

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

**OMBUDSMAN REGULATORY REVIEW COMMITTEE  
OF THE  
COMMON INTEREST COMMUNITY BOARD**

*Tentative* **AGENDA**

**FRIDAY, JUNE 2, 2023, 10:00 A.M.  
2<sup>nd</sup> FLOOR, BOARD ROOM 4**

- I. CALL TO ORDER**
- II. EMERGENCY EVACUATION PROCEDURES**
- III. APPROVAL OF AGENDA**
- a. Committee Agenda, June 2, 2023
- IV. PUBLIC COMMENT PERIOD\***
- V. OVERVIEW**
- a. Review Purpose of Committee
  - b. Members & Staff
  - c. Primary Responsibilities of the Committee
    - i. Overview of Regulatory Review Process
  - d. Proposed Regulatory Review Timeline
- VI. RESOURCES AND INFORMATION**
- a. Common Interest Community Ombudsman Regulations
  - b. Laws and Regulations
    - i. §54.1-2354.3
    - ii. §54.1-2354.4
  - c. SB 1042
  - d. Guidance Document: Request for Waiver of Filing Fee for Notice of Final Adverse Decision
- VII. NEW BUSINESS**
- a. Consider Regulatory Amendments to Parts I Through IV
- VIII. OTHER BUSINESS**
- IX. COMPLETE CONFLICT OF INTEREST FORMS AND TRAVEL VOUCHERS**

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

Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the Department at (804) 367-0362 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.

**X. ADJOURN**

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

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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.

# **PUBLIC COMMENT PERIOD**

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

DRAFT AGENDA  
Materials contained in this agenda are proposed topics for discussion  
and are not to be construed as a question or official Board decision.  
DRAFT AGENDA

# **OVERVIEW**

- a. Review Purpose of Committee
- b. Members & Staff
- c. Primary Responsibilities of the Committee
  - i. Overview of Regulatory Review Process
- d. Proposed Regulatory Review Timeline

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Materials contained in this agenda are proposed for discussion  
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DRAFT AGENDA

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COMMONWEALTH OF VIRGINIA  
COMMON INTEREST COMMUNITY BOARD



**COMMON INTEREST COMMUNITY  
OMBUDSMAN REGULATIONS**

Last Updated December 11, 2019

STATUTES

Title 54.1, Chapter 23.3



Department of Professional and Occupational Regulation

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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 the association's responsibility to stay informed and follow all regulations and statutes governing associations. It is important to read and become familiar with all regulations applicable to associations. You can stay informed of regulatory actions that may result in changes to the regulations at Virginia Regulatory Town Hall ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)).

This document is a complete, edited (unofficial) copy of the Common Interest Community Ombudsman Regulations (18VAC48-70). 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 conform to statutory changes that became effective on October 1, 2019, resulting from the recodification of Title 55 of the Code of Virginia to the new Title 55.1 of the Code of Virginia.

## STATEMENT OF PURPOSE

This regulation requires that associations set rules for receiving and considering complaints from members and other citizens. Specifically, the regulation (i) requires associations to establish written complaint procedures; (ii) requires the maintenance of association complaint records; (iii) sets time frames in which associations must complete certain actions; (iv) indicates the consequences for failure of an association to establish and utilize a complaint procedure; and (v) establishes procedures and forms for filing a notice of final adverse decision. The law that authorizes the Board to establish these regulations is found in Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

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 document, 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](mailto:cic@dpor.virginia.gov).



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## Part I

### General

#### 18VAC48-70-10. Definitions.

Section [54.1-2345](#) of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Association

Board

Common interest community

Declaration

Governing board

Lot

Section [55.1-1900](#) of the Code of Virginia provides definition of the following term as used in this chapter:

Condominium instruments

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

"Adverse decision" or "final adverse decision" means the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the association complaint procedure have been exhausted. The date of the final adverse decision shall be the date of the notice issued pursuant to subdivisions 8 and 9 of 18VAC48-70-50.

"Association complaint" means a written complaint filed by a member of the association or citizen pursuant to an association complaint procedure. An association complaint shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

"Association complaint procedure" means the written process adopted by an association to receive and consider association complaints from members and citizens. The complaint procedure shall include contact information for the Office of the Common Interest Community Ombudsman in accordance with [§ 54.1-2354.4](#) of the Code of Virginia. An appeal process, if applicable, shall be set out in an association complaint procedure adopted by the association,

including relevant timeframes for filing the request for appeal. If no appeal process is available, the association complaint procedure shall indicate that no appeal process is available and that the rendered decision is final.

"Association governing documents" means collectively the applicable organizational documents, including the current and effective (i) articles of incorporation, declaration, and bylaws of a property owners' association, (ii) condominium instruments of a condominium, and (iii) declaration and bylaws of a real estate cooperative, all as may be amended from time to time. Association governing documents also include, to the extent in existence, resolutions, rules and regulations, or other guidelines governing association member conduct and association governance.

"Complainant" means an association member or citizen who makes a written complaint pursuant to an association complaint procedure.

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

"Record of complaint" means all documents, correspondence, and other materials related to a decision made pursuant to an association complaint procedure.

***Historical Notes:***

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

**18VAC48-70-20. Submission of documentation.**

Any documentation required to be filed with or provided to the board, director, or Office of the Common Interest Community Ombudsman pursuant to this chapter and Article 2 ([§ 54.1-2354.1](#) et seq.) of Chapter 23.3 of Title 54.1 of the Code of Virginia shall be filed with or provided to the Department of Professional and Occupational Regulation.

***Historical Notes:***

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

## Part II

### Association Complaint Procedure

#### **18VAC48-70-30. Requirement for association to develop an association complaint procedure.**

In accordance with [§ 54.1-2354.4](#) of the Code of Virginia, each association shall have a written process for resolving association complaints from members and citizens. The association complaint procedure or form shall conform with the requirements set forth in [§ 54.1-2354.4](#) of the Code of Virginia and this chapter, as well as the association governing documents, which shall not be in conflict with [§ 54.1-2354.4](#) of the Code of Virginia or this chapter.

#### *Historical Notes:*

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

#### **18VAC48-70-40. Establishment and adoption of written association complaint procedure.**

- A. Associations filing an initial application for registration pursuant to [§§ 55.1-1835, 55.1-1980](#), or [55.1-2182](#) of the Code of Virginia must certify that an association complaint procedure has been established and adopted at the date of registering or within 90 days of registering with the Board.
- B. An association that has been delinquent in registering the association and filing its required annual reports is still required to have an established and adopted written association complaint procedure. At the time such an association files an application for registration, it must certify that an association files an application for registration, it must certify that an association complaint procedure has been established and adopted by the governing board.
- C. The association shall certify with each annual report filing that the association complaint procedure has been adopted and is in effect.

#### *Historical Notes:*

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 33, Issue 15, eff. May 1, 2017; Volume 36, Issue 6, eff. December 11, 2019.*

#### **18VAC48-70-50. Association complaint procedure requirements.**

The association complaint procedure shall be in writing and shall include the following provisions in addition to any specific requirements contained in the association's governing documents that do not conflict with [§ 54.1-2354.4](#) of the Code of Virginia or the requirements of this chapter.

- DRAFT AGENDA  
Materials contained in this agenda are not to be considered for discussion or on the Board's agenda.  
DRAFT AGENDA
1. The association complaint must be in writing.
  2. A sample of the form, if any, on which the association complaint must be filed shall be provided upon request.
  3. The association complaint procedure shall include the process by which complaints shall be delivered to the association.
  4. The association shall provide written acknowledgment of receipt of the association complaint to the complainant within seven days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided, or if consistent with established association procedure, by electronic means provided the sender retains sufficient proof of the electronic delivery.
  5. Any specific documentation that must be provided with the association complaint shall be clearly described in the association complaint procedure. In addition, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the complainant shall provide that reference, as well as the requested action or resolution.
  6. The association shall have a reasonable, efficient, and timely method for identifying and requesting additional information that is necessary for the complainant to provide in order to continue processing the association complaint. The association shall establish a reasonable timeframe for responding to and for the disposition of the association complaint if the request for information is not received within the required timeframe.
  7. Notice of the date, time, and location that the matter will be considered shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within a reasonable time prior to consideration as established by the association complaint procedure.
  8. After the final determination is made, the written notice of final determination shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within seven days.
  9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

**Historical Notes:**

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

**18VAC48-70-60. Distribution of association complaint procedure.**

- A. The association complaint procedure must be readily available upon request to all members of the association and citizens.
- B. The association complaint procedure shall be included as an attachment to the resale certificate or the association disclosure packet.

**Historical Notes:**

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.*

**18VAC48-70-70. Maintenance of association record of complaint.**

- A. A record of each association complaint filed with the association shall be maintained in accordance with [§ 54.1-2354.4 A 1](#) of the Code of Virginia.
- B. Unless otherwise specified by the director or his designee, the association shall provide to the director or his designee, within 14 days of receipt of the request, any document, book, or record concerning the association complaint. The director or his designee may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within 14 days of receiving the request.

**Historical Notes:**

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

**18 VAC48-70-80. Failure of association to establish and utilize association complaint procedure.**

Failure of an association to establish and utilize an association complaint procedure in accordance with this chapter may result in the board seeking any of the remedies available pursuant to Chapter 23.3 ([§ 54.1-2345](#) et seq.) of Title 54.1 of the Code of Virginia.

**Historical Notes:**

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012.*

### Part III

#### Final Adverse Decision

##### **18VAC48-70-90. Filing of notice of final adverse decision.**

A complainant may file a notice of final adverse decision in accordance with [§ 54.1-2354.4 B](#) of the Code of Virginia concerning any final adverse decision that has been issued by an association in accordance with this chapter.

1. The notice shall be filed within 30 days of the date of the final adverse decision.
2. The notice shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman. Such forms shall request the following information:
  - a. Name and contact information of complainant;
  - b. Name, address, and contact information of association;
  - c. Applicable association governing documents; and
  - d. Date of final adverse decision.
3. The notice shall include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation related to the final adverse decision, and a copy of the association complaint procedure.
4. The notice shall be accompanied by a \$25 filing fee or a request for waiver pursuant to 18VAC48-70-100.

##### ***Historical Notes:***

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

##### **18VAC48-70-100. Waiver of filing fee.**

In accordance with [§ 54.1-2354.4 B](#) of the Code of Virginia, the board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the complainant.

**Historical Notes:**

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

**18VAC48-70-110. Review of final adverse decision.**

Upon receipt of the notice of final adverse decision from the complainant, along with the filing fee or a board-approved waiver of filing fee, the Office of the Common Interest Community Ombudsman shall provide written acknowledgment of receipt of the notice to the complainant and shall provide a copy of the written notice to the association that made the final adverse decision. The notice of adverse decision will not be reviewed until the filing fee has been received or a waiver of filing fee has been granted by the board.

In accordance with [§ 54.1-2354.4 C](#) of the Code of Virginia, additional information may be requested from the association that made the final adverse decision. Upon request, the association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time.

**Historical Notes:**

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

**18VAC48-70-120. Decision from the notice of final adverse decision.**

Upon review of the notice of final adverse decision in accordance with [§ 54.1-2354.4 C](#) of the Code of Virginia, if the director determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board, the director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the board.

The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board shall be a matter within the sole discretion of the director. Such decision is final and not subject to further review. The determination of the director shall not be binding upon the complainant or the association that made the final adverse decision.

**Historical Notes:**

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*



**18VAC48-70-125. Referral for further action.**

In addition to the provisions of this chapter, any matter involving a violation of applicable laws or regulations of the board may be referred for further action by the board in accordance with the provisions of Chapter 23.3 ([§ 54.1-2345](#) et seq.) of Title 54.1; Chapters 18 ([§ 55.1-1800](#) et seq.), 19 ([§ 55.1-1900](#) et seq.), and 21 ([§ 55.1-2100](#) et seq.) of Title 55.1 of the Code of Virginia; and the board's regulations.

***Historical Notes:***

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

**Part IV**  
**Office of the Common Interest Community Ombudsman**

**18VAC48-70-130. Purpose, responsibilities, and limitations.**

The Office of the Common Interest Community Ombudsman shall carry out those activities as enumerated in [§ 54.1-2354.3](#) of the Code of Virginia.

***Historical Notes:***

*Derived from Virginia Register Volume 28, Issue 19, eff. July 1, 2012; amended Virginia Register Volume 36, Issue 6, eff. December 11, 2019.*

## 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 2019 session. Any changes made during the 2019 session became effective July 1, 2019, or October 1, 2019, unless otherwise noted. It is your responsibility to stay informed of revisions to the regulations and the statutes governing Virginia common interest communities. 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 54.1, Chapter 23.3**

#### **Article 1. Common Interest Community Board**

#### **§ 54.1-2345. (Effective October 1, 2019) Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Association" includes condominium, cooperative, or property owners' associations.

"Board" means the Common Interest Community Board.

"Common interest community" means real estate subject to a declaration with respect to which a person, by virtue of the person's ownership of a lot subject to that declaration, is a member of the association and is obligated to pay assessments of common expenses, provided that for the purposes of this chapter only, a common interest community does not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.) or any additional land that is a part of such registration. "Common interest community" does not include an arrangement described in § [54.1-2345.1](#).

"Common interest community manager" means a person or business entity, including a partnership, association, corporation, or limited liability company, that, for compensation or valuable consideration, provides management services to a common interest community.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual

assessment in connection with the provision of maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition.

"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors or other governing body of a property owners' association.

"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.

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

2008, cc. [851](#), [871](#); 2019, c. [712](#).

**§ 54.1-2345.1. (Effective October 1, 2019) Certain real estate arrangements and covenants not deemed to constitute a common interest community.**

A. An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community, or an arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance, or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. Assessments against the lots in the common interest community required by such arrangement shall be included in the periodic budget for the common interest community, and the arrangement shall be disclosed in all required public offering statements and disclosure packets.

B. A covenant requiring the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree to create such community.

2019, c. [712](#).

**§ 54.1-2346. (Effective October 1, 2019) License required; certification of employees; renewal; provisional license.**

A. Unless exempted by § [54.1-2347](#), any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this article prior to engaging in such management services.

B. Unless exempted by § [54.1-2347](#), any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this article shall be subject to the provisions of § [54.1-111](#).

C. On or after July 1, 2012, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be \$10,000.

E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

2008, cc. [851](#), [871](#); 2011, cc. [334](#), [605](#); 2019, c. [712](#).

**§ 54.1-2347. (Effective October 1, 2019) Exceptions and exemptions generally.**

A. The provisions of this article shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;
2. An employee of an association from providing management services for that association's common interest community;
3. A resident of a common interest community acting without compensation from providing management services for that common interest community;
4. A resident of a common interest community from providing bookkeeping, billing, or recordkeeping services for that common interest community for compensation, provided the blanket fidelity bond or employee dishonesty insurance policy maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;
5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;
6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;
7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;
8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;
9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or
10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.) from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this article if he would be otherwise exempt from such licensure.

2008, cc. [851](#), [871](#); 2010, c. [511](#); 2011, cc. [334](#), [605](#); 2019, c. [712](#).

**§ 54.1-2348. (Effective October 1, 2019) Common Interest Community Board; membership; meetings; quorum.**

There is hereby created the Common Interest Community Board (the Board) as a policy board, within the meaning of § [2.2-2100](#), in the executive branch of state government. Members of the Board shall be appointed by the Governor and consist of 11 members as follows: three shall be representatives of Virginia common interest community managers, one shall be a Virginia attorney whose practice includes the representation of associations, one shall be a representative of a Virginia certified public accountant whose practice includes providing attest services to associations, one shall be a representative of the Virginia time-share industry, two shall be representatives of developers of Virginia common interest communities, and three shall be Virginia citizens, one of whom serves or who has served on the governing board of an association that is not professionally managed at the time of appointment and two of whom reside in a common interest community. Of the initial appointments, one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of two years and one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of three years; the Virginia attorney shall serve a term of three years; the Virginia certified public accountant shall serve a term of one year; the Virginia citizen who serves or who has served on the governing board of an association shall serve a term of two years, and the two Virginia citizens who reside in a common interest community shall serve terms of one year. All other initial appointments and all subsequent appointments shall be for terms for four years, except that vacancies may be filled for the remainder of the unexpired term. Each appointment of a representative of a Virginia common interest community manager to the Board may be made from nominations submitted by the Virginia Association of Community Managers, who may nominate no more than three persons for each manager vacancy. In no case shall the Governor be bound to make any appointment from such nominees. No person shall be eligible to serve for more than two successive four-year terms.

The Board shall meet at least once each year and at other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. A majority of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this article.

2008, cc. [851](#), [871](#); 2010, c. [511](#); 2012, c. [522](#); 2019, c. [712](#).

**§ 54.1-2349. (Effective October 1, 2019) Powers and duties of the Board.**

A. The Board shall administer and enforce the provisions of this article. In addition to the provisions of §§ [54.1-201](#) and [54.1-202](#), the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this article in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.), including the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. Upon application for license and each renewal thereof, the applicant shall pay a fee established by the Board, which shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § [54.1-2354.2](#);



2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the Community Association Managers International Certification Board, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § [54.1-2354.2](#);

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this article;

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this article;

8. Issue a certificate of registration to each association that has properly filed in accordance with this chapter; and

9. Develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act (§ [55.1-1800](#) et seq.).



B. 1. The Board shall have the sole responsibility for the administration of this article and for the promulgation of regulations to carry out the requirements thereof.

2. The Board shall also be responsible for the enforcement of this article, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this article with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ [54.1-2100](#) et seq.) who is also licensed as a common interest community manager.

3. For purposes of enforcement of this article or the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.), any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § [2.2-4019](#) of the Administrative Process Act (§ [2.2-4000](#) et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

D. Notwithstanding the provisions of subsection A of § [54.1-2354.4](#), the Board may receive a complaint directly from any person aggrieved by an association's failure to deliver a resale certificate or disclosure packet within the time period required under § [55.1-1809](#), [55.1-1810](#), [55.1-1811](#), [55.1-1900](#), [55.1-1992](#), or [55.1-2161](#).

2008, cc. [851](#), [871](#); 2009, c. [557](#); 2010, cc. [511](#), [615](#); 2011, c. [334](#); 2012, cc. [481](#), [797](#); 2015, c. [268](#); 2017, cc. [387](#), [393](#), [405](#), [406](#); 2019, cc. [391](#), [712](#).

**§ 54.1-2350. (Effective October 1, 2019) Annual report; form to accompany resale certificates and disclosure packets.**

In addition to the provisions of § [54.1-2349](#), the Board shall:

1. Administer the provisions of Article 2 (§ [54.1-2354.1](#) et seq.);
2. Develop and disseminate an association annual report form for use in accordance with §§ [55.1-1836](#), [55.1-1980](#), and [55.1-2182](#); and
3. Develop and disseminate a form to accompany resale certificates required pursuant to § [55.1-1990](#) and association disclosure packets required pursuant to § [55.1-1809](#), which form shall summarize the unique characteristics of common interest communities generally that may affect a prospective purchaser's decision to purchase a lot or unit located in a common interest community. The form shall include information on the following, which may or may not be applicable to a particular common interest community: (i) the obligation on the part of an owner to pay regular annual or special assessments to the association; (ii) the penalty for failure or refusal to pay such assessments; (iii) the purposes for which such assessments, if any, may be used, including for the

construction or maintenance of stormwater management facilities; (iv) the importance the declaration of restrictive covenants or condominium instruments, as applicable, and other governing documents play in association living; (v) limitations on an owner's ability to rent his lot or unit; (vi) limitations on an owner's ability to park or store certain types of motor vehicles or boats within the common interest community; (vii) limitations on an owner's ability to maintain an animal as a pet within the lot or unit, or in common areas or common elements; (viii) architectural guidelines applicable to an owner's lot or unit; (ix) limitations on an owner's ability to operate a business within a dwelling unit on a lot or within a unit; (x) the period or length of declarant control; and (xi) that the purchase contract for a lot within an association is a legally binding document once it is signed by the prospective purchaser where the purchaser has not elected to cancel the purchase contract in accordance with law. The form shall also provide that (a) the purchaser remains responsible for his own examination of the materials that constitute the resale certificate or disclosure packet and of any table of contents that may be contained therein; (b) the purchaser shall carefully review the entire resale certificate or disclosure packet; and (c) the contents of the resale certificate or disclosure packet shall control to the extent that there are any inconsistencies between the form and the resale certificate or disclosure packet.

2008, cc. [851](#), [871](#); 2017, c. [257](#); 2018, cc. [70](#), [733](#); 2019, cc. [390](#), [712](#).

**§ 54.1-2351. (Effective October 1, 2019) General powers and duties of Board concerning associations.**

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this article, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this article or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act or practice in violation of this article, the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.), or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring an action in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action involving a violation by a declarant or a developer of a time-share project of this article, the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.), or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this article.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and

uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order, the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this article, the Board, without compliance with the Administrative Process Act (§ [2.2-4000](#) et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this article, the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.), or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than \$1,000 per violation against any governing board that violates any provision of this article, the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.), or any of the Board's regulations or orders. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this article, the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.), or any of the Board's regulations or orders unless the governing board has been given notice and an opportunity to be heard pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

2008, cc. [851](#), [871](#); 2009, c. [557](#); 2010, c. [615](#); 2019, c. [712](#).

**§ 54.1-2352. (Effective October 1, 2019) Cease and desist orders.**

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this article, if the Board determines after notice and hearing that the governing board of an association has:

1. Violated any statute or regulation of the Board governing the association regulated pursuant to this article, including engaging in any act or practice in violation of this article, the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.), or any of the Board's regulations or orders;
2. Failed to register as an association or to file an annual report as required by statute or regulation;
3. Materially misrepresented facts in an application for registration or an annual report; or

4. Willfully refused to furnish the Board information or records required or requested pursuant to statute or regulation.

B. If the Board 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 order to cease and desist or to take such affirmative action as may be deemed appropriate by the Board. Prior to issuing the temporary order, the Board shall give notice of the proposal to issue a temporary order to the person. Every temporary 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.

2008, cc. [851](#), [871](#); 2009, c. [557](#); 2019, cc. [467](#), [712](#).

**§ 54.1-2353. (Effective October 1, 2019) Protection of the interests of associations; appointment of receiver for common interest community manager.**

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and

take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest

community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Recovery Fund as a cost of administering the Fund pursuant to § [54.1-2354.5](#), to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of § [13.1-718](#) shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ [13.1-715.1](#) et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ [13.1-723](#) and [13.1-724](#) shall be required, nor shall §§ [13.1-730](#) through [13.1-741](#) be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within



such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. The provisions of this article are declared to be remedial. The purpose of this article is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this article shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

2008, cc. [851](#), [871](#); 2011, cc. [334](#), [605](#); 2019, c. [712](#).

**§ 54.1-2354. (Effective October 1, 2019) Variation by agreement.**

Except as expressly provided in this article, provisions of this article may not be varied by agreement, and rights conferred by this article may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this article and the provisions of the Property Owners' Association Act (§ [55.1-1800](#) et seq.), the Virginia Condominium Act (§ [55.1-1900](#) et seq.), the Virginia Real Estate Cooperative Act (§ [55.1-2100](#) et seq.), or the Virginia Real Estate Time-Share Act (§ [55.1-2200](#) et seq.), as applicable.

2008, cc. [851](#), [871](#); 2019, c. [712](#).

**Article 2. Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund**

**§ 54.1-2354.1. (Effective October 1, 2019) Definitions.**

As used in this article, unless the context requires a different meaning:

"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions A 1, 2, and 4 of § [2.2-4519](#), and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations to the fund.

"Claimant" means, upon proper application to the Director, a receiver for a common interest community manager appointed pursuant to § [54.1-2353](#) in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver.

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

1993, c. 958; 2008, cc. [851](#), [871](#), § 55-528; 2019, c. [712](#).

**§ 54.1-2354.2. (Effective October 1, 2019) Common Interest Community Management Information Fund.**

A. There is hereby created the Common Interest Community Management Information Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to promote the improvement and more efficient operation of common interest communities through research and education. The Fund shall be established on the books of the Comptroller. The Fund shall consist of money paid into it pursuant to §§ [54.1-2349](#), [55.1-1835](#), [55.1-1980](#), and [55.1-2182](#), and such money shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to § [54.1-2354.5](#).

B. Expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Common Interest Community Ombudsman, shall be paid first from interest earned on deposits constituting the Fund and the balance from the moneys collected annually in the Fund. The Board may use the remainder of the interest earned on the balance of the Fund and of the moneys collected annually and deposited in the Fund for financing or promoting the following:

1. Information and research in the field of common interest community management and operation;
2. Expeditious and inexpensive procedures for resolving complaints about an association from members of the association or other citizens;
3. Seminars and educational programs designed to address topics of concern to community associations; and
4. Other programs deemed necessary and proper to accomplish the purpose of this article.

C. Following the close of any biennium, when the Common Interest Community Management Information Fund shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the Board, the Board shall revise the fees levied by it for placement into the Fund so that the fees are sufficient but not excessive to cover expenses. A fee established pursuant to § [55.1-1835](#), [55.1-1980](#), or [55.1-2182](#) shall not exceed \$25 unless such fee is based on the number of units or lots in the association.

1993, c. 958, § 55-529; 2008, cc. [851](#), [871](#); 2019, cc. [391](#), [712](#).

**§ 54.1-2354.3. (Effective October 1, 2019) Common Interest Community Ombudsman; appointment; powers and duties.**

A. The Director in accordance with § [54.1-303](#) shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.



B. The Office shall:

1. Assist members in understanding rights and the processes available to them according to the laws and regulations governing common interest communities and respond to general inquiries;
2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;
3. Receive notices of final adverse decisions;
4. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;
5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;
6. Maintain data on inquiries received, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;
7. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;
8. Monitor changes in federal and state laws relating to common interest communities;
9. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and
10. Carry out activities as the Board determines to be appropriate.

1993, c. 958, § 55-530; 1997, c. [222](#); 1998, c. [463](#); 2001, c. [816](#); 2008, cc. [851](#), [871](#); 2010, cc. [59](#), [208](#); 2012, cc. [481](#), [797](#); 2019, c. [712](#).

**§ 54.1-2354.4. (Effective October 1, 2019) Association complaint procedures; final adverse decisions.**

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall

include the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.

2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mailing address of the Office. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

B. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § [54.1-2354.2](#). The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

C. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.

1993, c. 958, § 55-530; 1997, c. [222](#); 1998, c. [463](#); 2001, c. [816](#); 2008, cc. [851](#), [871](#); 2010, cc. [59](#), [208](#); 2012, cc. [481](#), [797](#); 2019, c. [712](#).

**§ 54.1-2354.5. (Effective October 1, 2019) Common Interest Community Management Recovery Fund.**

A. There is hereby created the Common Interest Community Management Recovery Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date shall be assessed \$25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application

fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

All assessments, except initial assessments, for the Fund shall be deposited within three business days after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency shall be secured under the Virginia Security for Public Deposits Act (§ [2.2-4400](#) et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § [64.2-1502](#).

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest Community Management Information Fund, established pursuant to § [54.1-2354.2](#), or accrue to the Fund.

C. On and after July 1, 2011, the minimum balance of the Fund shall be \$150,000. Whenever the Director determines that the principal balance of the Fund is or will be less than such minimum principal balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount from the Common Interest Community Management Information Fund to the Fund to bring the principal balance of the Fund to the amount required by this subsection. Such transfer shall be considered by the Board within 30 days of the notification of the Director.

D. If any such transfer of funds is insufficient to bring the principal balance of the Fund to the minimum amount required by this section, or if a transfer to the Fund has not occurred, the Board shall assess each association and each common interest community manager, within 30 days of notification by the Director, a sum sufficient to bring the principal balance of the Fund to the required minimum amount. The amount of such assessment shall be allocated among the associations and common interest community managers in proportion to each payor's most recently paid annual assessment, or if an association or common interest community manager has not paid an annual assessment previously, in proportion to the average annual assessment most recently paid by associations or common interest community managers, respectively. The Board may order an assessment at any time in addition to any required assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

Notice to common interest community managers and the governing boards of associations of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within 45 days after the mailing of such notice.

E. If any common interest community manager fails to remit the required payment within 45 days of the mailing, the Director shall notify the common interest community manager by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the

delinquent assessment.

F. If any association fails to remit the required payment within 45 days of the mailing, the Director shall notify the association by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, it shall be deemed a knowing and willful violation of this section by the governing board of the association.

G. At the close of each fiscal year, whenever the balance of the Fund exceeds \$5 million, the amount in excess of \$5 million shall be transferred to the Virginia Housing Trust Fund established pursuant to Chapter 9 (§ [36-141](#) et seq.) of Title 36. Except for payments of costs as set forth in this article and transfers pursuant to this subsection, there shall be no transfers out of the Fund, including transfers to the general fund, regardless of the balance of the Fund.

H. A claimant may seek recovery from the Fund subject to the following conditions:

1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, the Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § [54.1-2353](#) by the court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, as certified by the court appointing the receiver.

3. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment of the amount of such shortfall to the claimant from the Fund, provided that in no event shall such payment exceed the balance in the Fund. When the Fund balance is not sufficient to pay the aggregate amount of such shortfall, the Board shall direct that payment be applied first in satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore the funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager. If the Board has reason to believe that there may be additional claims against the Fund, the Board may withhold any payment from the Fund for a period of not more than one year. After such one-year period, if the aggregate of claims received exceeds the Fund balance, the Fund balance shall be prorated by the Board among the claimants and paid in the above payment order from the Fund in proportion to the amounts of claims remaining unpaid.

4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from the Fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of the associations receiving distributions from the Fund against the common interest community manager to the extent that such rights were satisfied from the Fund.

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a case decision as defined in § [2.2-4001](#), and judicial review of these findings shall

be in accordance with § [2.2-4025](#) of the Administrative Process Act (§ [2.2-4000](#) et seq.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court that is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the Fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions resulted in payment from the Fund. The common interest community manager whose license was so revoked shall not be eligible to apply for a license as a common interest community manager until he has repaid in full the amount paid from the Fund on his account, plus interest at the judgment rate of interest from the date of payment from the Fund.

8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action against any common interest community manager for any violation of statute or regulation, nor shall the repayment in full by a common interest community manager of the amount paid from the Fund on such common interest community manager's account nullify or modify the effect of any disciplinary proceeding against such common interest community manager for any such violation.

2008, cc. [851](#), [871](#), § 55-530.1; 2009, c. [557](#); 2013, c. [754](#); 2019, c. [712](#).

Code of Virginia

Title 54.1. Professions and Occupations

Subtitle II. Professions and Occupations Regulated by the Department of Professional and Occupational Regulation and Boards within the Department

Chapter 23.3. Common Interest Communities

Article 2. Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund

## **§ 54.1-2354.3. Common Interest Community Ombudsman; appointment; powers and duties**

A. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.

B. The Office shall:

1. Assist members in understanding rights and the processes available to them according to the laws and regulations governing common interest communities and respond to general inquiries;
2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;
3. Receive notices of final adverse decisions;
4. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;
5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;
6. Maintain data on inquiries received, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;
7. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;
8. Monitor changes in federal and state laws relating to common interest communities;
9. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and

10. Carry out activities as the Board determines to be appropriate.

1993, c. 958, § 55-530; 1997, c. 222; 1998, c. 463; 2001, c. 816; 2008, cc. 851, 871; 2010, cc. 59, 208; 2012, cc. 481, 797; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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Code of Virginia

Title 54.1. Professions and Occupations

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Chapter 23.3. Common Interest Communities

Article 2. Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund

## **§ 54.1-2354.4. Association complaint procedures; final adverse decisions**

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include the following:

1. A record of each complaint shall be maintained for no less than one year after the association acts upon the complaint.
2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mailing address of the Office. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

B. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

C. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision.



1993, c. 958, § 55-530; 1997, c. 222; 1998, c. 463; 2001, c. 816; 2008, cc. 851, 871; 2010, cc. 59, 208; 2012, cc. 481, 797; 2019, c. 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

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# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 21

*An Act to amend and reenact §§ 54.1-2354.3 and 54.1-2354.4 of the Code of Virginia, relating to the Common Interest Community Board; enforcement power over continuing violations of common interest community associations.*

[S 1042]

Approved March 16, 2023

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-2354.3 and 54.1-2354.4 of the Code of Virginia are amended and reenacted as follows:**

**§ 54.1-2354.3. Common Interest Community Ombudsman; appointment; powers and duties.**

A. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.

B. The Office shall:

1. Assist members in understanding rights and the processes available to them according to the laws and regulations governing common interest communities and respond to general inquiries;

2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;

3. Receive notices of final adverse decisions *and may either (i) refer such decision to the Board for further review of whether such decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board or (ii) make a determination of whether a final adverse decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board and promptly notify the complainant of such determination. If the Office determines that such conflict exists, the Office shall promptly notify the governing board, and if applicable the common interest community manager, of the association that issued the final adverse decision that such decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board. If within 365 days of issuing such determination the Ombudsman receives a subsequent notice of final adverse decision for the same violation, the Office shall refer the matter to the Board;*

4. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;

5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;

6. Maintain data on inquiries received, *referrals made to the Board*, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter;

7. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;

8. Monitor changes in federal and state laws relating to common interest communities;

9. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and

10. Carry out activities as the Board determines to be appropriate.

**§ 54.1-2354.4. Association complaint procedures; final adverse decisions.**

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include the following:

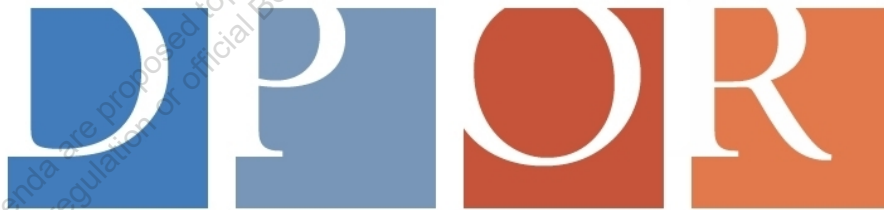
1. A record of each complaint shall be maintained for no less than one year after the association acts

upon the complaint.

2. Such association shall provide complaint forms or written procedures to be given to persons who wish to register written complaints. The forms or procedures shall include the address and telephone number of the association or its common interest community manager to which complaints shall be directed and the mailing address, telephone number, and electronic mailing address of the Office. The forms and written procedures shall include a clear and understandable description of the complainant's right to give notice of adverse decisions pursuant to this section.

B. A complainant may give notice to the ~~Board~~ *Ombudsman* of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The ~~Director~~ *Ombudsman* shall provide a copy of the written notice to the *governing board, and if applicable the common interest community manager, of the association that made the final adverse decision.*

C. The Director or his designee may request additional information concerning any notice of final adverse decision from the association that made the final adverse decision. The association shall provide such information to the Director within a reasonable time upon request. If the Director upon review determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board, the Director ~~may, in his sole discretion,~~ *shall provide the complainant and the governing board, and if applicable the common interest community manager, of the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the Board. The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose decision is final and not subject to further review. The determination of the Director shall not be binding upon the complainant or the association that made the final adverse decision. If within 365 days of issuing a determination that an adverse decision is in conflict with laws or Board regulations governing common interest communities or interpretations thereof by the Board the Director receives a subsequent notice of final adverse decision for the same violation, the Director shall refer the repeat violation to the Board, which shall take action in accordance with § 54.1-2351 or 54.1-2352, as deemed appropriate by the Board.*



Department of Professional and Occupational Regulation

## Common Interest Community Board

### Guidance Document: Requests for Waiver of Filing Fee for Notice of Final Adverse Decision

Adopted September 17, 2013  
Revised September 3, 2020

*Effective December 10, 2020*

#### I. Issue

In accordance with 18 VAC 48-70-100 of the Common Interest Community Ombudsman Regulations, the Board may waive or refund the \$25 filing fee that must accompany the Notice of Final Adverse Decision. Such waiver or refund is permitted if the Board finds that the payment of the filing fee will cause undue harm or financial hardship. The *Waiver of Filing Fee Request Form* currently requests an explanation as to why paying the filing fee would cause undue financial hardship.

In order to provide an objective method for determining the appropriateness of waiving or refunding the filing fee, the Board requested at its June 27, 2013, Board meeting that staff conduct research and prepare a recommendation wherein the federal poverty guidelines be used as the basis for determining financial hardship.

#### II. Applicable Regulations and Statutes

**18 VAC 48-70-100** of the Common Interest Community Ombudsman Regulations states:

“In accordance with § 54.1-2354.4 B of the Code of Virginia, the board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the complainant.”

**§ 54.1-2354.4(B)** of the Code of Virginia states:

A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

**III. Policy**

The U.S. Department of Health & Human Services (HHS) Poverty Guidelines will be used by the Board to establish the threshold for whether a filing fee will be waived or refunded as a result of financial hardship. The Poverty Guidelines for the most recent or current, whichever is applicable, calendar year will be used. The HHS Poverty Guidelines can be found at <http://www.aspe.hhs.gov/>.

In order to determine whether an individual requesting the waiver or refund of the filing fee is at or below the HHS Poverty Guidelines, he shall be required to submit supporting documentation that provides proof of income. Such documentation may include:

- Recent tax return form
- W-2 form
- Letter from an employer, welfare officer, case worker, or Social Security Administration office indicating annual income. Such letter must be on agency/company letterhead and must include the verifier's signature and contact phone number for verification purposes.

The Board authorizes staff to approve a waiver or refund of the filing fee if proof of income submitted is at or below the then-current HHS Poverty Guidelines. Board staff may request additional information as needed in order to ensure compliance with this policy. Should Board staff be unable to satisfactorily affirm that the proof of income submitted complies with this policy, the request for waiver or refund will not be approved. The individual requesting a waiver or refund, or Board staff, may request that the Board consider the request for waiver or refund in the event that the supporting documentation is not sufficient or a determination cannot be reasonably made based on the information submitted.

Guidance Document  
Requests for Waiver of Filing Fee for Notice of Final Adverse Decision  
Adopted September 17, 2013 (Revised September 3, 2020)

3700 et seq.), the referenced supporting documentation is exempt from public disclosure.

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1 **Project 6864 - None**

2 **Common Interest Community Board**

3 **General Review**

4 Chapter 70

5 Common Interest Community Ombudsman Regulations

6 Part I

7 General

8 **18VAC48-70-10. Definitions.**

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

11 Association

12 Board

13 Common interest community

14 Declaration

15 Governing board

16 Lot

17 B. Section 54.1-2354.1 of the Code of Virginia provides definition of the following term as used  
18 in this chapter:

19 Director

20 C. Section 55.1-1900 of the Code of Virginia provides definition of the following term as used  
21 in this chapter:

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22 Condominium instruments

23 D. Section 55.1-2307 of the Code of Virginia provides definition of the following terms as  
24 used in this chapter:

25 Governing documents

26 Resale certificate

27 E. The following words, terms, and phrases, when used in this chapter, shall will have the  
28 following meanings unless the context clearly indicates otherwise, a different meaning is provided  
29 or is plainly required by the context:

30 "Adverse decision" or "final adverse decision" means the final determination decision issued  
31 by an association pursuant to an association complaint procedure that is opposite of, or does not  
32 provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such  
33 decision means all avenues for internal appeal under the association complaint procedure have  
34 been exhausted. The date of the final adverse decision shall be the date of the notice issued  
35 pursuant to subdivisions 8 and 9 of 18VAC48-70-50.

36 "Association complaint" means a written complaint filed by a member of the association or a  
37 citizen pursuant to an association complaint procedure. An association complaint shall must  
38 concern a matter regarding the an action, inaction, or decision by the association, governing  
39 board, or managing agent, or association which that is inconsistent with applicable common  
40 interest community laws and or regulations.

41 "Association complaint procedure" means the written process adopted by an association to  
42 receive and consider association complaints from members and citizens. The complaint  
43 procedure shall include contact information for the Office of the Common Interest Community  
44 Ombudsman in accordance with § 54.1-2354.4 of the Code of Virginia. An appeal process, if  
45 applicable, shall be set out in an association complaint procedure adopted by the association,

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Commented [VP1]: Thinking this should not be in the definition. Probably can move this down to -90.

Commented [VP2]: What about "contrary to"?

Commented [VP3]: Clarify we are only dealing with CIC laws/regulations.



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46 including relevant timeframes for filing the request for appeal. If no appeal process is available,  
47 the association complaint procedure shall indicate that no appeal process is available and that  
48 the rendered decision is final.

Commented [VP4]: This should probably be in -50.

49 "Association disclosure packet" means the documents and information described in (i) Article  
50 2 of Chapter 18 (§ 55.1-1808 et seq.) of Title 55.1 of the Code of Virginia; (ii) Article 5 of Chapter  
51 19 (§ 55.1-1900 et seq.) of Title 55.1 of the Code of Virginia; or (iii) § 55.1-2161 of the Code of  
52 Virginia that are required to be provided by the association to an owner selling a lot.

53 ~~"Association governing documents" means collectively the applicable organizational~~  
54 ~~documents, including the current and effective (i) articles of incorporation, declaration, and bylaws~~  
55 ~~of a property owners' association, (ii) condominium instruments of a condominium, and (iii)~~  
56 ~~declaration and bylaws of a real estate cooperative, all as may be amended from time to time.~~  
57 ~~Association governing documents also include, to the extent in existence, resolutions, rules and~~  
58 ~~regulations, or other guidelines governing association member conduct and association~~  
59 ~~governance.~~

60 "Complainant" means an association member or citizen who makes a written complaint  
61 pursuant to an association complaint procedure.

62 ~~"Director" means the Director of the Department of Professional and Occupational Regulation.~~

63 "Record of complaint" means all documents, correspondence, and other materials related to  
64 a decision made pursuant to an association complaint procedure.

65 **18VAC48-70-20. Submission of documentation.**

66 Any documentation required to be filed with or provided to the board, director, or Office of the  
67 Common Interest Community Ombudsman pursuant to this chapter and Article 2 (§ 54.1-2354.1  
68 et seq.) of Chapter 23.3 of Title 54.1 of the Code of Virginia ~~shall~~ must be filed with or provided to  
69 the Department of Professional and Occupational Regulation.

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Part II

71

Association Complaint Procedure

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**18VAC48-70-30. Requirement for association to develop an association complaint procedure.**

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In accordance with § 54.1-2354.4 of the Code of Virginia, each association ~~shall~~must have a written process for resolving association complaints from members and citizens. The association complaint procedure or form ~~shall~~must conform with the requirements set forth in § 54.1-2354.4 of the Code of Virginia and this chapter, as well as the association governing documents, which ~~shall~~must not be in conflict with § 54.1-2354.4 of the Code of Virginia or this chapter.

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**18VAC48-70-40. Establishment and adoption of written association complaint procedure.**

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A. Associations filing an initial application for registration pursuant to § 55.1-1835, 55.1-1980, or 55.1-2182 of the Code of Virginia must certify that an association complaint procedure has been established and adopted at the date of registering or within 90 days of registering with the board.

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B. An association that has been delinquent in registering the association and filing its required annual reports is still required to have an established and adopted written association complaint procedure. At the time such an association files an application for registration, it must certify that an association complaint procedure has been established and adopted by the governing board.

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C. The association ~~shall~~must certify with each annual report filing that the association complaint procedure has been adopted, ~~and~~ is in effect, and is in compliance with applicable laws and regulations.

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91 **18VAC48-70-50. Association complaint procedure requirements.**

92 The association complaint procedure ~~shall~~must be in writing and ~~shall~~ include the following  
93 provisions in addition to any specific requirements contained in the ~~association's~~ governing  
94 documents that do not conflict with § 54.1-2354.4 of the Code of Virginia or the requirements of  
95 this chapter.

96 1. The association complaint must be in writing.

97 2. A sample of the form, if any, on which the association complaint must be filed ~~shall~~must  
98 be provided upon request.

99 3. The association complaint procedure ~~shall~~must include the process by which  
100 complaints ~~shall~~will be delivered to the association.

101 4. The association ~~shall~~must provide written acknowledgment of receipt of the association  
102 complaint to the complainant within seven days of receipt. ~~Such~~The acknowledgment  
103 ~~shall~~must be hand delivered or mailed ~~by registered or certified mail with proof of delivery,~~  
104 ~~return receipt requested,~~ to the complainant at the address provided, or if consistent with  
105 established association procedure, by electronic means provided the sender retains  
106 sufficient proof of the electronic delivery.

107 5. Any specific documentation that must be provided with the association complaint ~~shall~~  
108 must be clearly described in the association complaint procedure. In addition, to the extent  
109 the complainant has knowledge of the law or regulation applicable to the complaint, the  
110 complainant ~~shall~~will provide that reference, ~~as well as the requested action or resolution.~~

111 6. The association ~~shall~~must have a reasonable, efficient, and timely method for  
112 identifying and requesting additional information from the complainant that is necessary  
113 ~~for the complainant to provide in order~~ to continue processing the association complaint.

114 The association ~~shall~~must establish a reasonable timeframe for responding to and for the

115 disposition of the association complaint if the request for information is not received within  
116 the required timeframe.

117 7. Notice of the date, time, and location that the matter will be considered ~~shall~~must be  
118 hand delivered or mailed ~~by registered or certified mail, return receipt requested, with proof~~  
119 of delivery to the complainant at the address provided or, if consistent with established  
120 association procedure, delivered by electronic means, provided the sender retains  
121 sufficient proof of the electronic delivery, within ~~a reasonable time~~14 days prior to  
122 consideration as established by the association complaint procedure.

123 8. After the final determination is made, the written notice of final determination ~~shall~~must  
124 be hand delivered or mailed ~~by registered or certified mail, return receipt requested, with~~  
125 proof of delivery to the complainant at the address provided or, if consistent with  
126 established association procedure, delivered by electronic means, provided the sender  
127 retains sufficient proof of the electronic delivery, within seven days.

128 9. The notice of final determination ~~shall~~must be dated as of the date of issuance and  
129 include specific citations to ~~applicable association governing documents, laws,~~ or  
130 regulations that led to the final determination, as well as the registration number of the  
131 association. If applicable, the name and license number of the common interest  
132 community manager ~~shall~~must also be provided.

133 10. The notice of final determination ~~shall~~must include the complainant's right to file a  
134 Notice of Final Adverse Decision with the ~~Common Interest Community Board via the~~  
135 Common Interest Community Ombudsman and the applicable contact information.

136 **18VAC48-70-60. Distribution of association complaint procedure.**

137 A. The association complaint procedure must be readily available upon request to all members  
138 of the association and citizens.

139 B. ~~The association complaint procedure shall be included as an attachment to the resale~~  
140 ~~certificate or the association disclosure packet~~ An association must include the association  
141 complaint procedure as part of an association disclosure packet the resale certificate.

142 **18VAC48-70-70. Maintenance of association record of complaint.**

143 A. A record of each association complaint filed with the association ~~shall~~ must be maintained  
144 in accordance with § 54.1-2354.4 A 1 of the Code of Virginia.

145 B. Unless otherwise specified by the director or his designee, the association ~~shall~~ must  
146 provide to the director or his designee, within 14 days of receipt of the request, any document,  
147 book, or record concerning the association complaint. The director or his designee may extend  
148 such timeframe upon a showing of extenuating circumstances prohibiting delivery within 14 days  
149 of receiving the request.

150 **18VAC48-70-80. Failure of association to establish and utilize association complaint**  
151 **procedure.**

152 Failure of an association to establish and utilize an association complaint procedure in  
153 accordance with this chapter may result in the board seeking any of the remedies available  
154 pursuant to Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

155 Part III

156 Final Adverse Decision

157 **18VAC48-70-90. Filing of notice of final adverse decision.**

158 A complainant may file a notice of final adverse decision in accordance with § 54.1-2354.4 B  
159 of the Code of Virginia concerning any final adverse decision that has been issued by an  
160 association in accordance with this chapter.

161 1. The notice ~~shall~~ must be filed within 30 days of the date of the final adverse decision.

162 2. The notice ~~shall~~ must be in writing on forms provided by the Office of the Common  
163 Interest Community Ombudsman. ~~Such~~ The forms ~~shall~~ will request the following  
164 information:

165 a. Name and contact information of complainant;

166 b. Name, address, and contact information of association; and

167 ~~c. Applicable association governing documents; and~~

168 ~~etc.~~ Date of final adverse decision.

169 3. The notice ~~shall~~ must include a copy of the association complaint, the final adverse  
170 decision, reference to the laws and regulations the final adverse decision may have  
171 violated, any supporting documentation ~~related to~~ accompanying the final adverse  
172 decision, and a copy of the association complaint procedure.

173 4. The notice ~~shall~~ must be accompanied by a \$25 filing fee or a request for waiver  
174 pursuant to 18VAC48-70-100.

175 **18VAC48-70-100. Waiver of filing fee.**

176 A. In accordance with § 54.1-2354.4 B of the Code of Virginia, the board may, for good cause  
177 shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause  
178 undue financial hardship for the complainant.

179 B. The U.S. Department of Health & Human Services (HHS) Poverty Guidelines will be used  
180 by the Board to establish the threshold for whether a filing fee will be waived or refunded  
181 as a result of financial hardship. The Poverty Guidelines for the most recent or current,  
182 whichever is applicable, calendar year will be used.

**Commented [LT(5):** Incorporates Board's guidance document

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183 C. In order to determine whether an individual requesting the waiver or refund of the filing fee  
184 is at or below the HHS Poverty Guidelines, he will be required to submit supporting  
185 documentation that provides proof of income.

186 D. The Board authorizes staff to approve a waiver or refund of the filing fee if proof of income  
187 submitted is at or below the then-current HHS Poverty Guidelines.

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188 **18VAC48-70-105. Receipt of notice of final adverse decision.**

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189 In accordance with subdivision B 3 of § 54.1-2354.3 of the Code of Virginia, upon receipt of a  
190 notice of final adverse decision, the Office of the Common Interest Community Ombudsman  
191 may either (i) refer such adverse decision to the board for further review of whether such  
192 adverse decision is in conflict with the laws or board regulations governing common interest  
193 communities or interpretations thereof by the board; or (ii) review such adverse decision in  
194 accordance with the requirements of this part.

**Commented [LT(6):** Adopted by Board at 4/25/23 meeting

197 **18VAC48-70-110. Review of final adverse decision.**

198 Upon receipt of the notice of final adverse decision from the complainant, along with the filing  
199 fee or a board-approved waiver of filing fee, the Office of the Common Interest Community  
200 Ombudsman ~~shall~~will provide written acknowledgment of receipt of the notice to the complainant  
201 and ~~shall~~will provide a copy of the written notice to the governing board, and, if applicable, the  
202 common interest community manager of the association that made the final adverse decision.  
203 The notice of adverse decision is not complete and will not be reviewed until the filing fee has  
204 been received or a waiver of filing fee has been granted by the board.

**Commented [LT(7):** Adopted by Board at 4/25/23 Board meeting

205 In accordance with § 54.1-2354.4 C of the Code of Virginia, additional information may be  
206 requested from the association that made the final adverse decision. Upon request, the

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207 association ~~shall~~must provide such information to the Office of the Common Interest Community  
208 Ombudsman within a reasonable time.

209 **18VAC48-70-120. Decision from the notice of final adverse decision.**

210 A. Upon review of the notice of final adverse decision in accordance with § 54.1-2354.4 C of  
211 the Code of Virginia, if the director determines that the final adverse decision may be in  
212 conflict with laws or regulations governing common interest communities or interpretations  
213 thereof by the board, the director ~~may, in his sole discretion,~~must provide the complainant  
214 and the governing board, and, if applicable, the common interest community manager of  
215 the association with information concerning such laws or regulations governing common  
216 interest communities or interpretations thereof by the board.

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**Commented [LT(8):** Amended by Board at 4/25/23 meeting

**Commented [LT(9):** Amended by Board at 4/25/23 meeting

217 B. The determination of whether the final adverse decision may be in conflict with laws or  
218 regulations governing common interest communities or interpretations thereof by the board ~~shall~~  
219 ~~be a matter within the sole discretion of the director. Such decision is final and not subject to~~  
220 ~~further review. The determination of the director shall not be binding upon the complainant or the~~  
221 ~~association that made the final adverse decision.~~

**Commented [LT(10):** Amended by Board at 4/25/23 meeting

222 C. In accordance with § 54.1-2354.4 C of the Code of Virginia, if within 365 days of issuing a  
223 determination that an adverse decision is in conflict with laws or board regulations governing  
224 common interest common interest communities or interpretations thereof by the board, the  
225 director receives a subsequent notice of final adverse decision for the same violation by the  
226 association, the director must refer the repeat violation to the board, which must take action in  
227 accordance with §§ 54.1-2351 or 54.1-2352, as deemed appropriate by the board.

**Commented [LT(11):** Adopted by Board at 4/25/23 meeting

228



229 **18VAC48-70-125. Referral for further action.**

230 In addition to the provisions of this chapter, any matter involving a violation of applicable laws  
231 or regulations of the board may be referred for further action by the board in accordance with the  
232 provisions of Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1; Chapters 18 (§ 55.1-1800 et seq.),  
233 19 (55.1-1900 et seq.), and 21 (§ 55.1-2100 et seq.) of Title 55.1 of the Code of Virginia; and the  
234 board's regulations.

235 Part IV

236 Office of the Common Interest Community Ombudsman

237 **18VAC48-70-130. Purpose, responsibilities, and limitations.**

238 The Office of the Common Interest Community Ombudsman ~~shall~~will carry out those activities  
239 as enumerated in § 54.1-2354.3 of the Code of Virginia.

240 FORMS (18VAC48-70)

241 [Common Interest Community Complaint Form, F491-CICCOMP-v3 \(rev. 12/2019\)](#)

242 [Notice of Final Adverse Decision, F491-CICNOTE-v1 \(eff. 12/2019\)](#)

243 [Waiver of Filing Fee Request Form, F491-CICFW-v2 \(eff. 12/2019\)](#)

# OTHER BUSINESS

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**COMPLETE CONFLICT OF INTEREST**  
**FORMS AND**  
**TRAVEL VOUCHERS**

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# ADJOURN

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