

Common Interest Community Board

Summary of Board Interpretations, Policies, and Guidance Documents

General

Board Interpretations (General)	
The Board discussed providing interpretations of statutes related to its programs. The Board considered whether it would entertain requests for interpretations that go beyond those interpretations necessary to administer its programs, enforce the regulations, and make case decisions. The Board agreed by consensus to limit its review to those interpretations that fall within the scope of the Board's authority.	10/13/09

Associations/Association Registration

Gross Assessment Income	
The Board considered the meaning of "gross assessment income" as it is used in § 55-516.1(C) and § 55-79.93:1(C) of the <i>Code of Virginia</i> and agreed by consensus that this amount would include any mandatory fees that are imposed by the association on its members. This would not include voluntary amenity fees ("user fees"), but would include any other mandatory fees including, but not limited to, neighborhood assessments, mandatory maintenance fees, special assessments, fines, etc.	9/15/08
Reserve Balance	
The Board discussed "reserve balance" as it is used in § 55-514.2(B) of the Property Owners Association Act and § 55-79.81(B) of the Condominium Act. The Board agreed by consensus this would be the amount in reserves at the end of the fiscal year, plus what they plan to add to the reserve balance, plus one-fourth of the planned assessment income for the coming year. The bond must cover the highest amount that the reserve balance could be during the year, plus one-fourth in accordance with the Code requirements.	9/15/08
Final Adverse Decisions and Associations with No Governing Boards	
The Board discussed the applicability of the final adverse decision process to members of associations with no governing boards. This is a concern because there would be no governing board to consider complaints, thus there could be no final adverse decision. The Board determined that these complaints would have to go through the Department's regular complaint process and a remedy to these situations could only be handled by a change in the statute.	10/26/09
Gross Assessment Income Calculations	
The Board discussed a memorandum regarding whether late fees should be included in gross assessment income for calculating annual assessment fees. The Board unanimously approved a motion that late	6/3/10

<p>fees, interest charge, and similar fees imposed on delinquent assessment accounts should be included in the gross assessment income.</p>	
<p>Applicability of the Common Interest Community Ombudsman Regulations on Solely Commercial Condominiums</p>	
<p>The Board adopted a guidance document on September 20, 2012, regarding whether the Common Interest Community Ombudsman Regulations apply to solely commercial condominiums.</p> <p>The Board determined that the definition of association, as set forth in § 55-528 of the <i>Code of Virginia</i>, is not intended to include commercial condominiums. The Board does not have jurisdiction over commercial condominiums, and there will be no action taken by the Board if a commercial condominium does not implement and adopt a complaint process under the CIC Ombudsman Regulations. The Guidance Document is available on Town Hall.</p>	<p>9/20/12</p>
<p>Requests for Waiver of Filing Fee for Notice of Final Adverse Decision</p>	
<p>The Board adopted a guidance document on September 17, 2013 regarding the waiver of filing fees for filing a Notice of Final Adverse Decision (NFAD).</p> <p>The U.S. Department of Health and 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 rent or current, whichever is applicable, calendar year will be used. In order to determine whether an individual requesting the waiver or refund of the filing fee is at or below the HHS Poverty Guidelines, applicant shall be required to submit supporting documentation that provides proof of income. Board staff is authorized 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 proof of income, then the waiver or refund will not be approved. The applicant, or Board staff, may request that the Board consider the request for waiver or refund in the event supporting documentation is not sufficient or a determination cannot be reasonably made based on the information submitted. In accordance with the Virginia Freedom of Information Act, supporting documentation provided by applicants is exempt from public disclosure.</p>	<p>9/17/13</p>
<p>Maximum Allowable Fees</p>	
<p>The Board adopted a guidance document on June 27, 2013, regarding specific maximum allowable fees set by the Condominium Act and Property Owners Association Act that may be charged by the preparer of disclosure packets and resale certificates. This guidance document was subsequently amended March 27, 2014, and July 1, 2014. The Guidance Document is available on Town Hall. The Maximum Allowable Fees are</p>	<p>6/26/14</p>

posted on the DPOR website.	
Best Practices for Property Owners' Associations' Declarations	
The Board adopted a guidance document on December 10, 2015, to offer guidance on the best practices for the content of property owners' association declarations. Best Practices for the Content of Property Owners' Associations' Declarations is posted on the DPOR website.	12/10/15

CIC Manager Licensure

Reserve Balance	
The Board discussed "reserve balance" as referenced in Section 54.1-2346(D) of the <i>Code of Virginia</i> . It was stated that the reserve balance should be calculated based on the last fiscal year, the date of the application, and the highest aggregate amount of each association managed by the Common Interest Community Manager during the last fiscal year. The amount of the bond or insurance for the manager is to maintain maximum coverage.	10/15/08
Blanket Fidelity Bond or Employee Dishonesty Insurance Policy	
The Board adopted a guidance document on March 2, 2010, regarding the requirement in § 54.1-2346(D) of the <i>Code of Virginia</i> that a Common Interest Community Manager obtain and maintain a blanket fidelity bond or employee dishonest insurance policy.	3/2/10
To fulfill the requirement, applicants for a Common Interest Community Manager license shall submit evidence that proper and sufficient coverage has been obtained to comply with § 54.1-2346(D). Such documentation shall include (i) the name of the surety company or insurance carrier; (ii) the dollar amount of the bond or insurance policy; (iii) a description of coverage as it applies to the requirements in § 54.1-2346(D); and (iv) the expiration date of the bond or insurance policy. Staff may require a certified statement from the surety company or insurance carrier that the applicant has sufficient coverage. The Guidance Document is available on Town Hall.	
Definition of "Employee" as Used in Statutory Exemption from Licensure	
The Board adopted a guidance document on December 2, 2010, regarding the definition of "Employee" as used in § 54.1-2347(A) of the <i>Code of Virginia</i> .	12/2/10
The exceptions and exemptions from licensure as a Common Interest Community Manager include "an employee of an association from providing management services for that association's common interest community." As used in this context, the factors as contained in Internal Revenue Service (IRS) Revenue Ruling 87-41 shall be used to determine whether an individual is an employee. The guidance document incorporates the IRS ruling document by reference. The Guidance	

Document is available on Town Hall.	
CIC Manager License Requirements for Association Debt Collections	
The Board considered whether a common interest community manager license is required for a company that is only responsible for the collection of past-due assessments on behalf of an association. The Board responded by referencing the definition of “management services” in § 54.1-2345 of the <i>Code of Virginia</i> , which includes “(iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association.” Thus, based on the current statutory language, a license would be required for an entity performing any of the functions in the definition of management services, unless an exemption in § 54.1-2347 of the Code of Virginia applied.	6/9/11
CIC Managers with Disciplinary Action as a Provisional Licensee	
An applicant for a common interest community manager license who held a provisional common interest community manager license issued by the Board and had a consent order entered by the Board will not have the previous consent order adversely affect the common interest community manager license application as long as all terms of the consent order were met as stipulated in the applicable consent order. All other requirements of the Common Interest Community Manager Regulations regarding convictions, adverse financial history, or administrative discipline are not affected by this policy statement.	6/7/12
Requirement to Obtain and Maintain Separate Fidelity Bond or Insurance Policy	
The Board adopted a guidance document on September 20, 2012, regarding the requirement for common interest community managers to obtain and maintain a fidelity bond or employee dishonest insurance policy. Section 54.1-2346(D) of the <i>Code of Virginia</i> and 18 VAC 48-50-30.E require that a common interest community manager obtain and maintain a fidelity bond or insurance policy separate from an association insurance policy that is required for associations under the Condominium Act and the Property Owners’ Association Act. The Guidance Document is available on Town Hall.	9/20/12
Certified Principal/Supervisory Employee Personal Adverse Financial History	
The Board adopted a guidance document on December 3, 2014, regarding what applicants for a principal/supervisory employee certificate must submit when certain personal adverse financial history is disclosed. Board staff may approve applicants for principal or supervisory employee certification who disclose personal adverse financial history in accordance with 18VAC48-50-35.H, provided all other entry requirements are met, as follows:	12/03/14

<ol style="list-style-type: none"> 1. For past-due tax assessment, the applicant provides proof of an installment agreement or payment plan with the Internal Revenue Service or other applicable taxation authority. Such installment agreement or payment plan shall not be in default. 2. For an outstanding judgment, the applicant provides proof of an installment plan to satisfy the judgment and proof that payments pursuant to the established installment plan are current. 3. For an active bankruptcy, the applicant provides proof of a payment plan established by a bankruptcy court. Such payment plan shall not be in default. <p>An applicant unable to provide documentation in accordance with this policy that is acceptable, or discloses adverse financial history not related to a past-due tax assessment, outstanding judgment or bankruptcy shall be afforded the opportunity to have the application considered by the Board through an informal fact-finding conference pursuant to the Administrative Process Act (Chapter 40 of Title 2.2 of the <i>Code of Virginia</i>). The Guidance Document is available on Town Hall.</p>	
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Condominium Registration

Completion Bonds for Commercial Condos	
The Board considered whether a commercial condominium needs to file a completion bond with the Board for incomplete common elements since commercial condominiums are exempt from registration. It was determined that § 55-79.87 <u>does not</u> exempt commercial condominiums from filing a completion bond and that Board staff will retain these bonds, if applicable.	1/26/09
Ownership of Condo Unit by POA	
The Board reviewed a request for an interpretation on ownership of condominium units by a property owners association. The Board declined to provide an interpretation as it is outside the Board’s authority.	10/13/09
Meaning of “Substantial Completion”	
The Board considered a request to provide an interpretation of the meaning of “substantial completion.” The Board agreed by consensus that it could not provide an interpretation on this issue as it is outside the Board’s authority.	10/26/09
Registration Process for Condominiums in Foreclosure	
The Board discussed a recurring issue that involves the foreclosure of condominiums wherein there are unsold units. Upon learning of a condominium foreclosure (the declarant’s property has been foreclosed, not an individual unit owner’s property), staff proceeds to ascertain the current status of the condominium and, if still owned by the foreclosing	12/1/11

<p>entity, the future plans for the condominium in order to ensure that the registration is compliant with the Condominium Act and the Condominium Regulations. Specifically, staff must know whether the financial institution plans to sell individual units or sell to a successor declarant. Upon learning this information, staff can then advise as to the appropriate steps to ensure the registration remains up-to-date and accurate. The problem arises in situations wherein staff is unable to make contact with the foreclosing financial institution or does not obtain cooperation from the financial institution and it proceeds with the sale of the units.</p> <p>The Board directed staff to i.) ensure that appropriate confirmation from the association is received before releasing the assessment bond or letter of credit; ii.) attempt to obtain a statement from the financial institution to determine the current status and the next course of action; and, iii.) if appropriate, prepare the registration file so that the Board can review the matter in consideration of entering a cease and desist order in accordance with § 55-79.100 of the <i>Code of Virginia</i> if compliance is not obtained and/or sales proceed.</p>	
Declarant and Developer Control Period	
<p>1. QUESTION: Section 55-79.54(c)(3) of the <i>Code of Virginia</i> includes a provision for extending the time period for expanding an expandable condominium. § 55-79.54(d)(3) of the <i>Code of Virginia</i> regarding a contractible condominium does not contain a similar provision to allow for an amendment to the declaration to extend the time to contract a contractible condominium. Does the Board take the position that such an amendment is not allowed?</p> <p>BOARD RESPONSE: The statute does not address extending the time period to withdraw land; therefore, it would not be permitted. Such time period extension only applies to an expandable condominium.</p> <p>2. QUESTION: The Property Owners' Association Act (Title 55, Chapter 26 of the <i>Code of Virginia</i>) does not contain a provision covering the extension of a developer control period reserved by a developer in a recorded declaration. Could an amendment adopted by two-thirds of the lot owners provide for an extension of the developer control period?</p> <p>BOARD RESPONSE: The Board does not have any purview over the extension of a developer control period in a property owners' association as it is determined by the declaration and not the Property Owners' Association Act.</p>	<p>3/14/13</p>
Bond Requirements for Commercial Condominiums	
<p>The Board considered two questions regarding the applicability of § 55-79.58:1 of the <i>Code of Virginia</i> to commercial condominiums and</p>	<p>6/27/13</p>

<p>responded as follows.</p> <ol style="list-style-type: none"> 1. Does the Board have the authority to regulate commercial condominiums? <p>The Board does have the authority to regulate commercial condominiums, except as exempt pursuant to § 55-79.87(B) of the <i>Code of Virginia</i>.</p> <ol style="list-style-type: none"> 2. Does the Board accept and hold bonds posted pursuant to Virginia Code § 55-79.58:1 on behalf of commercial condominium regimes? <p>If the declarant of a commercial condominium were to present to the Board a bond pursuant to § 55-79.58:1 of the <i>Code of Virginia</i>, the Board would retain the bond in accordance with the Code. Because commercial condominiums are exempt from the application requirements, and therefore are not required to submit plats, plans, and other documentation regarding the condominium, Board staff may not be able to ensure compliance with § 55-79.58:1. Therefore, it may be necessary for Board staff to request such documentation to ensure the bond is in compliance.</p>	
Letters of Credit May Be Accepted in Lieu of Assessment Bond	
<p>The Board adopted a guidance document on June 27, 2013, regarding the requirement for a declarant to post an assessment bond for a condominium.</p> <p>A letter of credit issued by a financial institution insured by the FDIC can be accepted in lieu of a bond to comply with the assessment bond required by § 55-79.84:1. The Guidance Document is located on Town Hall.</p>	6/27/13
Required Amount of Assessment Bond/Letter of Credit	
<p>The declarant of a condominium must file and maintain a bond or letter of credit in favor of the unit owner’s association to insure the declarant’s assessment obligations are fulfilled. It has been the registration practice to require that the bond or letter of credit is equal to \$1,000 per unit registered (minimum of \$10,000 and maximum of \$100,000), regardless of whether the declarant still owns the unit. After discussion, the Board agreed by consensus to continue the practice of requiring an assessment bond or letter of credit be filed for the total number of units registered with the Board.</p>	12/3/13

Withdrawal of Condominium Registrations

<p>The Board confirmed by consensus that the declarant is not obligated to maintain the condominium project registration, and may withdraw the registration, if the declarant is not selling units. As part of withdrawing the registration, the declarant will be required to certify that he has no plans to sell units, will continue to pay assessments on units owned by the declarant, and that he will re-register the condominium project and meet all current entry requirements of the <i>Code of Virginia</i> and Board's regulations should the declarant decide to sell units in the future. Release of the assessment bond or letter of credit is possible with withdrawing the registration with confirmation from the unit owners association that the declarant is current in the payment of assessments.</p>	<p>3/26/15</p>
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Time-Share Registration

Procedure for Determination of Compliance with § 55-375 and § 55-386	
<p>The Board has the obligation, pursuant to § 55-382(B) of the Code of Virginia, upon the request of an aggrieved owner to render a determination whether compliance with §§ 55-375 or 55-386 has occurred. The Board adopted procedural guidelines for handling determination requests.</p>	<p>10/26/09</p>
Definition of Alternative Purchase	
<p>A program that in summary will not be sold during the visit to the resort but will be marketed to potential purchasers days after they have left the resort does not appear to meet the definition of alternative purchase.</p>	<p>9/17/13</p>
Time-Share Public Offering Statement (§55-374(A)(1)(d))	
<p>The Board was asked for an interpretation of what exactly is required from the time-share developer in the Public Offering Statement regarding unsatisfied judgments and the status of pending lawsuits. The Board declined to provide an interpretation as it is outside the Board's authority in that it goes beyond an interpretation necessary to administer its programs, enforce the regulations, or make case decisions. The Board further stated that it urges the developer and its counsel to seek full disclosure consistent with the <i>Code of Virginia</i> and Board's regulations.</p>	<p>3/26/15</p>
Determining Value of Blanket Surety Bonds Filed by Developers in Lieu of Escrowing Deposits	
<p>The Board adopted a guidance document on June 7, 2018, regarding changes to §55-375 of the Virginia Real Estate Time-Share Act resulting from legislation during the 2018 General Assembly session. HB 674 and SB 434 allow for a developer of a time-share project consisting of more than 25 units to file a blanket surety bond or blanket letter of credit with the Board in lieu of escrowing deposits received in connection with the purchase or reservation of a time-share product. The legislation specified that for blanket letters of credit, the amount of letter of credit to be filed with the Board is based on the amount of deposits held by the developer as of May 31 of each calendar year. However, the legislation was silent</p>	<p>6/7/18</p>

<p>with respect to blanket bonds filed with the Board. The Board established that for the purposes of determining the amount of any blanket bond that a developer maintains in any calendar year, the total amount of deposits considered held by the developer shall be determined as of May 31 in each calendar year and the amount of the bond shall be in accordance with the amount of deposits held as of May 31. The Guidance Document is located on Town Hall.</p>	
Time-Share Public Offering Statements Delivered by Way of Alternative Media; Purchaser Opportunity to Review Public Offering Statement Prior to Execution of a Contract	
<p>The Board adopted a guidance document on June 7, 2018, regarding the requirements for public offering statements under § 55-374 of the Virginia Real Estate Time-Share Act.</p> <p>The guidance document established the following:</p> <ol style="list-style-type: none"> 1. With respect to the format of a public offering statement, Subsection I of § 55-374 should be construed to include any tangible medium commonly used for data storage (such as compact disc, DVD, flash drive/thumb drive). Subsection I shall also be construed to include distribution of a public offering statement by way of Internet web link or network document storage service (e.g. Dropbox). 2. Full and accurate disclosure in a public offering statement includes disclosure to each potential purchaser of the developer's obligations, as outlined in § 55-374, to distribute the public offering statement to each potential purchaser prior to execution of the purchase contract; and that each potential purchaser must have the public offering statement available for review, along with ample time for questions and answers, prior to execution of the purchase contract. 3. The disclosure described in Item #2 above must be provided in either (i) the first page of the public offering statement required by Board Regulation 18 VAC 48-45-160.C; or (ii) the optional public offering statement receipt page outlined in Board Regulation 18 VAC 48-45-160.B. 4. A developer that seeks to distribute a public offering statement by way of alternative media (i.e. other than paper copy) must obtain written consent from the prospective purchaser to receive the public offering statement by way of alternative media, prior to execution of the purchase contract; and must inform prospective purchasers of the developer's obligation, as outlined in Subsection I of § 55-374, to provide potential purchasers with a copy of the public offering statement for review, and ample time for questions and answers, prior to execution of a purchase contract. The Guidance Document is located on Town Hall. 	<p>6/7/18</p>

