Deficit Model on PDF Page 174
10. Col 8 is the calculation of the Desired Balance
11. Col 9 is the amount of funding required recognizing the interest that will be earned to get to the FFB
12. Col 10 is the interest earned assuming current year funding is available at the beginning of the year
13. Col 11 is the sum of prior year end fund balance + current year funding + interest which grows to the future replacement cost
14. Col 12 is the % change in the annual funding

Alternative Reserve Deficit Model with Interest & Inflation
Fully Funded Balance (FFB) Inflation & Interest Sensitivity

Exhibit 2

Paving (PDF Page 174)

Original Current Cost	\$	12,439
Useful life		7
Future Replace cost	\$	15,298
Inflation		0.030
Interest		0.050

(1) Time	(2) Inflation Only		(3) Inflation Only		(4) Beg Fund		(5) Inflation & Interest		(6) Inflation & Interest		(7) End Fund		(8) Alternative Reserve Deficit Model with Interest & Inflation			(9) FFB w/ Inf & Int		(10) End Fund		(11) Balance		(12) % Change in Funding	
	Funding	Fund Balance	Funding	Fund Balance	Balance	Balance	Funding	Interest	Funding	Interest	Balance	Balance	Funding	Interest	Funding	Interest	FFB w/ Inf & Int	Funding	Interest	Balance	Balance	% Change in Funding	% Change in Funding
1	2,185	2,185	-	2,185	-	1,879	1,789	89	1,879	89	1,879	1,584	79	1,584	79	1,663	1,663	-	1,663	1,663	-	-	-
2	2,185	4,371	1,879	4,371	1,879	3,852	1,789	183	3,852	183	3,852	1,644	165	1,644	165	3,472	3,472	165	3,472	3,472	3.8%	3.8%	
3	2,185	6,556	3,852	6,556	3,852	5,923	1,789	282	5,923	282	5,923	1,711	259	1,711	259	5,442	5,442	259	5,442	5,442	4.1%	4.1%	
4	2,185	8,742	5,923	8,742	5,923	8,098	1,789	386	8,098	386	8,098	1,787	361	1,787	361	7,590	7,590	361	7,590	7,590	4.4%	4.4%	
5	2,185	10,927	8,098	10,927	8,098	10,382	1,789	494	10,382	494	10,382	1,871	473	1,871	473	9,934	9,934	473	9,934	9,934	4.7%	4.7%	
6	2,185	13,113	10,382	13,113	10,382	12,780	1,789	609	12,780	609	12,780	1,966	595	1,966	595	12,495	12,495	595	12,495	12,495	5.1%	5.1%	
7	2,185	15,298	12,780	15,298	12,780	15,298	1,789	728	15,298	728	15,298	2,075	728	2,075	728	15,298	15,298	728	15,298	15,298	5.5%	5.5%	
Total	15,298		12,526		12,526		2,772		2,772		2,772	12,636	2,662	12,636	2,662								

Notes

1. Original Current Cost Based on $\$14,000 \div 1.03^{*4} = \$12,439$; Future Replace Cost = $\$12,349 \times 1.03^{*7} = \$15,298$
2. Col 2 is funding considering inflation only and spreads future replacement cost evenly over all years: $15,298 \div 7 = 2,185$
3. Col 3 accumulates Col 2 over time showing the balance equals future replacement costs
4. Col 4 - 7 targets a constant payment considering inflation and interest
5. Col 4 is the fund balance at the beginning of the year
6. Col 5 is the constant annual contribution
7. Col 6 is interest earned assuming current year funding is available at the beginning of the year.
8. Col 7 is the fund balance at the end of the year and shows the accumulation to the future replacement cost
9. Col 8 - 12 uses the formula underlying the Alternate Reserve Deficit Model on PDF Page 174
10. Col 8 is the calculation of the Desired Balance
11. Col 9 is the amount of funding required recognizing the interest that will be earned to get to the FFB
12. Col 10 is the interest earned assuming current year funding is available at the beginning of the year
13. Col 11 is the sum of prior year end fund balance + current year funding + interest which grows to the future replacement cost
14. Col 12 is the % change in the annual funding

The following comments are based on this draft guideline as is.

1. Page (P) 3 "1." at bottom of page uses the term "current estimated replacement cost" which is defined in Appendix B Glossary. Appendix B states: "The current replacement cost would be the cost to replace, repair, or restore the component during that particular year." Which year is that particular year: 1. the year of the study or 2. the year the component will be replaced? I believe this language is ambiguous and the study guideline should clearly state the cost should be based on the year the item will be replaced. This is discussed further below..
2. P5 continuation of paragraph from P4 - I suggest the financial analysis should be measured in cash "and" percent funded as opposed to "or." In addition, as discussed below, I believe the percent funded should be shown relative to the target fund balance as determined by the governing board (implied by the words) as well as relative to a fully funded balance defined below. The reason to include the fully funded balance is discussed further below.
3. P5 the four levels of service refer to the "life and valuation estimates" which as defined in the Appendix B Glossary uses the phrase "replacement costs." As I have indicated this should be defined to be the cost of replacement at time replacement. However, if this definition is not accepted, then each of these studies should include inflation.
4. P5 Contents of a Reserve Study - the contents of a reserve study includes the "current replacement cost." As discussed above, I believe the definition of current replacement cost is ambiguous.
5. I also believe a reserve study should include the fully funded balance based on the replacement cost at time of replacement and a comparison of the projected reserve balance to the fully funded balance at the end of each year shown in the study.
6. P8 Conducting a Physical Analysis - in this section most of time the word "component" is used but in the last paragraph of P9, "capital component" is used. I suggest being consistent throughout the document.
7. P8 the major steps in conducting a physical analysis - the selection of an inflation rate to determine the cost of replacement at time of replacement should be part of the physical analysis as indicated on P23 second bullet.
8. P9 first bullet - I think a major expense that is expected just after the 30 years should also be included in the study. Otherwise, the first year that it is included in the study, it might cause a large increase in required funding level.
9. P12 (wood shingle) at top of page - suggest moving to bottom of prior page.
10. P12 Determining Replacement Cost - I believe the replacement cost in the study should be the cost at time of replacement. Thus the selection of an inflation factor must be included.
11. P14 2nd paragraph under Determine Funding Goal - notes the association should consider the cash remaining "in the reserve account at the end of the planning period relative to the projected balance needed at that date." What is the planning period - annual budget, time between reserve studies or 30 year period shown in reserve study? I would suggest the study should show the status annually and in addition to showing the projected balance needed each year, it should show the fully funded balance.

12. P14 Full Funding Model - this definition does not clearly indicate the \$10,000 replacement cost is the cost at time of replacement, which I believe is the appropriate definition.
13. P14 Baseline Funding Model - if inflation is not considered, i.e., the cost at time of replacement is not the basis of the study, then a will almost certainly arise at the time of replacement because the actual cost of replacement will be significantly higher than the study anticipated.
14. P17 Formula at top of page - First, it is not clear to me how to use this formula to determine the annual funding and I believe this type of guidance should be provided by a Reserve Study Guideline. The attached Appendix 3 shows two different interpretations of how to apply this formula. Second, the formula uses the term "Current Cost" but does not define it - see No. 1 above. Please note that interest accumulates on the actual funds being held while inflation increases the total replacement cost. Depending on the definition of "Current Cost", unless this calculation is updated annually, when the Effective Age equals the Useful Life (or Remaining Life equals zero), the formula results in a Desired Balance equal to the Current Cost, i.e. at time of replacement there may only be available the replacement cost at the time the study was completed. Thus, the formula may not take inflation into consideration depending on the definition of "Current Cost" and whether the study is repeated annually. As previously noted, the attached Appendix 3 compares two different interpretations of this formula as well as an alternative approach to reflecting inflation and interest. It shows, depending on how the formula is applied and the definition of current cost that the proposed formula may require a special assessment.
15. P17 Formula at top of page - if this formula is still to be presented it is missing, in the second and third terms, parenthesis around the denominator. For example, the second term should be

$$\frac{\text{Current Cost} \times \text{Effective Age}}{\text{Useful Life}}$$

$$(1 + \text{Interest Rate})^{\text{Remaining Life}}$$

The stated term $1 + \text{Interest Rate}^{\text{Remaining Life}}$ very quickly goes to 1.0. For painting as example, $1 + .05^3 = 1.00013$ and inflation equals 1.00003. This results in $\$6,000 + (6,000 \div 1.00013) + (6,000 \div 1.00003) = 6,000 + 5,999 - 6,000 = 5,999$. The two terms essentially sum to zero since the adjustment is so small and neither interest nor inflation has been considered, depending on definition of "Current Cost."

16. P17 inflation = 3% and interest = 5% assumptions - I recognize that these are assumptions being used to explain the concepts. However, I would select assumptions more in line with current realities. The inflation seems reasonable to me but, in my opinion, the interest should be in the 2.0% to 3.0% range. Admittedly I have no experience in what other reserve accounts are currently earning but would think most associations are securely invested in relatively short term certificates of deposit or US Treasury Bonds.

17. P17 Table - I believe the table value for Roofing is incorrect even using the correction in No. 15 above per the calculations shown below comparing Roofing to Paving.

Roofing	Paving
Desired Balance = $30,000 \div 15 \times 11 = 22,000$	$=14,000 \div 7 \times 4 = 8,000$
$+ 22,000 \div (1.05)^4 = 18,099$	$+ 8,000 \div (1.05)^3 = 6,911$
<u>$- 22,000 \div (1.03)^4 = 19,546$</u>	<u>$- 8,000 \div (1.03)^3 = 7,321$</u>
20,553	7,590

18. P17 states "failure to take interest and inflation into account can unfairly lead to unrealistically high calculations of the reserve deficit." Given reasonable interest and inflation assumptions, I would submit it would always be a low estimate.
19. P19 second paragraph - points out that if the governing board uses current costs, then the plan should be updated annually with current replacement cost. Given Virginia requires a study every five years, do you really expect the study to be updated annually? Why not take inflation into consideration in the beginning so the study does not have to be updated annually?
20. P19 third paragraph - points out that using "the inflation rate approach is valid only if repeated each year." However, if the inflation rate assumption was reasonably close to actual inflation and there are no other major changes in useful life or remaining life, then the whole study does not have to be updated. I suggest expanding this statement to reflect that the study does not have to be repeated each year if the major assumptions, including inflation, hold true.
By using current replacement cost and reflecting inflation in the study, is this sentence suggesting the reserve study should be done annually?
21. P20 first paragraph - While I agree the interest rate assumption should be adjusted for taxes, and I am not a tax accountant, it is my understanding that many associations credit the reserve account with the interest earnings and do not reduce the reserve account for their share of the taxes. Of course, they could interpret the after-tax interest rate to be the same as the before tax rate.
22. P20 third paragraph - I don't know if this is intended but the second sentence seems to me to be endorsing the Baseline Funding Model, which is noted to be the least conservative method on Page 14.
23. P21 Statement of Limitations and Assumptions - I believe the funding analysis should also clearly document the funding goal underlying the funding recommendation and this might be the appropriate location of the suggestion to do so.
24. P21 last paragraph - it is noted that cost of components should be updated annually. Given inflation, this means updating the study every year. However, assuming no unusual events, if inflation is considered in the study and the inflation assumption is reasonably close to the actual inflation, the study will not need to be completely redone. This same logic applies to the interest assumption.
25. Appendix B Glossary Funding Goals - if inflation is not considered, i.e., the cost at time of replacement is not the basis of the study, then a deficit might arise at the time of

replacement because the actual cost of replacement was significantly higher than the study anticipated.

26. Appendix B Glossary Replacement Cost - Appendix B states: "The current replacement cost would be the cost to replace, repair, or restore the component during that particular year." Which year is that particular year: 1. the year of the study or 2. the year the component will be replaced? I believe this language is ambiguous and the study guideline should clearly state the cost should be based on the year the item will be replaced.
27. Appendix B Fully Funded is not defined. I would suggest one of the following definitions: the balance that with future evenly distributed contributions and interest will equal the replacement cost at the time of replacement or the balance that with future contributions that increase with inflation and interest will equal the replacement cost at the time of replacement.
28. Physical Analysis Check List Determining the cost of replacement: also requires considering inflation per P23 second bullet "Estimation of replacement cost in current and future dollars."
29. Appendix F - Sample Financial Analysis Component cost increase factor @4.6% per annum - it seems to me that the factors are off by a year. For example, painting at end of year 2 should have two years of cost increase so the factor would be 1.094
30. Appendix F - inflation and interest rates seems to me to be extremely high and would use something more consistent with current conditions.
31. Appendix F - Liability is not defined in the Appendix B Glossary and I would reflect inflation

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Treatment of Interest and Inflation

The purpose of this appendix is to provide funding calculation examples with three different interest and inflation relationships by applying seven different methods of developing funding. Two of the methods are discussed in the Reserve Study Guidelines. A couple of these methods are not likely to be used but by comparing them to the other methods, one gains a greater understanding of the underlying issues of dealing with inflation and interest.

There are three examples varying the relationship between interest and inflation. The other assumptions of cost and useful life are based on the parameters underlying the painting example in the Reserve Study Guidelines. However, the effective age is shown for each year over the useful life of five years. This component was selected because the useful life was five years, the period for which Virginia requires a new study.

Columns 2 - 3 Page 16: Accrued Fund Balance - No Inflation or Interest

This method is the Page 16 Accrued Fund Balance approach and computes the annual funding by dividing the current cost by the number of years as shown on Page 18. With a replacement cost at the time of the study of \$10,000 and five years of 3.0% inflation, in Year 5, the cost of painting at the time it will be painted is projected to be \$11,593. However since the replacement cost at the time of the study was used to determine the annual \$2,000 of funding, there is a shortfall of \$1,593 in each of the three examples. This approach will always require a special assessment in Year 5 and why I suggest not showing it.

Columns 4 - 7: Interest Only

For this method, the same \$2,000 of annual funding is determined based on the replacement cost at the time of the study. However, in this method interest will be accumulated in the reserves so at Year 5, there actually would be a refund of \$11 for Example 1 and a special assessment of \$976 and \$656 for Examples 2 and 3, respectively. The unusual Example 1 interest and inflation assumptions relationship causes the refund for Example 1. Note that in Example 3 when interest equals inflation with a constant funding based on the replacement cost at the time of the study a special assessment is still needed in Year 5. This is because the inflation affects the total cost while the interest only earns on the funds collected.

Columns 8 - 11: Funding Based on Inflation Only

For this method, the annual funding amount is determined by the replacement cost at time of replacement and does not reflect the interest that will be realized in the selection of the funding amount. Since interest was not considered in determining the annual funding amount, as shown here in all three examples, the interest will generate a refund in Year 5. Based upon my limited experience, I have never seen this method proposed.

Columns 12 - 15: Page 17 Interest and Inflation - Cost at time of study

This method is based upon the corrected (see Appendix 2 No. 15 comments) Page 17 formula whereby a Desired Balance is computed for each year without adjusting the replacement cost and then backing into the funding, recognizing there will be interest, needed to get to the Desired Balance. This method does reflect interest and inflation in the calculation of the funding and the fund balance. However, note that since the replacement cost is not updated annually as the Page 17 chart shows, in Year 5 the Desired Balance is the replacement cost at the time of the study, \$10,000, and a special assessment will be needed to cover the Year 5 painting cost of \$11,593. Since this method computes the funding based upon the Desired Balance of \$10,000, the relationship of interest and inflation do not change the Year 5 special assessment regardless of the interest and inflation assumptions. The Year 5 special assessment is the same as that found in Columns 2 - 3 Accrued Fund Balance - No Inflation or Interest.

Columns 16 - 19: Page 17 Interest and Inflation - Cost inflated each year

This method is based upon the corrected (see Appendix 2 No. 15 comments) Page 17 formula whereby a Desired Balance is computed for each year; however the replacement cost is adjusted annually and then backing into the funding, recognizing there will be interest needed to get to the Desired Balance. This method results in no Year 5 Special Assessment because inflation and interest have been taken into consideration.

Columns 20 - 23: Funding Based on Inflation & Interest - constant funding

This method computes the funding based on the projected replacement cost at the time of replacement, i.e., recognizing inflation, and based on earning interest. This method is based upon having a constant funding amount over the five year period. In all three examples, this method does not require a special assessment.

Columns 24 - 27: Funding Based on Inflation & Interest - funding increases with inflation

This method computes the funding based on the projected replacement cost at the time of replacement, i.e., recognizing inflation, and based on earning interest. This method is based upon the annual funding amount increasing with inflation. In all three examples, this method does not require a special assessment.

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Virginia CIRB Reserve Study Guidelines

Example 1 - Interest exceeds Inflation

Current Cost	\$	10,000
Useful life		5
Final cost	\$	11,593
Inflation		3.0%
Interest (after tax)		5.0%

(1) Year	(2) Page 16 Accrued Fund Balance - No Inflation or Interest		(3) Interest Only				(4) Funding Based on Inflation Only			
	Funding	Balance	Beg Balance	Funding	Interest	End Balance	Beg Balance	Funding	Interest	End Balance
1	2,000	2,000	0	2,000	100	2,100	0	2,319	116	2,434
2	2,000	4,000	2,100	2,000	205	4,305	2,434	2,319	238	4,991
3	2,000	6,000	4,305	2,000	315	6,620	4,991	2,319	365	7,675
4	2,000	8,000	6,620	2,000	431	9,051	7,675	2,319	500	10,493
5	2,000	10,000	9,051	2,000	553	11,604	10,493	2,319	641	13,452
Special Assessment in Yr 5		1,593				(11)				(1,859)
Total Year 5	10,000	11,593		10,000	1,604	11,593		11,593	1,859	11,593

Notes:

1. Assumes all Funding collected at beginning of the year
2. Col 2 = 10,000 ÷ 5
3. Col 3 = sum of annual funding
4. Col 4 = prior year End Balance
5. Col 5 = 10,000 ÷ 5
6. Col 6 = Interest × (Beginning Balance + Funding)
7. Col 7 = Beginning Balance + Annual Funding + Interest
8. Col 8 = prior year End Balance
9. Col 9 = 11,593 ÷ 5

Virginia CIRB Reserve Study Guidelines

Example 1 - Interest exceeds Inflation

Current Cost	\$	10,000
Useful life		5
Final cost	\$	11,593
Inflation		3.0%
Interest (after tax)		5.0%

Year	Page 17 Interest and Inflation - Cost at time of study				Page 17 Interest and Inflation - Cost inflated Each Year				Funding Based on Inflation & Interest - constant funding				Funding Based on Inflation & Interest - funding increases with inflation			
	Desired Fund Balance	Funding	Interest	End Balance	Desired Fund Balance	Funding	Interest	End Balance	Beg Balance	Funding	Interest	End Balance	Beg Balance	Funding	Interest	End Balance
(1)																
1	1,868	1,779	89	1,868	1,924	1,832	92	1,924	0	1,998	100	2,098	0	1,887	94	1,982
2	3,795	1,746	181	3,795	4,026	1,910	192	4,026	2,098	1,998	205	4,301	1,982	1,944	196	4,122
3	5,787	1,716	276	5,787	6,323	1,996	301	6,323	4,301	1,998	315	6,614	4,122	2,002	306	6,430
4	7,852	1,691	374	7,852	8,838	2,094	421	8,838	6,614	1,998	431	9,043	6,430	2,062	425	8,917
5	10,000	1,672	476	10,000	11,593	2,203	552	11,593	9,043	1,998	552	11,593	8,917	2,124	552	11,593
Special Assessment in Yr 5				1,593				0				0				0
Total Year 5		8,605	1,395	11,593		10,036	1,557	11,593		9,991	1,602	11,593		10,020	1,573	11,593

Notes:

- 12. Col 12 = Desired Fund Balance computed per Page 17 - Cost at time of study
- 13. Col 13 Funding computed so that after interest End Balance = Desired Fund Balance
- 14. Col 14 Year 1 = Interest × Funding; Col 14 Years 2-5 = Interest × (Prior Year End Balance + Funding)
- 15. Col 15 = Prior Yr End Balance + Annual Funding + Interest
- 16. Col 16 = Desired Fund Balance computed per Page 17 - Cost inflated each year
- 17. Col 17 Funding computed so that after interest End Balance = Desired Fund Balance
- 18. Col 18 Year 1 = Interest × Funding; Col 18 Years 2-5 = Interest × (Prior Year End Balance + Funding)
- 19. Col 19 = Prior Yr End Balance + Annual Funding + Interest
- 20. Col 20 = Prior Year End Balance
- 21. Col 21 is computed so that with interest there will no assessment in Year 5
- 22. Col 22 = Interest × (Beginning Balance + Funding)
- 23. Col 23 = Beginning Balance + Annual Funding + Interest
- 24. Col 24 = Prior Year End Balance
- 25. Col 25 is computed so that with interest there will no assessment in Year 5
- 26. Col 26 = Interest × (Beginning Balance + Funding)
- 27. Col 27 = Beginning Balance + Annual Funding + Interest

Virginia CIRB Reserve Study Guidelines

Example 2 - Inflation exceeds Interest

Current Cost	\$	10,000
Useful life		5
Final cost	\$	11,593
Inflation		3.0%
Interest (after tax)		2.0%

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Page 16 Accrued Fund Balance - No Inflation or Interest										
	Interest			Interest Only			Funding Based on Inflation Only				
Year				Beg Balance	Funding	Interest	End Balance	Beg Balance	Funding	Interest	End Balance
1	2,000	2,000	0	2,000	40	2,040	0	2,319	46	2,365	
2	2,000	4,000	2,040	2,000	81	4,121	2,365	2,319	94	4,777	
3	2,000	6,000	4,121	2,000	122	6,243	4,777	2,319	142	7,238	
4	2,000	8,000	6,243	2,000	165	8,408	7,238	2,319	191	9,747	
5	2,000	10,000	8,408	2,000	208	10,616	9,747	2,319	241	12,307	
Special Assessment in Y		1,593				976				(714)	
Total Year 5	10,000	11,593		10,000	616	11,593		11,593	714	11,593	

Notes

1. Assumes all Funding collected at beginning of the year
2. Col 2 = 10,000 ÷ 5
3. Col 3 = sum of annual funding
4. Col 4 = prior year End Balance
5. Col 5 = 10,000 ÷ 5
6. Col 6 = Interest × (Beginning Balance + Funding)
7. Col 7 = Beginning Balance + Annual Funding + Interest
8. Col 8 = prior year End Balance
9. Col 9 = 11,593 ÷ 5
10. Col 10 = Interest × (Beginning Balance + Funding)

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Virginia CIRB Reserve Study Guidelines

Example 2 - Inflation exceeds Interest

Current Cost	\$	10,000
Useful life		5
Final cost	\$	11,593
Inflation		3.0%
Interest (after tax)		2.0%

Year	Page 17 Interest and Inflation - Cost at time of study				Page 17 Interest and Inflation - Cost inflated Each Year				Funding Based on Inflation & Interest - constant funding				Funding Based on Inflation & Interest - funding increases with inflation			
	Desired Fund Balance	Funding	Interest	End Balance	Desired Fund Balance	Funding	Interest	End Balance	Beg Balance	Funding	Interest	End Balance	Beg Balance	Funding	Interest	End Balance
1	2,071	2,030	41	2,071	2,133	2,091	42	2,133	0	2,184	44	2,228	0	2,059	41	2,100
2	4,109	1,957	81	4,109	4,359	2,141	85	4,359	2,228	2,184	88	4,500	2,100	2,121	84	4,306
3	6,111	1,882	120	6,111	6,678	2,188	131	6,678	4,500	2,184	134	6,818	4,306	2,185	130	6,620
4	8,076	1,807	158	8,076	9,090	2,234	178	9,090	6,818	2,184	180	9,182	6,620	2,250	177	9,048
5	10,000	1,728	196	10,000	11,593	2,276	227	11,593	9,182	2,184	227	11,593	9,048	2,318	227	11,593
Special Assessment in Y				1,593				0				0				0
Total Year 5		9,405	595	11,593		10,929	664	11,593		10,920	673	11,593		10,933	660	11,593

Notes

- 12. Col 12 = Desired Fund Balance computed per Page 17 - Cost at time of study
- 13. Col 13 Funding computed so that after interest End Balance = Desired Fund Balance
- 14. Col 14 Year 1 = Interest × Funding; Col 14 Years 2-5 = Interest × (Prior Year End Balance + Funding)
- 15. Col 15 = Prior Yr End Balance + Annual Funding + Interest
- 16. Col 16 = Desired Fund Balance computed per Page 17 - Cost inflated each year
- 17. Col 17 Funding computed so that after interest End Balance = Desired Fund Balance
- 18. Col 18 Year 1 = Interest × Funding; Col 18 Years 2-5 = Interest × (Prior Year End Balance + Funding)
- 19. Col 19 = Prior Yr End Balance + Annual Funding + Interest
- 20. Col 20 = Prior Year End Balance
- 21. Col 21 is computed so that with interest there will no assessment in Year 5
- 22. Col 22 = Interest × (Beginning Balance + Funding)
- 23. Col 23 = Beginning Balance + Annual Funding + Interest
- 24. Col 24 = Prior Year End Balance
- 25. Col 25 is computed so that with interest there will no assessment in Year 5
- 26. Col 26 = Interest × (Beginning Balance + Funding)
- 27. Col 27 = Beginning Balance + Annual Funding + Interest

Virginia CIRB Reserve Study Guidelines

Example 3 - Interest equals Inflation

Current Cost	\$	10,000
Useful life		5
Final cost	\$	11,593
Inflation		3.0%
Interest (after tax)		3.0%

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Page 16 Accrued Fund Balance - No Inflation or										
	Interest		Interest Only				Funding Based on Inflation Only				
Year			Beg				End	Beg			End
	Funding	Balance	Balance	Funding	Interest	Balance	Balance	Funding	Interest	Balance	
1	2,000	2,000	0	2,000	60	2,060	0	2,319	70	2,388	
2	2,000	4,000	2,060	2,000	122	4,182	2,388	2,319	141	4,848	
3	2,000	6,000	4,182	2,000	185	6,367	4,848	2,319	215	7,381	
4	2,000	8,000	6,367	2,000	251	8,618	7,381	2,319	291	9,991	
5	2,000	10,000	8,618	2,000	319	10,937	9,991	2,319	369	12,679	
Special Assessment in Y		1,593				656				(1,086)	
Total Year 5	10,000	11,593		10,000	937	11,593		11,593	1,086	11,593	

Notes

1. Assumes all Funding collected at beginning of the year
2. Col 2 = 10,000 ÷ 5
3. Col 3 = sum of annual funding
4. Col 4 = prior year End Balance
5. Col 5 = 10,000 ÷ 5
6. Col 6 = Interest × (Beginning Balance + Funding)
7. Col 7 = Beginning Balance + Annual Funding + Interest
8. Col 8 = prior year End Balance
9. Col 9 = 11,593 ÷ 5
10. Col 10 = Interest × (Beginning Balance + Funding)
11. Col 11 = Beginning Balance + Annual Funding + Interest

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Virginia CIRB Reserve Study Guidelines

Example 3 - Interest equals Inflation

Current Cost	\$	10,000
Useful life		5
Final cost	\$	11,593
Inflation		3.0%
Interest (after tax)		3.0%

	(1)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)
	Page 17 Interest and Inflation - Cost at time of study				Page 17 Interest and Inflation - Cost inflated Each Year				Funding Based on Inflation & Interest - constant funding				Funding Based on Inflation & Interest - funding increases with inflation				
Year	Desired Fund				Desired Fund				Beg				Beg				
	Balance	Funding	Interest	End Balance	Balance	Funding	Interest	End Balance	Balance	Funding	Interest	End Balance	Balance	Funding	Interest	End Balance	
1	2,000	1,942	58	2,000	2,060	2,000	60	2,060	0	2,120	64	2,184	0	2,000	60	2,060	
2	4,000	1,883	117	4,000	4,244	2,060	124	4,244	2,184	2,120	129	4,433	2,060	2,060	124	4,244	
3	6,000	1,825	175	6,000	6,556	2,121	191	6,556	4,433	2,120	197	6,749	4,244	2,122	191	6,557	
4	8,000	1,767	233	8,000	9,004	2,186	262	9,004	6,749	2,120	266	9,135	6,557	2,186	262	9,004	
5	10,000	1,709	291	10,000	11,593	2,251	338	11,593	9,135	2,120	338	11,593	9,004	2,251	338	11,593	
Special Assessment in Y				1,593				0				0				0	
Total Year 5		9,126	874	11,593		10,619	974	11,593		10,600	993	11,593		10,619	974	11,593	

Notes

- 12. Col 12 = Desired Fund Balance computed per Page 17 - Cost at time of study
- 13. Col 13 Funding computed so that after interest End Balance = Desired Fund Balance
- 14. Col 14 Year 1 = Interest × Funding; Col 14 Years 2-5 = Interest × (Prior Year End Balance + Funding)
- 15. Col 15 = Prior Yr End Balance + Annual Funding + Interest
- 16. Col 16 = Desired Fund Balance computed per Page 17 - Cost inflated each year
- 17. Col 17 Funding computed so that after interest End Balance = Desired Fund Balance
- 18. Col 18 Year 1 = Interest × Funding; Col 14 Years 2-5 = Interest × (Prior Year End Balance + Funding)
- 19. Col 19 = Prior Yr End Balance + Annual Funding + Interest

- 20. Col 20 = Prior Year End Balance
- 21. Col 21 is computed so that with interest there will no assessment in Year 5
- 22. Col 22 = Interest × (Beginning Balance + Funding)
- 23. Col 23 = Beginning Balance + Annual Funding + Interest
- 24. Col 24 = Prior Year End Balance
- 25. Col 25 is computed so that with interest there will no assessment in Year 5
- 26. Col 26 = Interest × (Beginning Balance + Funding)
- 27. Col 27 = Beginning Balance + Annual Funding + Interest

Common Interest Community Board

Draft Reserve Study Guidelines for Public Comment

Comments submitted August 13, 2019

Terri Hillaert, CMCA, AMS

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Vienna, VA 22182

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Text from Draft Guidelines: “In addition to establishing a reserve fund for capital components, associations should also consider establishing an operating reserve for budget overages. An operating reserve provides the association with funds in case of unexpected budget overages or unforeseen operating expenses. Doing so will guard against the risk that the capital reserve fund being used to cover these unanticipated expenses.”

Comment:

Unless the intent is to legislate more minutely how a CIC establishes their operating budget, this paragraph is outside the scope of a guideline for the development of reserve studies.

Assuming that a board is fiscally responsible, they will already be monitoring the status of their unappropriated members' equity which is a common source for an operating reserve in a CIC. They may also consider creating an operating budget line item to account for possible overages, however these suggestions are outside the scope of reserve guidelines for capital components.

This may be the appropriate area to discuss the concept of using designated capital reserve funds for undesignated operating expenses. Some governing documents may address the specifics of borrowing and repayment of reserve funds used for operating expenses. If they don't, it might be appropriate to suggest a CIC governing board consult with their CPA for possible tax implications before doing so.

Another suggestion is to address the source of funding improvements. An example is adding new concrete sidewalk where none previously existed. It would be helpful to clarify that although capital improvements will be added to the capital component inventory, the cost of adding the improvements should be paid from operating funds. Many CIC governing boards struggle with this concept.

CLOSED MEETING FOR THE PURPOSE OF
CONSULTATION WITH LEGAL COUNSEL
PURSUANT TO 2.2-3711.A.7 OF THE CODE
OF VIRGINIA

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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**

2018-2020 Biennium

July 2019

	July 2019 Activity	Biennium-to-Date Comparison	
		July 2016 - July 2017	July 2018 - July 2019
Cash/Revenue Balance Brought Forward			3,380,114
Revenues	46,853	1,035,712	1,061,642
Cumulative Revenues			4,441,756
Cost Categories:			
Board Expenditures	52,117	404,911	481,234
Board Administration	0	0	0
Administration of Exams	0	0	0
Enforcement	16,921	143,003	148,896
Legal Services	0	1,121	636
Information Systems	4,160	69,735	95,765
Facilities and Support Services	2,924	72,802	82,782
Agency Administration	5,783	67,119	54,865
Other / Transfers	0	24,589	8,513
Transfer To/(From) Cash Reserves	3,569,066	0	3,569,066
Total Expenses	3,650,971	783,279	4,441,756
Ending Cash/Revenue Balance			0

Cash Reserve Beginning Balance	0	0	0
Change in Cash Reserve	3,569,066	0	3,569,066
Ending Cash Reserve Balance	3,569,066	0	3,569,066

Number of Regulants

Current Month	7,410
Previous Biennium-to-Date	6,633

**VIRGINIA COMMON INTEREST
COMMUNITY MANAGEMENT
RECOVERY FUND**

Financial Statements

Cash Basis

For the Month Ended

April 30, 2019

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DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
VIRGINIA COMMON INTEREST COMMUNITY MANAGEMENT
RECOVERY FUND
BALANCE SHEET
GOVERNMENTAL FUNDS
April 30, 2019

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	Special Revenue Funds		
	Principal	Interest	Totals
ASSETS			
CASH AND CASH EQUIVALENTS	\$ 206,286	\$ 7,901	\$ 214,187
TOTAL ASSETS	\$ 206,286	\$ 7,901	\$ 214,187
FUND BALANCES			
RESERVED FOR PAYMENT OF FUTURE CLAIMS	\$ 206,286	\$ -	\$ 206,286
RESERVED FOR ADMINISTRATION OF RECOVERY ACT	-	7,901	7,901
TOTAL FUND BALANCES	\$ 206,286	\$ 7,901	\$ 214,187

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
April 30, 2019

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	MONTH OF APRIL			YEAR TO DATE		
	Principal Fund	Interest Fund	Totals	Principal Fund	Interest Fund	Totals
REVENUES:						
Assessments:	\$ 825	\$ -	\$ 825	\$ 5,424	\$ -	\$ 5,424
Investment Income	-	333	333	-	3,084	3,084
Total Revenues:	825	333	1,158	5,424	3,084	8,508
EXPENDITURES:						
Administrative Expense	-	-	-	-	-	-
Total Expenses:	-	-	-	-	-	-
Net Change in Fund Balances	825	333	1,158	5,424	3,084	8,508
Beginning Fund Balance	205,461	7,568	213,029	200,862	4,817	205,679
Ending Fund Balance	\$ 206,286	\$ 7,901	\$ 214,187	\$ 206,286	\$ 7,901	\$ 214,187

The accompanying notes are an integral part of this statement.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
 VIRGINIA COMMON INTEREST COMMUNITY MANAGEMENT RECOVERY FUND
 SUPPLEMENTAL SCHEDULE OF CLAIMS PAID
 April 30, 2019

CLAIMS PAID:	Number of Payments	Dollar Amount of Claims Paid	Related Recoveries	Net Payments
July 1, 2018 - June 30, 2019	0	\$0.00	\$0.00	\$0.00
July 1, 2017 - June 30, 2018	0	\$0.00	\$0.00	\$0.00
July 1, 2016 - June 30, 2017	0	\$0.00	\$0.00	\$0.00
July 1, 2015 - June 30, 2016	0	\$0.00	\$0.00	\$0.00
July 1, 2014 - June 30, 2015	0	\$0.00	\$0.00	\$0.00
July 1, 2013 - June 30, 2014	0	\$0.00	\$0.00	\$0.00
July 1, 2012 - June 30, 2013	0	\$0.00	\$0.00	\$0.00
July 1, 2011 - June 30, 2012	0	\$0.00	\$0.00	\$0.00
July 1, 2010 - June 30, 2011	0	\$0.00	\$0.00	\$0.00
July 1, 2009 - June 30, 2010	0	\$0.00	\$0.00	\$0.00
July 1, 2008 - June 30, 2009	0	\$0.00	\$0.00	\$0.00
Total	<u>0</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>

This schedule is presented on a cash basis and represents aggregate claims paid and related recoveries. Recoveries are often received and reported in a different year from when the claim was paid.

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DEPARTMENT OF PROFESSIONAL AND OCCUPATION REGULATION
VIRGINIA COMMON INTEREST COMMUNITY MANAGEMENT RECOVERY FUNDS
NOTES TO FINANCIAL STATEMENTS
April 30, 2019

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 is 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

November 13, 2019	McLean Citizens Association	Heather Gillespie
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OTHER BUSINESS

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COMPLETE CONFLICT OF INTEREST
FORMS AND
TRAVEL VOUCHERS

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