

## **Common Interest Community Board**

### **Guidance Document 5**

## **Regarding the Applicability of the Common Interest Community Ombudsman Regulations on Solely Commercial Condominiums**

**Adopted September 20, 2012**

### **I. Issue**

The Office of the Common Interest Community (CIC) Ombudsman has received numerous inquiries from Virginia attorneys as to whether the Common Interest Community Ombudsman Regulations apply to solely commercial condominiums.

### **II. Applicable Laws**

#### **§ 55-528 Definitions**

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

"Common interest community" means real estate located within the Commonwealth subject to a declaration which contains lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of his ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

#### **§ 55-529. Common Interest Community Management Information Fund**

There is hereby created the Common Interest Community Management Information Fund to be used in the discretion of the Board to promote the improvement and more efficient operation of common interest communities through research and education. The Fund shall consist of money paid into it pursuant to §§ [54.1-2349](#), [55-79.93:1](#), [55-504.1](#), and [55-516.1](#). The Fund shall be established on the books of the Comptroller, and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to § [55-530.1](#). Interest earned on the Fund shall be credited to the Fund.

#### **§ 55-530 Powers of the Board; Common interest community ombudsman, final adverse decisions**

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

F. A complainant may give notice to the Board of any final adverse decision in accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the Director and paid directly into the state treasury and credited to the Common Interest Community Management Information Fund, § 55-530.1. The Board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the member. The Director shall provide a copy of the written notice to the association that made the final adverse decision.

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

### **§ 55-530.1 Common Interest Community Management Recovery Fund**

A. There is hereby created the Common Interest Community Management Recovery Fund (the Fund) to be used in the discretion of the Board to protect the interests of associations.

B. Each common interest community manager, at the time of initial application for licensure, and each association filing its first annual report after the effective date hereof shall be assessed \$25, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment or annual filing fee and transferred to the Fund by the Director within 30 days.

## **§ 55-2351 - General powers and duties of Board concerning associations**

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

B. If it appears that any governing board has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action or suit involving a violation by a declarant or a developer of a time-share project of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders.

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

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

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

G. Without limiting the remedies that may be obtained under this chapter, the Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than \$1,000 per violation against any governing board that violates any provision of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders unless the governing board has been given notice and an opportunity to be heard pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

### **§ 55-79.41 Definitions**

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

### **§ 55-79.87 Exemptions from certain provisions of article.**

B. In cases of dispositions in a condominium where all units are restricted to nonresidential use, the provisions of §§ [55-79.88](#) through [55-79.95](#) shall not apply, unless the method of offer or disposition is adopted for the purpose of evasion of this chapter.

- 55-79.88 Limitations on dispositions of units
- 55-79.89 Application for registration; fee
- 55-79.90 Public offering statement; condominium securities
- 55-79.91 Inquiry and examination
- 55-79.92 Notice of filing and registration
- 55-79.93 Annual report by declarant
- 55-79.93:1 Annual report by unit owners' association
- 55-79.93:2 Termination of registration.
- 55-79.94 Conversion condominiums; special provisions
- 55-79.95 Escrow of deposits

### **Considerations**

1. § 55-530(E) requires each “association” to “establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens.” The term “association” under §55-528 “includes condominium, cooperative, or property owners’ associations.” Nowhere does the law state that associations are to be construed in these statutes as being solely common interest communities.
2. New commercial condominiums are not required to register with the Board and commercial condominium associations do not currently submit annual reports to the Board nor do they submit any form of payment to the Commonwealth in support of the Common Interest Community Management Information Fund. All common interest communities are required to submit annual reports and annual payments that are applied to the Common Interest Community Management Information Fund.
3. While the definition of association appears to include commercial condominiums, or at least does not exclude them, the definition of *common interest community* sets forth the premise that a “person, by virtue of his ownership of a lot, is a *member* of an association...” The responsibility of the Board, under § 55-530(E) is to “establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the *members* of the association and other citizens.”
4. If commercial condominiums draft and adopt a complaint process, doing so would be futile as there is no jurisdiction or enforcement authority for commercial condominiums since they do not fall under the definition of a common interest community.
5. The CIC Ombudsman Regulations pertain only to violations of common interest community laws or regulations. The Director or his designee, under § 55-530(G), “may provide the complainant and association with information if the final adverse decision may be in conflict with laws or regulations governing common interest communities...”
6. The Board is responsible for establishing the regulations that require complaint procedures within associations. The Board has no jurisdiction over any association except a common interest community association, in whatever form it may take – Cooperative, Condominium, Property Owners’.
7. The Board has no authority to enforce the requirement that an association other than a common interest community association have a complaint procedure, since its only authority is over common interest communities.

8. Based on the jurisdiction of the Board, the CIC Ombudsman, and the Board staff, notices of the new regulations and mandatory complaint procedure were sent only to those common interest communities currently registered with the Board.

### **III. Board Policy**

The Board determined that the definition of association, as set forth in §55-528 is not intended to include commercial condominiums, the Board does not have jurisdiction over commercial condominiums, and there will be no action taken by the Board if a commercial condominium does not implement and adopt a complaint process under the CIC Ombudsman Regulations. Based on the language of the law, it does not appear that the Board can unequivocally state that commercial condominiums are not required to adopt complaint procedures, but the Board can address the jurisdictional aspect of this issue and its lack of authority to take action if a commercial condominium does not adopt a complaint process.