

Common Interests



The Newsletter of the Virginia Common Interest Community Board

An Update from the Executive Director...

Happy Spring! This is the Spring 2022 edition of *Common Interests*, the newsletter for the Common Interest Community Board. The past several months have been a period of exciting change and transition for DPOR and the Board.

In January 2022, Governor Glenn Youngkin appointed Demetrios “Mitch” Melis to be Director of DPOR, replacing Mary Broz-Vaughan. Mitch returns to DPOR after having served as Director of Regulatory Compliance for the Virginia State Bar. Previously, Mitch was a member of the staff at DPOR. From 2006 to 2018, he served in several roles, including working in the investigations section, and as a board administrator. Most recently, Mitch was the Executive Director for the Board for Barbers and Cosmetology, and the Board for Hearing Aid Specialists and Opticians from 2012 to 2018.

In March 2022, DPOR welcomed a new Chief Deputy Director, Kishore Thota. Kishore brings to DPOR his experience working in both the public and private sectors as a technology professional. Kishore has worked with Fortune 500 companies, financial technology firms, and state governments. Most recently, Kishore was a Business Development Manager at CapTech Consulting. Kishore is helping to lead and develop improvements throughout the agency, with an emphasis on technology and data reporting.

In September 2021, Tom Payne joined DPOR as a Deputy Director. Tom comes to DPOR after having served in the Office of Attorney General most recently as the Section Chief/Sr. Assistant Attorney General for that agency’s Office of Civil Rights (OCR). During his 16-year tenure at OAG, Tom served as DPOR’s fair housing counsel in addition to overseeing OCR’s employment discrimination investigations and other functions. Tom directs DPOR’s regulatory compliance, investigation, and adjudication functions. The Department is in the process of hiring a Deputy Director for Licensing.

Aside from these leadership changes, the Board’s office monitored several pieces of legislation related to common interest communities throughout the recent General Assembly session. One of these measures, SB 740, requires DPOR to establish a work group to study the adequacy of current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities (see Page #4 for more information on 2022 legislation).

DPOR continues to emerge from the challenges imposed by the COVID-19 pandemic. At the end of June 2021, the state of emergency declared by then-Governor Northam was lifted. In August 2021, the Department reopened to the public for customer service. The Board’s call center has returned to its normal operating schedule of 8:15 a.m. to 5:00 p.m.

The Board recently completed a significant regulatory action. In September 2021, the

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Disclaimer:

The information in this newsletter is intended to provide a summary of various updates and actions. It does not contain all information and should not be relied upon exclusively. Please contact the Board’s office if you would like more information regarding the topics covered in this newsletter.

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regulations governing registration of common interest community associations were amended. Among other changes, the name of these regulations was changed from Common Interest Community Management Information Fund Regulations to the more accurately titled Common Interest Community Association Registration Regulations (see Page #6 for more details on these changes).

The Board is also in the middle of a significant regulatory action related to the licensure regulations for common interest community managers. This past fall and winter, a regulatory review panel performed a review of the Common Interest Community Manager Regulations, and recommended proposed amendments to the Board. At its most recent meeting in March 2022, the Board approved many of these recommendations for the next stage of the regulatory process (see Page #7 for more details on this action).

In other Board news, the Board welcomed the appointment of its newest member, Matt Durham, during its March 2022 meeting. In November 2021, then-Governor Ralph Northam appointed Mr. Durham to fill a vacant citizen member seat on the Board. Governor Northam also reappointed Anne M. Sheehan and Katherine E. (Katie) Waddell. Ms. Sheehan, a CPA, was appointed to a first full four-year term on the Board, after having been previously appointed to complete an unexpired term. Ms. Waddell, a citizen member, was reappointed to a second four-year term.

At its March meeting, the Board also recognized the contributions of Tanya Pettus, who had served as the administrative assistant for the Board's office since 2015. In 2021, Tanya was promoted to the position of Board Administrator for the Board for Waterworks and Wastewater Works Operators, and Onsite Sewage System Professionals, and for the Virginia Board for Asbestos, Lead, and Home Inspectors. Tanya has worked double duty over the course of the last year-plus while recruitment and hiring of her replacement was in process.

I remain proud to say that the Board and staff have continued to demonstrate poise, perseverance, and adaptability over the last year as we have withstood the challenges brought on by the pandemic. As always, our office and the Office of the Common Interest Community Ombudsman remain here to serve regulants, association members, and members of the public.

Wishing everyone a joyous and safe spring and summer,

- Trisha Lindsey

Executive Director

Common Interest Community Board



About the Newsletter

Common Interests is produced by the staff of the Common Interest Community Board's office. The newsletter does not have an established publication schedule, though staff aims to publish the newsletter at least semi-annually. To receive notification regarding the publication of upcoming editions of the newsletter, please register as a public user at the Virginia Regulatory Town Hall website. Registered users of the site will also receive important updates from the Board, including notices of regulatory action and changes to board-issued documents. To register with Town Hall, visit its website at: <http://townhall.virginia.gov/L/Register.cfm>. Staff also welcomes input from the public regarding topics for upcoming editions of the newsletter. You may submit any ideas for future articles or other suggestions for the newsletter to the Board's email: CIC@dpor.virginia.gov.

New Board Member Profiles

In 2021, Governor Ralph Northam appointed two new citizen members to the Common Interest Community Board.

Eileen M. Greenberg, Citizen Serving on an Association Board, Unexpired term ends on June 30, 2022.

On May 7, 2021, the Governor's office announced the appointment of Eileen M. Greenberg of Alexandria to fill a vacancy created by the departure of Board Member Tom Burrell. Ms. Greenberg is a citizen who serves on an association's governing board. Ms. Greenberg is a native of New York City. When she was 14 years old, Ms. Greenberg and her family moved to Tucson, Arizona. In 1969, Ms. Greenberg graduated from the University of Arizona with Bachelor of Science in Elementary Education. Ms. Greenberg began her education career in Tucson, before moving to Bloomington, Indiana. In 1975, Ms. Greenberg moved to Fredericksburg, Virginia. In 1998, Ms. Greenberg moved to Alexandria, Virginia, where she taught elementary school for the Alexandria City Public School system until her retirement in 2012. Ms. Greenberg became an owner in the Watergate at Landmark Condominium in 2002. Ms. Greenberg is a board member and Vice-President of the unit owners' association. Prior to her appointment to the Board, Ms. Greenberg previously served as a member of the CIC Board's Reserve Study Guidelines Committee in 2019, and helped develop the Guidelines for the Development of Reserve Studies for Capital Components, which was published in September 2019. In her role as a Board member, Ms. Greenberg recently served on the Board's CIC Manager Regulatory Review Committee. When she is not working as a member of her association's board, Ms. Greenberg pursues her passion for music. Ms. Greenberg is a member and soloist for The Alexandria Singers, the only show choir in the DMV area. She is also an adult student at Levine Music School, performing personal cabaret shows and for Levine's Cabaret Show for Senior Citizens. Ms. Greenberg was also a volunteer cantorial soloist for many years at synagogues in Fredericksburg, and Washington, D.C. Since 2006, Ms. Greenberg has been a student of ballroom dance.

Matt Durham, Citizen Residing in a CIC, First four-year term ends on June 30, 2025.

On November 19, 2021, the Governor's office announced the appointment of Matt Durham of Potomac Falls to fill a vacant citizen member seat. Mr. Durham is an analyst relations expert with a broad and deep experience in enterprise software. Mr. Durham's educational background includes a Bachelor of Arts in Anthropology from the University of Michigan, a Master of Arts in International Studies from the Josef Korbel School of International Studies at the University of Denver, and the Aresty Institute of Executive Education at the University of Pennsylvania's Wharton School. Mr. Durham has been a top analyst relations executive at SAP, ServiceNow, and five other companies, and has over a decade of executive leadership at the Vice-President and Senior Vice-President levels. Mr. Durham resides in the Cascades Community Association, a property owners' association with more than 6,600 homes and about 25,000 residents. Mr. Durham has served as the President of the association's board of directors since 2016. He is also a member of the board of directors for the Community Foundation for Loudoun and Northern Fauquier Counties. Prior to his appointment to the CIC Board, Mr. Durham participated as a member of the Board's CIC Manager Regulatory Review Committee.



Virginia Housing Announces Virginia Mortgage Relief Program

In February 2022, Virginia Housing, a state agency, announced that the Virginia Mortgage Relief Program (VMRP) was live and accepting applications from the general public. VMRP uses funds awarded to the Commonwealth of Virginia by the United States Treasury as part of COVID-19 relief to support homeowners facing housing instability as a result of the pandemic. Virginia Housing is using the funds to assist eligible Virginians to help prevent or ease mortgage delinquencies, defaults, foreclosures, and displacement resulting from the pandemic. VMRP also allows for payment of qualified expenses such as homeowner's association fees, condominium association fees or common charges, including for lien extinguishment. For more information, please visit <https://www.virginiamortgagerelief.com>.

2022 Legislative Update

On January 12, 2022, the Virginia General Assembly convened for its 2022 regular session. The 60-day regular session adjourned on March 12, 2022. During this session, the Assembly considered and adopted multiple bills affecting common interest communities. The list below includes only those bills that were enacted and directly impact the CIC Board. There may be other legislation affecting common interest communities that are not on this list.

(Note: Except where otherwise indicated, all legislation will become effective on July 1, 2022. Bill information was obtained from the General Assembly's Legislative Information System. Further details on these bills are available at <http://lis.virginia.gov/>.)

Associations/Association Governance

HB 470/SB 197 - Common interest communities; prohibition on refusal to recognize a licensed real estate broker.

Summary: Clarifies the prohibition on property owners' associations and unit owners' associations pursuant to the Property Owners' Association Act (§ 55.1-1800 et seq.) and the Virginia Condominium Act (§ 55.1-1900 et seq.), as the case may be, refusing to recognize a licensed real estate broker that is designated by the lot owner or unit owner as such lot owner's or unit owner's authorized representative, provided that the property owners' association or unit owners' association is given a written authorization signed by the lot owner or unit owner designating such licensed individual as his authorized representative and containing certain information for such designated representative. The bill also expands the list of authorized persons to whom a seller or seller's authorized agent may provide a written request for the delivery of the association disclosure packet or resale certificate. The bill contains a technical amendment.

Capital Components and Reserves

SB 740 - Common interest communities; standards for structural integrity and reserves for capital components.

Summary: Directs the Department of Professional and Occupational Regulation (the Department) to establish a work group to study the adequacy of current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities. The bill directs the Department to report the work group's findings and provide recommendations, including any legislative recommendations, to the Chairs of the House Committee

on General Laws and the Senate Committee on General Laws and Technology no later than April 1, 2023.

Common Interest Community Association Complaint Procedure

SB 693 - Common interest communities; notice of final adverse decision; allowing audio and video recordings; report.

Summary: Directs the Common Interest Community Board (the Board) to review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision. The bill requires the Board to report its findings and any legislative, regulatory, policy, or budgetary recommendations to the Secretary of Labor and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology on or before November 1, 2022.

Regulatory Actions Update

Recent Regulatory Actions Completed:

Common Interest Community Association Registration Regulations - General Review (Final Stage) (Effective September 1, 2021)

In March 2017, the Board initiated a general review of the Common Interest Community Management Information Fund Regulations. The scope of these regulations includes the registration and annual report requirements for community associations. The Board considered proposed amendments to the regulations at its November 2017 meeting. The Board voted to withdraw the action and restart the review to allow for additional public participation through formation of a regulatory review committee.

A regulatory review committee of the Board, consisting of selected Board members and other stakeholders, met on September 27, 2018, to discuss potential changes to the regulations. The committee reviewed and adopted proposed language for amendments to the regulations. At its November 29, 2018 meeting, the Board reviewed and accepted the proposed amendments. In February 2019, the proposed amendments were submitted for review by Executive Branch agencies. Executive Branch review was completed on September 19, 2019. The proposed stage was published in the *Virginia Register* on October 28, 2019 to commence a 60-day public comment period. A public hearing was held on November 12, 2019. The public comment period ended on December 27, 2019.

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Regulatory Actions Update (continued)

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At its meeting on March 12, 2020, the Board reviewed the proposed amendments and public comments received. Based on some of the comments received, the Board elected to make revisions to the proposed amendments. The Board adopted the amendments as revised. On May 14, 2020, the amended regulation was filed for Executive Branch review. Executive Branch review was completed on June 22, 2021. The final regulation was published in the *Virginia Register* on July 19, 2021, and a final 30-day public comment period was held. The comment period concluded on August 18, 2021, with no comments received. The amended regulation became effective on September 1, 2021. See Page #6 for more details on these amended regulations.

Common Interest Community Manager Regulations - Amendments to Incorporate Marijuana Legalization Legislation (Exempt Action) (Effective December 1, 2021)

At its September 23, 2021 meeting, the Board voted to initiate an exempt action to amend the Common Interest Community Manager Regulations to conform the regulations to changes in statute resulting from the passage of SB 1406, enacted by the General Assembly during the 2021 Special Session I. The legislation limits dissemination of criminal history record information and clarifies that convictions for certain misdemeanor marijuana offenses are not to be disclosed to the Board. Qualifications for licensure as a common interest community manager and certification as a principal or supervisory employee were revised to exclude marijuana-related misdemeanor convictions from convictions that must be disclosed on an application. Standards of conduct and practice were revised to exclude marijuana-related drug distribution misdemeanor convictions from convictions that a regulant must report to the Board.

Regulatory Actions In Progress:

Common Interest Community Manager Regulations - General Review (Proposed Stage)

At its March 4, 2021 meeting, the Board initiated a general review of the Common Interest Community Manager Regulations by voting to authorize the filing of a Notice of Intended Regulatory Action (NOIRA), and the formation of a regulatory review committee. The NOIRA was filed on June 11, 2021. The NOIRA was published in the *Virginia Register* on August 16, 2021, which commenced a 30-day public comment period. The comment period concluded on September

15, 2021, with no comments being received. Staff, in coordination with the Board's Chairman, formed a regulatory review committee consisting of selected Board members and other stakeholders. The committee met several times during the fall of 2021 and winter of 2022. At the committee's final meeting held on February 14, 2022, the committee adopted recommended amendments to the regulations. On March 3, 2022, the Board reviewed and considered the committee's recommended amendments. After considerable discussion, the Board adopted the committee's recommendations, with some revisions. The proposed amendments to the regulations were submitted for Executive Branch review on March 14, 2022. Executive Branch review is pending. Upon completion of Executive Branch review, the proposed amendments will be published in the *Virginia Register*. Publication in the register will begin a 60-day public comment period, which will include a public hearing. (See Page #7 for more information on this action.)

Further information on these regulatory actions may be found at the Virginia Regulatory Town Hall website (<http://townhall.virginia.gov/>).

Public Comment on Regulatory Actions

The Board welcomes the public's participation in the regulatory process. Individuals may offer comment on pending regulatory actions, to include proposed regulations or regulation amendments, and proposed guidance documents or guidance document amendments. To sign up to receive notices regarding the Board's regulatory actions, including notification of public comment periods and to submit comments during a regulatory comment period, visit the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov/>). In addition, public comments on regulatory actions may be submitted to the Board directly by mail or by email.



Board Amends Regulations for Registration of CIC Associations

The CIC Board recently completed a regulatory action to amend the regulations governing the registration of common interest community associations. The regulations prescribe when and how common interest community associations (property owners' associations, condominium unit owners' associations, and proprietary lessees' associations in real estate cooperatives) are to register with the Board by filing the annual report required under applicable state law (e.g. the Property Owners' Association Act and Virginia Condominium Act). The regulations provide for registration application filing fees, procedures for obtaining and renewing registrations, and requirements for updating registration information.

The Board began the process of amending these regulations in 2018, which included having the regulations reviewed by a panel of stakeholders. Stakeholders on the review panel included members of the CIC Board, community managers, and citizens serving on association boards. In November 2018, the Board reviewed the panel's recommendations and adopted proposed amendments to the regulations. In March 2020, the Board adopted the final amendments to the regulations. The final regulations became effective on September 1, 2021. The Board's amendments revised the regulations to (i) provide better clarity for regulants and the public; (ii) better complement statutory requirements; and (iii) reflect current agency practice regarding association registration.

The title of the regulations was changed from Common Interest Community Management Information Fund Regulations to Common Interest Community Association Registration Regulations to more accurately reflect the purpose of the regulations. Among the changes were amendments to establish clearer procedures for renewal of a registration, including a 12-month timeframe for an association to renew. An association that does not renew during the 12-month period following expiration of the registration must reapply by submitting a new registration application. The amendments added several definitions, including for the terms "registration" and "annual report." The amendments also outline association registration requirements, including potential consequences for associations that fail to comply.

Common Interest Community Ombudsman's 2020-2021 Annual Report

In November 2021, the Common Interest Community Ombudsman issued her 2020-2021 Annual Report to the Virginia General Assembly. The annual report outlines the Ombudsman's activities for the past year, which include offering assistance and information to members of associations regarding the rights and processes available to them through their associations, receiving complaints involving common interest communities, reviewing and making determinations regarding Notices of Final Adverse Decisions (NFADs) submitted to her office, and conducting public education and outreach to constituent groups.

In the report, the Ombudsman noted that during the past year, her office responded to 1,350 telephone calls and 3,045 emails. There was a significant increase (nearly 10%) in the number of emails received by the Ombudsman than in the previous year. The Ombudsman noted that many questions and concerns were related to the holding of virtual meetings, due, in part, to changes in the law that became effective in July 2021 which allowed for association and board meetings to be held electronically. The Ombudsman also reported that following the collapse of the Champaign Tower South Condominium in Florida in June 2021, her office received an enormous uptick in inquiries about maintenance and safety issues related to condominiums.

In the last year, the Ombudsman's office received a total of 214 complaints. The majority of complaints received (66%) related to property owners' associations, and 29% related to condominium unit owners' associations. This past year, the Ombudsman transferred responsibility for time-share complaints to the Department's Complaint Analysis and Resolution section, as time-shares are not common interest communities, and do not fall under the authority of the Ombudsman's office.

The Ombudsman reported that the greatest number of complaints related to associations failing to respond to complaints submitted through the association complaint procedure, followed by complaints that associations failed to adopt a complaint procedure. Other complaints related to notice of meetings, access to books and records, incomplete or delayed resale certificates, and poor or absent communication within associations.

The Ombudsman received 63 NFADs (an 80% increase from the previous year) from individuals requesting a final determination from the Ombudsman regarding an adverse decision made by an association. The most frequent issues in NFADs were related to method of communication, meetings and notice, reserve studies and budget requirements, and access to books and records.

Because of the pandemic, there was little opportunity for the Ombudsman to provide in-person outreach. The Ombudsman provided several virtual presentations, and appeared on Fairfax County Channel 16: *Your Community, You're Connected*. The Ombudsman noted that informational videos on the Ombudsman website have proven to be extremely helpful in explaining to complainants and boards the complaint process and the proper way to draft an association complaint procedure.

For additional details, the Ombudsman's 2020-2021 Annual Report (as well as reports for previous years) may be obtained through the website for the Ombudsman's office:

<http://www.dpor.virginia.gov/CIC-Ombudsman/>.



Board Proposes Amendments to Regulations for CIC Managers

In March 2021, the Board initiated a regulatory action to review and amend the Common Interest Community Manager Regulations. These regulations govern the licensure of common interest community managers, and principal or supervisory employees of common interest community managers who are required to hold a certificate issued by the Board. As part of the review, a regulatory review committee was formed to review the regulations and recommend amendments. The committee consisted of members of the CIC Board, community managers, a representative of the Real Estate Board, and citizens. Pia Trigiani, formerly the Chair of the CIC Board, agreed to serve as chair of the committee. Drew Mulhare, as current CIC Board Chair, served on the committee as an ex officio member.

The committee held a series of four meetings between August 2021 and February 2022. The committee reviewed and discussed many aspects of the regulations including (i) entry requirements for common interest community manager licenses and principal or supervisory employee certificates; (ii) requirements for renewal of licenses and certificates; (iii) standards of conduct and practice; and (iv) training and training program standards. At its final meeting on February 14, 2022, the committee adopted recommended changes to the regulations.

The most significant recommendations of the committee were to:

1. Add the term “qualifying individual” to the regulations;
2. Add provisions to clarify the requirement for common interest community manager firms to be licensed, and for principal or supervisory employees to be certified;
3. Revise entry requirements so that individuals who complete a Board-approved comprehensive or introductory training program also complete a Board-approved training module on Virginia CIC laws and regulations in order to become a qualifying individual or receive a principal or supervisory employee certificate;
4. Increase the term of licensure for common interest community managers from one year to two years; and increase the period for reinstatement of a license or certificate from six months to one year;
5. Revise requirements for renewal of a principal or supervisory employee certificate to include (i) requiring that certified principal or supervisory employees complete six contact hours of Board-approved training per certificate cycle, up from the current requirement of four contact hours of such training; and (ii) requiring that certificate holders maintain proof of completing such training;
6. Revise the standards of conduct and practice to include (i) changes to reporting requirements for licensees and certificate holders to maintain a license or certificate; (ii) clarification to requirements for maintenance and management of funds held by a common interest community manager in a fiduciary capacity; (iii) clarification of, and revision to, standards for management services contracts used by common interest community managers; (iv) addition of provisions regarding remuneration to common interest community managers from vendors, contractors, service providers, and others that provide

CIC Manager Regulatory Review Committee Members

Name	Role (Representation)
Pia Trigiani (Chair)	CIC Attorney
Matt Durham	Citizen, Assoc. Rep.
Jim Foley	Board Member (CIC Manager)
Bonnie Herring	CIC Manager
Amanda Jonas	Board Member (Developer)
Chris Melson	CIC Manager
Paul Orlando	CIC Manager
Nan Piland	Real Estate Board
Anne Sheehan	Board Member (CPA)
Drew Mulhare,	Board Member

goods or services to client associations; and (v) addition of provisions regarding regulant’s responsibilities to the public;

7. Significantly revise the prohibited acts in the standards of conduct and practice; and
8. Revise training program requirements to include (i) establishing a new Virginia CIC laws and regulations training module; and (ii) establishing miscellaneous topics training programs for renewal of principal or supervisory employee certificates.

At its meeting on March 3, 2022, the Board reviewed the proposed amendments recommended by the committee. After lengthy discussion, and some changes, the Board accepted most of the amendments recommended by the committee and adopted the recommendations as proposed amendments.

The proposed amendments to the regulation are currently undergoing an Executive Branch review. Once this review is completed, the proposed amendments will be published in the *Virginia Register* and will undergo a 60-day comment period. The Board will hold a public hearing during this comment period.

For more information on the proposed changes to the Common Interest Community Manager Regulations, please visit the Virginia Regulatory Town Hall website (<http://townhall.virginia.gov/>) or contact the Board’s office.

Recent Board Disciplinary Case Decisions

File Number 2020-01680; Barkan Management, LLC

Decided: September 23, 2021.

Summary: The management company was charged with multiple violations of the Board's regulations under five counts.

Under the first count (Count #1), the management company was charged with four violations of the Board's prohibited act for intentional and unjustified failure to comply with the terms of the management contract, operating agreement, or association governing documents (18 VAC 48-50-190.7).

The first two alleged violations under Count #1 pertained to the provision in the management agreement which required the management company to make all payments and disbursements on behalf of the association relating to common areas and facilities. The first charged violation under Count #1 alleged the management company failed to timely pay numerous invoices, resulting in late fees charged to the association from utility providers, and service disconnection notifications from some providers. The second charged violation under Count #1 alleged the management company failed to pay a pumping contractor for services provided to the community, resulting in a discontinuation of services. The third charged violation under Count #1 alleged the management company failed to pay the premium for the association's insurance policy, as required under the management agreement, resulting in the cancellation of the policy. The fourth violation under Count #1 alleged the management company failed to submit the association's annual budget within the timeframe required by the management agreement.

Under the second count (Count #2), the management company was charged with a violation of the Board's regulation pertaining to the standards for maintenance and management of accounts (18 VAC 48-50-160). It was alleged the management company failed in its fiduciary duty to the association by using the association's funds to pay for the utility services provided to another community that was managed by the management company.

Under the third count (Count #3), the management company was charged with two violations of the Board's prohibited act for failing to account in a timely manner for all money and property by the regulant in which the association has or may have an interest (18 VAC 48-50-190.12). The first charged violation under Count #3 alleged the management company failed to timely deposit money it received into the association's operating account. The second charged violation under Count #3 alleged the management company failed to timely account for all money and property received in which the association had an interest.

Under the fourth count (Count #4), the management company was charged with six violations of the Board's prohibited act for egregious or repeated violations of generally accepted standards for the provision of management services (18 VAC 48-50-190.10).

The first charged violation under Count #4 alleged the management company paid twice for the same invoice for security services provided to the association. The second charged violation under Count #4 alleged the management company continued to pay taxes that were improperly charged to the association for elevator services provided to the community after having been notified of the issue. The third charged violation under Count #4 alleged the management company made multiple payments to a telephone service provider without an invoice to substantiate the expense. The fourth charged violation under Count #4 alleged the management company, through an employee, used an association debit card to charge purchases on the employee's personal Amazon Prime account. The fifth charged violation under Count #4 alleged the management company assigned multiple vendor numbers to association vendors, causing these vendors to receive duplicate payments. The sixth charged violation under Count #4 alleged the management company failed to reimburse the association for late fees that were paid to utility vendors.

Under the fifth count (Count #5), the management company was charged with a violation of the Board's prohibited act for failing to act in providing management services in a manner that safeguards the interests of the public (18 VAC 48-50-190.17). It was alleged the management company disregarded the directives of the association's board of directors regarding the payment of an invoice which the association's board questioned.

Recent Board Disciplinary Case Decisions (continued)

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An Informal Fact-Finding Conference (“IFF”) was held in July 2021, where a presiding officer on behalf of the Board heard testimony from a principal of the management company and other representatives of the company, and several representatives from the complaining association. The presiding officer submitted a recommendation to the Board for its consideration at the September 2021 meeting.

As to Count #1, the presiding officer recommended a finding of no violation on each of the charged violations. The presiding officer concluded that while there was unjustified failure to comply with the terms of the management agreement, the failure to comply with the terms of the management agreement was not intentional.

As to Count #2, the presiding officer recommended a finding of a violation. The presiding officer found that the management company’s use of association funds to pay utilities for another property managed by the management company was a failure to maintain the association’s funds in accordance with its fiduciary duty. The presiding officer recommended imposition of a monetary penalty of \$250.

As to Count #3, the presiding officer recommended a finding of a violation on one of the two charged violations. The presiding officer recommended a finding of a violation on the charge related to the management company’s failure to timely deposit money it received into the association’s operating account. The presiding officer recommended imposition of a monetary penalty of \$250. The presiding officer recommended the other charged violation in Count #3 be closed with a finding of no violation.

As to Count #4, the presiding officer recommended a finding of a violation on five of the six charged violations. The presiding officer recommended imposition of monetary penalties totaling \$2,750. The presiding officer recommended the charge related to the payments made to a vendor without supporting invoices be closed with a finding of no violation.

As to Count #5, the presiding officer recommended a finding of no violation.

During the Board meeting, the Board voted unanimously to accept the recommendations of the presiding officer, and found the management company in violation of 18 VAC 48-50-160 (Count #2), 18 VAC 48-50-190.12 (Count #3), and 18 VAC 48-50-190.10 (Count #4—Five Violations). The Board imposed monetary penalties totaling \$3,250.

The terms of the order have been met.

File Number 2020-02432; Property Management Associates, LLC, d/b/a PMA

Decided: September 23, 2021.

Summary: The management company was charged with two violations under a single count for violating the Board’s prohibited act for intentional and unjustified failure to comply with the terms of the management contract, operating agreement, or association governing documents (18 VAC 48-50-190.7).

The first charged violation alleged the management company failed to obtain competitive bids for the performing of major repair work to the property, as required by the management agreement. The second charged violation alleged the management company failed to prepare an annual budget for the association as required by the management agreement.

An Informal Fact-Finding Conference (“IFF”) was held in July 2021, where a presiding officer on behalf of the Board heard testimony from the principal of the management company. The presiding officer submitted a recommendation to the Board for its consideration at the September 2021 meeting.

The presiding officer recommended a finding of no violation on each of the charged violations. The presiding officer concluded that while there was unjustified failure to comply with the terms of the management agreement, the failure to comply with the terms of the management agreement was not intentional.

During the Board meeting, the Board voted unanimously to accept the recommendations of the presiding officer. The case was closed by the Board with a finding of no violation.

Copies of any orders issued by the Board for disciplinary cases may be obtained from the Department’s website:

<https://www.dpor.virginia.gov/>.



Notable Recent Final Determinations from the Ombudsman

File Number 2022-01052, Frant / Barcroft Mews Homeowners' Association

Determination issued on December 20, 2021.

The Complainant (Frant) alleged the association failed to comply with § 55.1-1826 of the Property Owners' Association (POA) Act in preparing its annual budget. According to Frant, the 2022 Budget was presented to owners at a quarterly meeting, but the "...annual budget and reserves for capital components did not meet statutory requirements." Frant did not specify how the budget and reserves failed to meet statutory requirements. Frant asked the association to resubmit the budget for review by owners, and that the budget include "all the requirements listed in the statute; i.e. the board's annual review determination, and a statement describing the procedures used for estimation and accumulation of cash reserves."

The association responded to the complaint by stating Frant failed to state a violation of common interest community laws for regulations, and that the association was in compliance with § 55.1-1826. The association also provided a copy of its 2022 Budget.

Section 55.1-1826 of the Code of Virginia states:

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1800;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1800;

2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribu-

tion to the reserve fund for that year;

3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and

4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

The Ombudsman determined that the request for the board's annual review determination and procedure for estimating and accumulating cash reserves appeared to have been provided in the 2022 Budget. The 2022 Budget appeared to comply with the applicable statute; however the Ombudsman was not able to find a statement of the amount of reserves recommended in the reserve study as required by § 55.1-1826(C)(4). The Ombudsman noted that the POA Act does not require an association to obtain review or approval by owners before moving forward with a budget. The Ombudsman further noted that the governing documents of some associations may require owner approval of budgets; however, this issue was not raised in the Notice of Final Adverse Determination, and to the extent such review or approval is required by the association's governing documents, the matter does not fall under the authority of the Ombudsman's office.

The Ombudsman requested the association that if the 2022 Budget did not contain a statement of the amount of reserves recommended in the reserve study, to include it in the budget in future, and to provide Frant with that statement within 30 days.

File Number 2022-01075, Jones / Plantation Woods Condominium Association

Determination issued on January 20, 2022.

The Complainant (Jones) submitted two complaints to the association. The first complaint was related to the association's website. Jones alleged the association "denies homeowner access to certain association records on the website platform, refuses to allow unmonitored comment page for community communication between homeowners and with board members and refuses to allow homeowner input and participation in website management." Jones contended that the association violated several provisions of the Virginia Condominium Act ("the Act"), specifically §§ 55.1-1939(1), 55.1-1949(B)(3), 55.1-1950(A) and (B), and 55.1-1935(A) and (B). According to Jones, the association developed a website, and Jones assisted the person in charge of the development. Jones made numerous suggestions as to what should be posted and how the website should be run. Jones was later terminated as the website aide by the person in charge of developing the website. Jones alleged the association did not have a method of communication as required by § 55.1-1950. Jones alleged the association had failed to provide "adequate explanation to justify action and cost decisions." Jones further alleged she was denied electronic copies of certain documents she had requested.

Jones requested the association update meeting minutes, financials, the annual budget, the reserve study, and board meeting packets

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prior to each meeting, create a communication page to allow owners to communicate with each other and the board, identify administrative access levels to allow participation of owners in website management, and limit use of the association website by the association manager.

In her determination, the Ombudsman noted that Jones did not specify how Jones believed the association violated the various statutes cited in the complaint.

Section 55.1-1939(1) states:

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

1. The right of access to all books and records kept by or on behalf of the unit owners' association according to and subject to the provisions of § 55.1-1945, including records of all financial transactions;

The Ombudsman stated that the complaint did not allege the association failed to provide access to books and records, only that the association did not include this information on the website.

Section 55.1-1949(B)(3) states:

3. Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of the executive board or subcommittee or other committee of the executive board for a meeting shall be made available for inspection by the membership of the unit owners' association at the same time such documents are furnished to the members of the executive board.

The Ombudsman stated that the inclusion of this provision as a violation by the association did not have merit, since there was no allegation or evidence that the association was not providing agenda packets, only that they were not provided electronically, which is not required by the statute.

Section 55.1-1950 states:

- A. The executive board shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive board regarding any matter concerning the unit owners' association.
- B. Except as otherwise provided in the condominium instruments, the executive board shall not require prior approval of the dissemination or content of any material regarding any matter concerning the unit owners' association.

The Ombudsman stated that the reference to a violation of this section did not have a basis in the law, nor was there an allegation that no method of communication existed, only

that the association was not providing a method via the website. Associations are not required to use electronic methods of communication under the statute, but may choose to do so.

Section 55.1-1935 states, in part:

- A. Unless expressly prohibited by the condominium instruments, (i) any notice required to be sent or received or (ii) any signature, vote, consent, or approval required to be obtained under any condominium instrument or any provision of this chapter may be accomplished using electronic means.
- B. The unit owners' association, unit owners, and other persons entitled to occupy a unit may perform any obligation or exercise any right under any condominium instrument or any provision of this chapter by use of electronic means.

The Ombudsman stated that the reference to a violation of this section was not appropriate as the statute allows for the use of technology to provide notice and other actions via electronic means, but does not require that such actions be carried out electronically.

The second of Jones's complaints related to appointments of board members and chairing of committees. Jones alleged that due to an inability to achieve quorum over the preceding three years, there had been no election of board members, and, instead, friends and neighbors were selected to fill vacant positions that become available.

Jones contended that it was inappropriate that committees are chaired by board members, and not homeowners. Jones alleged these actions violated §§ 55.1-1939(5), 55.1-1953(E), 55.1-1935(D), and 55.1-1952(C).

Jones requested the association provide for absentee mail-in voting and electronic voting, and that the association develop electronic voting guidelines. Jones further asked that the association post open positions at least 30 days prior to filling a position, develop a board member disclosure form to protect against conflicts of interest, and provide information to owners regarding expectations and time commitments when serving on a board in order to decrease turnover of board members.

In her determination, the Ombudsman noted that Jones, as was the case with the first complaint, did not explain how the association violated the various statutes cited in the complaint.

Section 55.1-1939(5) states:

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

5. The right to serve on the executive board if duly elected and a member in good standing of the unit owners' association, except to the extent that the condominium instruments provide otherwise.

The Ombudsman stated this statute provides for a right to serve

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on a board if duly elected. However, if an association is not able to obtain quorum, the association is not in violation of this law. Failure to achieve quorum is a failure on multiple levels. It is not solely the responsibility of the association to obtain quorum, there must be sufficient interest by the owners to participate in these meetings to help make quorum. The Ombudsman stated that § 55.1-1952(C) seems to indicate that responsibility for quorum falls on both the association and its owners, and allows either an association or an owner entitled to vote to petition a local circuit court to order an annual meeting.

Section 55.1-1953(E) states:

E. Unless expressly prohibited by the condominium instruments, a unit owner may vote at a meeting of the unit owners' association in person, by proxy, or by absentee ballot. Such voting may take place by electronic means, provided that the executive board has adopted guidelines for such voting by electronic means. Unit owners voting by absentee ballot or proxy shall be deemed to be present at the meeting for all purposes.

The Ombudsman stated that there was nothing in the complaint that indicated an owner had been denied the right to vote. A failure to obtain quorum is not necessarily the fault of an association, and appointments of board members do not usually require voting. The Ombudsman stated it was unclear how the friends and neighbors were selected to fill open positions, and could not make a determination as to whether there was a violation of the statute without more information.

Section 55.1-1935(D) states:

D. Voting, consent to, and approval of any matter under any condominium instrument or any provision of this chapter may be accomplished by electronic means provided that a record is created as evidence of such vote, consent, or approval and maintained as long as such record would be required to be maintained in nonelectronic form. If the vote, consent, or approval is required to be obtained by secret ballot, the electronic means shall protect the identity of the voter. If the electronic means cannot protect the identity of the voter, another means of voting shall be used.

The Ombudsman stated this statute simply allows for electronic voting, and that nothing in the complaint indicated anyone had been denied the right to vote electronically.

The Ombudsman explained that the Act does not specify who can serve on a committee or sub-committee. Whether board members can chair such committees is dependent upon the condominium instruments and not the law.

The Ombudsman indicated the association should provide

for voting options as set forth in § 55.1-1953(E) if its governing documents so provide. The Ombudsman added that the association can choose to post open positions 30 days in advance of an election, require disclosure forms or counsel candidates on their responsibilities, but that there is no requirement under the law to do so.

The Ombudsman determined that no action was required of the association.

File Number 2022-01723, The Condominium at Gunston Corner / Gunston Corner Townhouse Homeowners Association, Inc.

Determination issued on March 16, 2022.

According to the complaint, the Complainant (Condominium) and the association share certain responsibilities and obligations under an Easement Agreement between the two entities. The Condominium alleged that despite multiple attempts to obtain documents from the association, it had not received all documents requested. The Condominium believes this failure to provide documents constitutes a violation of § 55.1-1945 of the Virginia Condominium Act (Condo Act), which states, in part:

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

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

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The Condominium also alleged a violation of § 55.1-1991 of the Condo Act based on its inability to provide complete resale certificates and its belief that it is entitled to the requested documents. The Condominium alleged that it is unable to provide complete resale certificates because it has not received the documents it has requested from the association, and those documents are necessary to provide a complete resale certificate. The Condominium contends it has a proper purpose in its request for documents, namely to perform an audit and be reimbursed.

The association responded to the complaint by raising the question as to whether the Condominium had standing to file the complaint, since the association believed the Condominium did not have an operating board of directors. The association responded that it had already produced hundreds of pages of documents, and intends to provide another audit. The association believes the Condominium does not have a right to examine the books and records of the association, and that it is not in violation of the Condo Act. The association provided the following reasons:

1. The rights provided under § 55.1-1815 of the Property Owners' Association (POA) Act (the applicable sister statute to § 55.1-1945) only apply to a member in good standing. Neither the Condominium, nor the president of the Condominium's unit owners' association are members of the association;
2. Section 55.1-1991 does not apply to the association, and "merely sets forth the required contents of resale certificates." Further, the statute does not require the association to permit the Condominium to inspect its books and records.
3. Section 55.1-1945 is not applicable to the association, since it is the mirror provision found in the Condo Act and thus only applies to condominiums.

In her determination, the Ombudsman stated "[t]here was more to this complaint than I have included here. My focus is solely on the portions of it that related to common interest community law. The relationship between the two entities, the legal obligations required under the easement agreement, the status of the condominium board of directors and any other aspects that were not directly related to common interest community law were excluded from consideration for this determination. This office has no authority to determine or address civil law issues."

The Ombudsman found that the association was not in violation of § 55.1-1815 of the POA Act, and that the similar statute under the Condo Act, § 55.1-1945, was not applicable. The Ombudsman agreed with the association that the Condominium is not a member of the association and therefore does not have a right to examine or receive copies of the association documents. Under § 55.1-1800 of the POA Act, a

person who owns a lot in a development is considered to be a member and must pay assessments. There was nothing in the complaint to suggest the Condominium owned a lot in the association. The Ombudsman stated her office could not determine whether there was a legal right to access to books and records under the agreement between the parties. The Ombudsman further determined that as a property owners' association, the association is not governed by § 55.1-1991 of the Condo Act and therefore could not be in violation of that statute. If the Condominium must rely upon the association to provide complete resale certificates, that is a legal issue outside the scope of the Ombudsman's office.

The Ombudsman determined no action was required of the association.

File Number 2022-01310, Keith / Overlook Condominium

Determination issued on February 18, 2022.

The Complainant (Keith) alleged multiple violations of the Virginia Condominium Act (the Act). Keith's first complaint, however, alleged a violation of § 54.1-2354.4 of the Code of Virginia, which is the statute that requires all associations to adopt an association complaint procedure.

Keith stated she had attempted to obtain a copy of the complaint procedure in April 2021, but did not receive a copy until June 2021. Keith believed the association's complaint procedure contains outdated information and that the association should have the procedure readily available. Keith also alleged the procedure was not included in a resale disclosure packet for a unit in the condominium in January 2021.

Keith's second complaint alleged a violation of § 55.1-1931(A) of the Act, which states:

- A. Except to the extent prohibited, restricted, or limited by the condominium instruments, any unit owner may make any improvements or alterations within his unit that do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the condominium. However, no unit owner shall do anything that would change the exterior appearance of his unit or of any other portion of the condominium except to such extent and subject to such conditions as the condominium instruments may specify.

Keith contends the association failed to have a process in place to ensure compliance with this statute. Keith referenced sagging floors and other structural issues, and believes the association should conduct a structural review, adequately fund reserves, and ensure compliance with the law by creating a procedure to obtain board review and approval for unit changes.

Keith's third complaint alleged a violation of § 55.1-1939(3) of the Act, which states:

- Every unit owner who is a member in good standing of a unit

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owners' association shall have the following rights:

3. The right to have notice of any meeting of the executive board, to make a record of such meetings by audio or visual means, and to participate in such meeting in accordance with the provisions of § 55.1-1949;

However, the portion of complaint related to this issue did not contain any information about meetings or lack of notice, but was instead related to general concerns Keith had about the association and its management company.

Keith's fourth complaint alleged a violation of § 55.1-1944 of the Act, which states:

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

Keith referenced a re-measurement of recently built decks and subsequent changes in cost allocated per unit. In some cases, owners were due a refund and in others owners owed additional money to the association. Keith believes these funds were not handled in a "fiduciary capacity" since prior unit owners, and not current owners, received refunds.

Keith's fifth complaint alleged a violation of § 55.1-1945(A) of the Act, which states:

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

Keith alleged the association failed to document financial matters and there was no evidence of approvals of assessments and refunds. Keith also asked whether the association maintains the books and records according to GAAP (Generally Accepted Accounting Principles), noting that the association does not carry out an annual audit. Keith noted there was a lack of documented board meetings that are open to unit owners.

Keith's sixth complaint alleged a violation of § 55.1-1949(B) of the Act, which states, in part:

B. 1. Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive board meetings at which business of the unit owners' association is transacted or discussed. All meetings of the unit owners' association or the executive board, including any subcommittee or other committee of such association or board, shall be open to all unit owners of record. The executive board shall not use work sessions or other informal gatherings of the executive board to circumvent the open meeting requirements of this section. Minutes of the meetings of the executive board shall be recorded and shall be available as provided in § 55.1-1945.

2. Notice of the time, date, and place of each meeting of the executive board or of any subcommittee or other committee of the executive board, and of each meeting of a subcommittee or other committee of the unit owners' association, shall be published where it is reasonably calculated to be available to a majority of the unit owners.

Keith alleged the association failed to provide notice of meetings to unit owners and failed to permit owners to attend meetings other than annual meetings.

Keith's seventh complaint alleged violations of §§ 55.1-1949(B)(1) and 55.1-1949(C). Section 55.1-1949(C) of the Act states:

C. The executive board or any subcommittee or other committee of the executive board may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, probable or pending litigation, and matters involving violations of the condominium instruments or rules and regulations promulgated pursuant to such condominium instruments for which a unit owner, his family members, tenants, guests, or other invitees are responsible; or discuss and consider the personal liability of unit owners to the unit owners' association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion, or other action adopted, passed, or agreed to in executive session shall become effective unless the executive board or subcommittee or other committee of the executive board, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion, or other action, which shall have its substance reasonably identified in the open meeting. The requirements of this section do not require the disclosure of

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information in violation of law.

According to Keith, the association's board failed to hold official board meetings. Keith claimed the association president said there had been no official board meetings other than organizational meetings since June 2019. Keith alleged the board has informal communications by phone or email to conduct business and make decisions; and that these interactions were not documented and not communicated to owners. Keith questioned how the board could oversee management of the association, makes decisions, and perform annual reviews of insurance policies and reserve funding without meetings. Keith said no documentation of board decisions relative to her questions was made available to her upon request.

Keith's eighth complaint alleged that unit owners are not permitted time during meetings to comment on association matters, in violation of § 55.1-1949(D) of the Act, which states:

D. Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period during each meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

Keith's ninth complaint alleged a violation of § 55.1-1950(A) of the Act, which states:

A. The executive board shall establish a reasonable, effective, and free method, appropriate to the size and nature of the condominium, for unit owners to communicate among themselves and with the executive board regarding any matter concerning the unit owners' association.

According to Keith, the association failed to provide a reasonable or effective method of communication. Keith contends the association failed to post the names, phone numbers, and email addresses of unit owners, and believes the Facebook account being used does not meet statutory requirements since only 65% of the owners use it and the manager will shut down any communication that gets out of hand. Keith also stated she had not received an emergency number to report after hours issues and does not know who her neighbors are if she needed to communicate with them in an emergency. Keith stated she had not received requested information regarding the main water valve. Keith believes that communications are intentionally stifled, and there is no interactive group communication where all owners can hear the same message. Keith noted that only two board members respond to questions, and that an open position on the board should have been filled per the associ-

ation bylaws.

Keith's tenth and eleventh complaints related to insurance, specifically § 55.1-1963 of the Act. The tenth complaint asked several questions related to the association's insurance coverage, and expressed concern that there was insufficient information in the statement and insurance policy to comply with the association bylaws.

The eleventh complaint alleged a violation of § 55.1-1963(C) of the Act which states:

C. When any policy of insurance has been obtained by or on behalf of the unit owners' association, written notice of such obtainment and of any subsequent changes in or termination of the policy shall be promptly furnished to each unit owner by the officer required to send notices of meetings of the unit owners' association. Such notices shall be sent in accordance with the provisions of subsection A of § 55.1-1949.

According to Keith, there has been no evidence that the association communicated any information about the insurance policy to owners over the previous two years. Keith also asserted there is no evidence insurance coverage is discussed, reviewed, or approved by the board on an annual basis. Keith also could find no evidence that coverage had been increased to cover the new decks.

Keith's twelfth and thirteenth complaints pertained to reserves and the association annual budget. The twelfth complaint alleged violation of §§ 55.1-1965(B)(2) and 55.1-1965(B)(3) of the Act, which state:

- B. Except to the extent otherwise provided in the condominium instruments, the executive board shall:
2. Review the results of that study at least annually to determine if reserves are sufficient; and
 3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

Keith alleged the association has provided no evidence the board reviews the reserve study annually, or that there have been any board meetings that have included this review in the minutes since 2019. Keith also alleged there is no evidence any adjustments have been made to the study in the previous four years.

The thirteenth complaint alleged a violation of § 55.1-1965(C) of the Act, which states:

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1900;

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2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for that fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

Keith alleged the association violated the statute by failing to include the statutorily required information in the annual budget.

The association responded to Keith by writing that it had concluded, "...that our association is, or will be, in compliance with the guidelines for all 13 of the specific complaints you filed." The association further wrote that owners will be invited to future board meetings and will be provided an opportunity to speak. The association confirmed the association's insurance policy provided adequate coverage for catastrophic loss. The association asked its insurance agent to provide a summary of coverage, and would post that on the association website.

Regarding Keith's first complaint of an alleged violation of § 54.1-2354.4 of the Code of Virginia, the Ombudsman stated she could not find any documentation of requests for the association compliant procedure prior to June 2021 in the documents included with the Notice of Final Adverse Determination, and, accordingly, could not make a determination that the association failed to have a complaint procedure readily available. The Ombudsman also did not find that complaint procedure failed to have accurate contact information. The Ombudsman stated that the failure to include the complaint procedure in a resale certificate would be a violation of the Common Interest Community Ombudsman Regulations,

The Ombudsman suggested the association update the actual complaint procedure to include the current contact information for the manager, rather than including a separate resolution that could be overlooked.

Regarding Keith's second complaint of an alleged violation of § 55.1-1931, the Ombudsman noted that there is nothing in the statute that requires an association to adopt a process to ensure compliance. In addition, the statute applies to an owner's responsibility, not the association or board of directors. The Ombudsman further noted that neither conducting a structural review nor adequately funding reserves is required under this statute. A reserve study is required every

five years, and the association had completed one within the past five years.

The Ombudsman determined that Keith's third complaint regarding failure to provide notice of meetings was supported by the meeting minutes for two organizational meetings held immediately after two separate annual meetings. The association claimed that it had not held any other meetings than the two organizational meetings and that business, other than appointment of directors, was discussed in the meetings. A review of the meeting minutes showed, however, that in addition to appointing officers, the board approved minutes and the annual budget. The Ombudsman noted that these meetings should have been open to the membership and notice should have been provided. The Ombudsman reminded the association of its obligation to provide notice of any meeting, whether it is a work session, subcommittee meeting, committee meeting, board meeting, or unit owners meeting.

Regarding Keith's fourth complaint alleging a violation of § 55.1-1944, the Ombudsman determined that this was a misapplication of the statute, as the statute addresses funds deposited with a managing agent. The statute does not address the manner in which those funds will be disbursed, nor does it provide any guidance regarding the association's decision to assess monies for the deck project, or refund monies for the project.

The Ombudsman determined there was no evidence to support Keith's fifth complaint alleging a violation of § 55.1-1945(A), and the complaint did not include requests demonstrating Keith had requested financial documents and not been provided them. Part of Keith's complaint asked questions, rather than made allegations, so a determination could not be made. The Ombudsman noted that associations, unless mandated under their governing documents, are not required to perform audits, nor must they adhere to GAAP. Instead, the language in the statute requires associations follow generally accepted accounting practices, which is not a specific method of accounting, or is it defined.

Regarding Keith's sixth and seventh complaints, alleging violation of meeting notice and open meeting requirements, the Ombudsman stated that associations are not required to send out notice of board meetings unless the governing documents require it. Instead, associations must post notice of meetings. The association should make all meetings open to owners, and should provide appropriate notice depending on whether it is a board meeting or a unit owners meeting. The Ombudsman added that board member communication by phone or email is not a violation of common interest community law, and is often necessary to handle the sometimes pressing business of the association. However, such communication should not take the place of regular board meetings. Decisions made by phone or email may not be binding unless permitted under the governing documents; or an incorporated association has the authority to do so under the Nonstock Corporation Act.

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The Ombudsman determined there was no evidence to support Keith's eighth complaint alleging a violation of § 55.1-1949(D), and if no board meetings had been held in the past year or attended by owners, it would be difficult to prove. The Ombudsman noted that associations must provide an opportunity for owners to comment at board meetings as required under § 55.1-1949(D).

Regarding Keith's ninth complaint of an alleged violation of § 55.1-1950(A), the Ombudsman noted the statute does not state what percentage must actively use a method of communication; only that it must be free, reasonable, effective, and appropriate to the size and nature of the condominium. The Ombudsman stated that her office cannot determine what is reasonable or effective since those terms are not defined in the Code of Virginia, but the association's Facebook account appears to allow owners to communicate among themselves, and to communicate with the board. The Ombudsman noted there is nothing in the statute that requires the board to respond to such communications. The Ombudsman further noted that whether the association provides an emergency number for after-hours problems is not governed by common interest community law. As to the issue of publication of emails and phone numbers, the Ombudsman stated:

While the question regarding emails and phone numbers really does not pertain to this statute, I will note that in many associations, emails and phone numbers are not distributed due to their private nature. Associations do have to provide access to their association member list if requested in accordance with §55.1-1945, but under that statute, "Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association" can be withheld from examination or copying. Emails and phone numbers are often considered part of an individual owner's file.

The Ombudsman determined that the allegations related to Keith's tenth complaint were not violations of § 55.1-1963, and stated that while the law does require an association to provide notice when it obtains insurance or changes its policy, there was no evidence in the complaint that there were any changes in the policy that would require notification.

As to Keith's eleventh complaint, the Ombudsman indicated that it is not a specific requirement under the law for an association to review its insurance to make certain it has adequate coverage. Further, the Ombudsman stated the Act does not specify what information must be contained in an insurance policy, and so her office could not determine the sufficiency of the information in the policy.

Regarding Keith's twelfth complaint, the Ombudsman indicated it was difficult to determine if the association had re-

viewed its reserve study annually and made any adjustments it considered necessary based on that review. Though Keith believes the association failed to follow these requirements, the Ombudsman was not certain there is way to prove this. The Ombudsman suggested there should be some evidence of such a review, such as part of minutes from a board meeting or similar.

Regarding Keith's thirteenth complaint, the Ombudsman stated that the association appeared not to have included in its annual budget the information required by § 55.1-1965(C) – (i) the current estimated life, estimated remaining life, and estimated useful life of the capital components; (ii) the current amount of accumulated cash reserves, and the expected contribution to those reserves; (iii) a statement describing the procedures used for estimation and accumulation of the reserves; and (iv) a statement of the amount of reserves recommended in the study and the amount of current cash for the reserves.

The Ombudsman notified the association that it (i) needs to ensure it includes a copy of the association complaint procedure in any resale certificate it issues; (ii) must provide notice to owners of all meetings, whether board meetings or annual meetings; (iii) make certain it reviews the reserve study on an annual basis and adjusts as needed; and (iv) must follow provisions applicable to association budgets in § 55.1-1965 of the Code of Virginia.

File Number 2022-01767, Johnson / Ruxton Services, Inc.

Determination issued on March 16, 2022.

The Complainant (Johnson) alleged the association violated § 55.1-1835 of the Property Owners' Association (POA) Act when it allowed the association to be automatically terminated as a Virginia corporation for failure to file its 2019 State Corporation Commission (SCC) Annual Report.

The association responded to the complaint by stating Johnson had misinterpreted the POA Act, and noted that § 55.1-1835 applied to the Common Interest Community Board Annual Report, not the annual report required by the SCC. The association further responded that the POA Act does not require associations to be incorporated. The association also stated the association's corporate status was reinstated with no repercussions.

In her determination, the Ombudsman stated it appeared Johnson misunderstood the application of § 55.1-1835 of the POA Act. Section 55.1-1835 requires an association to file an annual report with the Common Interest Community Board. Filing an annual report with the SCC is entirely separate issue that is governed by the Virginia Nonstock Corporation Act, which is not common interest community law and does not fall under the authority of the Ombudsman's office. The Ombudsman confirmed the association was current in filing its annual report with the Common Interest Community Board. The Ombudsman determined the association was not in violation of § 55.1-1835 of the POA Act.



Trends in Fair Housing: Discrimination Based on Familial Status, Neighbor-to-Neighbor Disputes, and Your Association's Obligation to Protect Residents' Rights

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By **Lindsey Davis, ESQ. & Lauren Ritter, ESQ.**

Lindsey is an associate attorney with the law firm of Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. Her practice is devoted to the representation of community associations across Virginia, including general counseling as well as litigation services. She is an active member of WMCCAI's Education Committee.

Lauren is an associate attorney at Chadwick, Washington, Moriarty, Elmore & Bunn, P.C. She provides general counseling and representation, as well as litigation services, to community associations across Virginia. She is Co-Chair of the Public Outreach Committee and co-leads the annual Scholarship Program for high school seniors.

Fair housing laws exist primarily on two levels: state and federal. Under the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968), community associations are prohibited from engaging in discrimination against seven protected classes of people: race, color, national origin, religion, sex, familial status, and disability. State-level fair housing laws in Maryland, Virginia and DC expand upon these seven federally protected classes.¹

Discrimination Based on Familial Status

Picture this: It's maybe 2003, the sun is out, and you are at the community pool with the family. Life is good. The lifeguard blows the whistle, signaling break time. Kids hurry back to their seats, while adults enjoy "adult swim only", exclusive pool time. But this is simply a memory, and "adult swim only" is a thing of the past.

Fair housing laws prohibit discrimination in association policies based on familial status, which includes families with children under the age of 18. As a result, associations must be careful not to adopt overly restrictive rules regarding children's use of the common areas. Courts have held that association rules which broadly require adult supervision of children in all community

facilities are *prima facie* discriminatory. Justifying broad rules with general safety concerns is often a losing argument, as courts have held that rules must use the "least restrictive" means to achieve their goals.

Associations must articulate a legitimate, non-discriminatory reason for its policy to overcome a finding of *prima facie* discrimination. As such, a preference for "peace and quiet" during adult swim is not valid justification for denying pool access to children.² In contrast, rules requiring adult supervision for young children while swimming are valid due to legitimate safety concerns. With respect to other community facilities, courts have found that the presence of dangerous and heavy equipment may be a valid safety concern to prevent young children from using an association gym but denying access to a laundry room or business center does not present the same safety concerns which would justify a "no kids" restriction.

Below are some best practices for community associations to follow when adopting new rules:

- **Inclusive Language.** Avoid singling out groups of residents or using the word "children." Focus on behavior and not a description of the group engaging in the behavior.
- **Least Restrictive Means.** Ensure that the rule is using the least restrictive means possible to achieve its goal. If there are specific safety hazards, tailor the rule to those concerns.
- **Transparency.** Explain the reasoning behind new policies and state the justification for them. This will help the community get behind the change with deeper understanding.
- **Confer with Legal.** If you are having trouble determining if a rule might violate fair housing laws, consider discussing the matter with association legal counsel.

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Discrimination in the fair housing context can include any actions taken by the association or, in some contexts, actions permitted by the association that adversely affect a resident's right to use and enjoy their housing facilities.

¹ Virginia Fair Housing Law (Virginia Code § 36-96.1 et seq.) also includes elderliness, source of funds, sexual orientation, gender identity, and military status. Maryland Fair Housing Law (State Government Article, §20-702, Annotated Code of Maryland) also includes marital status, sexual orientation, source of income, and gender identity; there are additional protected classes in Maryland that are specific to local jurisdictions. DC Fair Housing Law (D.C. Human Rights Act of 1977) also protects age, marital status, personal appearance, sexual orientation, gender identity, and political affiliation, as well as additional traits that are applicable to some areas, including matriculation, family responsibilities, genetic information, source of income, place of residence or business, status as victim of intrafamily offense, credit information, and status as victim or family member of victim of domestic violence, a sexual offense or stalking.

² See *Landesman v. Keys Condominium Owners Ass'n*, 2004 WL 2370638.

Trends in Fair Housing (Continued)

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“Neighbor-to-Neighbor” Disputes and Association Obligations to Protect Resident Rights

It is not uncommon for disputes to arise between neighbors—it can be something as mild as disagreement over a fence location or something as serious as a claim of purposeful class-based harassment. As a general rule, associations should avoid becoming involved in most neighbor-to-neighbor disputes. However, some situations may transform from a simple dispute into a claim of creation of a hostile housing environment.

A hostile housing environment occurs when an association subjects a resident to (or allows a resident to be subjected to) pervasive or severe unwelcome conduct that is grounded in a legally protected characteristic, with that conduct interfering with the resident’s use and enjoyment of their housing. Associations are required to intervene in hostile housing environments to protect residents’ civil rights and prevent discrimination against protected classes.

In 2016, the U.S. Department of Housing and Urban Development (HUD) amended its federal housing regulations to establish potential association liability arising out of certain neighbor-to-neighbor disputes. Now, under 24 C.F.R § 100.7(iii), an association is directly [liable] for “[f]ailing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it.”

When considering neighbor-to-neighbor disputes that include claims of harassment by one resident against another, an association board should carefully analyze and investigate the specific facts of the situation. Per HUD regulations, an association can be held liable if:

1. the harassment is based on a protected class status;
2. the association knew or should have known of the harassment;
3. the association had the power to correct and end the harassment; and
4. the association failed to take prompt action to correct and/or end the conduct.

If a board is ever concerned that a neighbor-to-neighbor dispute includes harassment based on protected class, it should consult with their legal counsel. Violations of fair housing laws and HUD regulations can lead to high penalties for associations. These situations should be treated with an abundance of caution.

Familial status discrimination and “hostile housing environment” claims are among the most pervasive issues arising in fair housing law during the last few years. These issues are often poorly understood, with residents usually believing that every form of “harassment” by a disagreeable neighbor rises to the level of a discrimination claim. While this is not often the case, it is critical that boards and managers understand the playing field, so they can get the right advice when they need it.

Recent Cease and Desist Actions

At its meetings held on September 23, 2021, and March 3, 2022, the Board imposed a temporary cease and desist order against the declarant for the following condominium registration due to non-compliance with the registration requirements in the Virginia Condominium Act. Under the terms of the order, declarant must cease and desist from sales of condominium units until it comes into compliance.
You may refer to the Board’s website for the most up-to-date information regarding active cease and desist orders.

Summerhill at Stony Point Condominium
(Registration No. 0517860169)
Richmond, VA
Declarant: RHS Management Corporation
Order adopted on September 23, 2021
(Compliance Obtained on December 14, 2021)

<p>The Tiber, a Luxury Condominium (Registration No. 0517120118) Richmond, VA Declarant: Libbie Guthrie Company, LLC Order adopted on September 23, 2021 (Compliance Obtained on October 4, 2021)</p>	<p>The Atrium at Metrowest Condominium (Registration No. 0517131188) Fairfax, VA Declarant: Pulte Home Company, LLC Order adopted on September 23, 2021 (Compliance Obtained on October 1, 2021)</p>
<p>Saunders Station, a Condominium (Registration No. 0517131057) Henrico, VA Declarant: Stanley Martin Homes, LLC Order adopted on September 23, 2021 (Compliance Obtained on October 7, 2021)</p>	<p>Colley Condominiums, a Condominium (Registration No. 0517080185) Norfolk, VA Declarant: Colley Condominiums, LLC Order adopted on March 3, 2022</p>
<p>One Monument Avenue, a Condominium (Registration No. 0517131135) Richmond, VA Declarant: RICd1, LLC Order adopted on March 3, 2022</p>	<p>The Loggias at Cape Charles Condominium (Registration No. 0517131229) Cape Charles, VA Declarant: 209 Mason LLC Order adopted on March 3, 2022</p>

Board and Meeting Information

CIC Board Membership

The CIC Board is composed of 11 members appointed by the Governor. Board members' terms are four years and a member can serve up to two terms. The *Code of Virginia* stipulates that the Board's membership is composed of:

- Three (3) representatives of common interest community managers
- One (1) attorney whose practice includes representing associations
- One (1) CPA who provides attest services to associations
- One (1) Time-Share Industry Representative
- Two (2) Representatives of Developers of CICs
- One (1) Citizen Serving/Served on Self-Managed Association Governing Board
- Two (2) Citizens Residing in Common Interest Communities

The Director of the Department of Professional and Occupational Regulation is designated by statute as the Secretary of the CIC Board, but is not a voting member of the Board.

Drew R. Mulhare (Community Manager) First four-year term ends June 30, 2022 Board Chair	David S. Mercer (Attorney) First four-year term ends June 30, 2023 Board Vice-Chair	Maureen A. Baker (Community Manager) First four-year term ends June 30, 2024
Matt Durham (Citizen Residing in a CIC) First four-year term ends June 30, 2025	Jim Foley (Community Manager) First four-year term ends June 30, 2023	Eileen M. Greenberg (Citizen Serving on an Association Board) Unexpired term ends June 30, 2022
Amanda Jonas (Developer) First four-year term ends June 30, 2022	Lori Overholt (Time-Share Industry) Second four-year term ends June 30, 2024	Anne M. Sheehan (CPA) First four-year term ends June 30, 2025
Scott E. Sterling (Developer) Second four-year term ends June 30, 2023	Katherine E. (Katie) Waddell (Citizen Residing in a CIC) Second four-year term ends June 30, 2025	Demetrios "Mitch" Melis Director, DPOR Board Secretary (Ex officio/Non-voting)

CIC Board Staff

- | | |
|---|---|
| <ul style="list-style-type: none"> ◆ Trisha L. Lindsey
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CIC Board and Regulatory Administrator
Joseph.Haughwout@dpor.virginia.gov | <ul style="list-style-type: none"> ◆ Raven Custer
Administrative Coordinator ◆ Lee Bryant
Program Administration Specialist ◆ Ben Tyree
Licensing Specialist |
|---|---|

2022 Meeting Dates

March 3, 2022 @ 9:30 a.m.

June 9, 2022 @ 9:30 a.m.

September 22, 2022 @ 9:30 a.m.

December 8, 2022 @ 9:30 a.m.

Note: As needed the Board will convene meetings of its Training Program Review Committee. These meetings typically take place on the afternoon preceding a scheduled board meeting date.



Contact Us

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