

# Common Interests



*The Newsletter of the Virginia Common Interest Community Board*

## ***An Update from the Board...***

*Greetings!* This is the Winter 2023 edition of *Common Interests*, the newsletter for the Common Interest Community Board. This issue is full of updates on the Board’s recent actions and ongoing activities over the course of 2022 and into 2023.

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As of this writing, the 2023 Session of the Virginia General Assembly is in progress. The Board is monitoring several bills that affect common interest communities. (See Page #3 for additional details.)

This past year has been busy, and one of continuing change for many, and the Board’s programs are no exception. On November 4, 2022, the Governor’s office announced the appointment of two new members to the Board. Thomas A. Mazzei of Fairfax County was appointed to one of the community manager seats on the Board. Mr. Mazzei is the CEO of Cardinal Management Group, Inc., a common interest community management firm. Margaret “Meg” Tunstall of Henrico was appointed to one of the developer seats on the Board. Ms. Tunstall is the Director of Operations and Systems for HHHunt Communities. The Board also saw the departure of Board members Amanda Jonas and Board Chair Drew Mulhare, whose terms had expired. At its December 2022 meeting, the Board elected Matt Durham by acclamation to succeed Mr. Mulhare as Board Chair. (See Page #2 for more on the changes in the Board’s membership.)

As the result of legislation passed during the 2022 General Assembly session, the Board has been involved with two legislative studies. Senate Bill 740 charged DPOR with establishing a workgroup “...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.” Although this workgroup is a departmental workgroup, and not a workgroup or committee of the Board, staff for the Board have played a critical role in forming the workgroup and providing assistance. The membership of the workgroup consists of a wide variety of stakeholders to examine several different issues. (See Page #10 for more on SB 740 and the Workgroup.)

Senate Bill 693 directed the Board to “...review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision...” to the Common Interest Community Ombudsman. This past summer, a committee established by the Board conducted the review. This review was recently completed, and a report was published this past fall. (See Page #8 for more on SB 693 and the report.)

**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.

At its June 2022 meeting, the Board considered and approved the first claim ever made to the Common Interest Community Management Recovery Fund. The claim resulted from a receivership case involving a licensed common interest community management company in which multiple associations suffered losses of their funds. (See Page #4 for more on the receivership and recovery claim.)

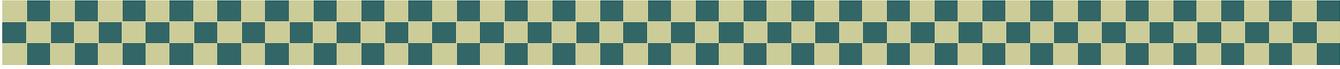
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At its December 2022 meeting, the Board undertook an action to update the maximum allowable fees for the preparation of property owners' association disclosure packets in professionally-managed property owners' associations and condominium resale certificates to adjust these fees for inflation as required by law. These updated fees became effective January 12, 2023. (See Page #6 for more on the updated fees.)

Finally, this update concludes with bittersweet news regarding a change in the Board's staff. Ben Tyree, who has served as a staff licensing specialist since 2017, was recently promoted to the position of CIC Administrative Support Specialist in the Office of the Common Interest Community Ombudsman. We thank Ben for his many years of dedicated service as a member of Board staff, and wish him the best in his new role.

We wish you a safe and enjoyable winter.



## Governor Youngkin Appoints New CIC Board Members

In the fall of 2022, Governor Glenn Youngkin appointed two new members to the Common Interest Community Board.

On November 4, 2022, the Governor's office announced the appointments of Thomas A. Mazzei of Fairfax County and Margaret "Meg" Tunstall of Henrico to the Board.

Mr. Mazzei was appointed to one of the common interest community manager seats on the Board to replace Drew Mulhare, whose term had expired. Mr. Mazzei is an owner and the CEO of Cardinal Management Group, Inc., a community management firm serving the DMV region and the Naples, Florida area. Mr. Mazzei and his brother founded Cardinal Management in 1987. The company provides full service community management, financial only management, and commercial management services. Mr. Mazzei is a graduate of Rollins College in Winter Park, Florida. He is credentialed as a PCAM and AMS, by the Community Associations Institute (CAI), and as a CMCA by Community Association Managers International Certification Board (CAMICB). He also holds a certificate from the CIC Board as a Principal or Supervisory Employee. In addition, Mr. Mazzei is licensed as a real estate broker by the Real Estate Board. Mr. Mazzei previously served as a member of the CIC Board from 2013 to 2017.

Ms. Tunstall was appointed to one of the developer seats on the Board to replace Amanda Jonas, whose term had expired. Ms. Tunstall is Director of Operations and Systems for HHHunt Communities, a Glen Allen, Virginia based developer of new home communities in Virginia and North Carolina. Ms. Tunstall is also General Manager for Genesis Community Management, LLC, an affiliated community management firm. Ms. Tunstall joined HHHunt in 2014 as a Community Coordinator for Genesis Community Management. Her current role includes oversight of operations for Genesis Community Management and systems for Land Development. Ms. Tunstall is a graduate of the College of William & Mary with a Bachelors of Business Administration. She holds graduate certifications in Change Management and Project Management. In 2019, Ms. Tunstall became certified as a PCAM by CAI. She also holds a certificate from the CIC Board as a Principal or Supervisory Employee.

Former Board members Drew Mulhare and Amanda Jonas had served on the Board since September 2018. Mr. Mulhare was first elected by his fellow Board members as Board chair in December 2019, and was unanimously re-elected by the Board's membership in each following officer election. During his tenure, Mr. Mulhare served on several committees, including the CIC Manager Regulatory Review Committee, the SB 693 Committee, and the Reserve Study Guidelines Committee, which he also chaired. During her tenure, Ms. Jonas also served on the CIC Manager Regulatory Review Committee. Both Mr. Mulhare and Ms. Jonas served as members of the regulatory review committee that developed the recent changes to the CIC Association Registration Regulations. At its December 8, 2022 meeting, the Board passed resolutions recognizing the service and contributions of Mr. Mulhare and Ms. Jonas.

## 2023 Legislative Update

On January 11, 2023, the Virginia General Assembly convened for its 2023 regular session. During this session, the Assembly is considering several bills affecting common interest communities. The list below includes only those bills that directly impact the CIC Board. There may be other legislation affecting common interest communities that are not on this list. The regular session is scheduled to conclude on February 25, 2023.

(Note: 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 2098 - Common interest communities; authority of association to suspend right to use certain facilities.**

**Summary:** Authorizes the board of directors of an association organized pursuant to the Property Owners' Association Act and the unit owners' association organized pursuant to the Virginia Condominium Act to suspend a member's or unit owner's, respectively, access to certain facilities for any violation of the declaration or rules and regulations for which the member or unit owner, or his family members, tenants, guests, or other invitees, is responsible. Current law allows the board of directors or unit owners' association to suspend such access only for nonpayment of assessments that are more than 60 days past due.

### Associations/Sales Transactions/Disclosures

#### **HB 2235/SB 1222 Resale Disclosure Act; established.**

**Summary:** Establishes the Resale Disclosure Act, which sets out disclosure requirements and authorized fees relating to contracts for the resale of property located within common interest communities and provides for the issuance of a standardized resale certificate. The bill repeals the existing disclosure requirements and authorized fees relating to association disclosure packets under the Property Owners' Association Act and resale certificates under the Virginia Condominium Act. The bill requires seller to obtain a resale certificate and provide the certificate to purchaser.

### CIC Managers

#### **HB 1519 - Common interest communities; professionally managed associations.**

**Summary:** Provides with respect to the Property Owners' Association Act and the Virginia Condominium Act that a management contract that contains an automatic renewal provision may be terminated by the association or unit owners' association, as the case may be, or the common interest community manager of such association at any time without cause upon not less than 60 days' written notice.

### Common Interest Community Board/CIC Ombudsman

#### **HB 1627/SB 1042 - Common Interest Community Board; enforcement power over continuing violations.**

**Summary:** Allows the Office of the Common Interest Community Ombudsman, upon receiving any notice of a final adverse decision issued by a common interest community association, to either (i) refer such final adverse decision to the Common Interest Community Board for further review of whether such decision is in conflict with relevant laws or Board regulations or (ii) make a determination of whether such final adverse decision conflicts with relevant laws or Board regulations. If the Office determines that such final adverse decision conflicts with relevant laws or Board regulations, the bill requires the Office to promptly notify the governing board, and if applicable the common interest community manager, of the association of such determination. If the Common Interest Community Ombudsman receives a subsequent notice of final adverse decision for the same violation within one year of such determination, the Office shall refer the matter to the Board. The bill also requires the Office to maintain data on referrals made to the Board.

Finally, the bill provides that if, within one year of issuing a determination that an adverse decision issued by a common interest community association is in conflict with relevant laws or Board regulations, the Director of the Department of Professional and Occupational Regulation receives a subsequent notice of final adverse decision for the same violation, the Director must refer the repeat violation to the Board.

#### **HB 1955/SB 969 - Virginia Real Estate Time-Share Act; alternative purchases.**

**Summary:** Removes the requirement under the Virginia Real Estate Time-Share Act that a time-share instrument executed by a time-share estate project developer state whether such developer reserves the right to add to or delete any alternative purchase and requires that the public offering statement distributed to each prospective purchaser of a time-share disclose whether the developer will offer any alternative purchase.



## Board Approves First Ever Recovery Fund Claim

At its June 2022 meeting, the Board approved its first ever claim under the Common Interest Community Management Recovery Fund (“the Fund”).

The Board reviewed a claim filed by John T. Farnum, as court-appointed receiver for Lighthouse Properties of Virginia, Inc. (“Lighthouse”). On July 26, 2021, Mr. Farnum was appointed by the Circuit Court for the City of Lynchburg to “...protect and conserve the financial accounts and assets of [Lighthouse] and examine the financial records of Lighthouse...”

The receivership stemmed from complaints regarding defalcation of funds for several associations that Lighthouse held in a fiduciary capacity. The Board, along with DPOR and the Real Estate Board, requested the intervention of the court and appointment of the receiver. According to Mr. Farnum’s final receiver’s report filed with the Court on March 31, 2022, the loss of funds for the associations exceeded \$336,000. There were no funds held by Lighthouse, and no assets to distribute to the associations. The Court approved the receiver’s final report on April 5, 2022; and separately awarded the receiver’s costs, fees, and expenses.

On May 16, 2022, the Board’s office received a verified claim from Mr. Farnum seeking a total of \$365,942.46. The claim amount included \$336,157.31 to restore lost association funds, and \$29,785.15 for fees, costs, and expenses awarded to the receiver.

On June 9, 2022, the Board considered the verified claim. The amount of the verified claim exceeded the funds available in the Fund. The Board ordered approval for payment in the amount of \$239,446.76. As a consequence of the payment of the claim, the Board imposed revocation of Lighthouse’s common interest community manager license. (*Note: Lighthouse’s license had previously been revoked in May 2021 as a result of the disciplinary action taken by the Real Estate Board related to the matter.*)

The Fund was originally established in 2008 as part of the legislation that created the Common Interest Community Board.

The Fund was designed to provide a means to recover funds “...in those cases in which there are not sufficient funds to pay an award of reasonable fees,

costs, and expenses to [a] receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager...”

Under the law, only a court-appointed receiver for a common interest community manager in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver is eligible to make a claim against the Fund.

The Board’s order in File Number 2022-02394 may be found on the DPOR website:

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

## Board Approves New CIC Law and Regulation Training Program

At its December 2022 meeting, the Board approved an application from Whiteford Taylor Preston LLP (WTP) for approval of its common interest community (CIC) law and regulation training program. WTP applied to the Board to receive approval for its training program named “Virginia Common Interest Community Law and Regulation Updates.” WTP proposed to conduct the training program in classroom and in webinar settings.

An individual who holds a principal or supervisory employee certificate issued by the Board is required to complete a minimum of two hours of Virginia CIC law and regulation training in order to renew the certificate every two years. Virginia CIC law and regulation training must encompass updates to Virginia laws and regulations directly related to common interest communities. Only training programs approved by the Board may be accepted for renewal of a certificate.

Prior to its consideration by the Board, the application was reviewed and recommended for approval by the Board’s Training Program Review Committee. The application from WTP is the first training program application to be considered by the Board since 2015. With the addition of the WTP training program, the Board currently has a total of 19 approved training programs, provided by 10 training providers.

Additional information regarding this training program, as well as the Board’s other approved training programs, may be found on the Board’s website:

<https://www.dpor.virginia.gov/sites/default/files/boards/CIC/CICTrainingPrograms.pdf>.

## Regulatory Actions Update

### 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.

#### Common Interest Community Ombudsman Regulations - General Review (NOIRA Stage)

At its December 8, 2022 meeting, the Board initiated a general review of the Common Interest Community Ombudsman Regulations by voting to authorize the filing of a Notice of Intended Regulatory Action (NOIRA), and the formation of a regulatory review committee. Staff, in coordination with the Board's Chairman, is undertaking the process to form the regulatory review committee and schedule meeting dates. Staff is also developing the NOIRA, which is anticipated to be filed subsequent to the formation of the review committee.

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.**



## 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](mailto:CIC@dpor.virginia.gov).



## Update to Maximum Allowable Fees for POA Disclosure Packets and Condominium Resale Certificates

Virginia law requires that when selling a lot in a property owners' association (POA), the owner must provide a potential purchaser with certain legally required information regarding the home, common areas, and the association. The Property Owners' Association Act (POA Act) calls the legally required information a disclosure packet. The packet must be requested by the seller, prepared by the POA, and delivered to the potential purchaser. The Virginia Condominium Act contains a similar requirement in that an owner reselling a condominium unit is to provide a potential purchaser with a condominium resale certificate.

Compiling the required documents involves time, effort, and resources, so the law allows the preparer to assess reasonable fees, but sets a maximum amount for such fees.

To account for inflation, the law automatically adjusts these maximum fees applicable to condominium resale certificates and to disclosure packets for POAs which are professionally managed (either by a common interest community manager or an association's employees) every five years based on the Consumer Price Index (CPI). These maximum fees were initially set by law in 2008, and were previously adjusted in 2013 and 2018. Effective January 12, 2023, these maximum fees have again been adjusted to account for inflation.

POAs that are not professionally managed (i.e. managed by volunteer member-owners) are subject to different fee caps that are not adjusted for inflation, but under certain conditions may charge the CPI-adjusted fees.

The Board recently published updated bulletins to its website. These bulletins provide additional details on the current maximum fees and other requirements that must be met for associations to charge and collect these fees.

The updated bulletins may be found on the Board's website:

[https://www.dpor.virginia.gov/CIC-Board/Disclosure\\_Notices/](https://www.dpor.virginia.gov/CIC-Board/Disclosure_Notices/).

### Maximum Allowable Fees for Preparers of Condominium Resale Certificates or Disclosure Packets for Professionally-Managed POAs

Fee Type	Previous Fees (2018)	Current Fees (2023)
Inspection of lot/unit	\$117.37	<b>\$141.31</b>
Preparation/delivery of packet/certificate (paper)	\$176.05	<b>\$211.96</b>
Preparation/delivery of packet/certificate (electronic)	\$146.71	<b>\$176.64</b>
Expedited inspection additional fee	\$58.69	<b>\$70.66</b>
Additional copy fee	\$29.34	<b>\$35.33</b>
Third-party commercial delivery (overnight or hand-delivery)	N/A	N/A
Post-closing fee	\$58.69	<b>\$70.66</b>
Pre-settlement updates	\$58.69	<b>\$70.66</b>
Additional inspection fee	\$117.37	<b>\$141.31</b>

### Maximum Allowable Fees for Preparers of Disclosure Packets in Non-professionally Managed POAs

Fee Type	Maximum Fee
Preparation of disclosure packet	<b>Actual costs not to exceed \$.10 per page of copying costs, or a total of \$100 for all costs.</b>
Expedited inspection additional fee	<b>\$50</b>
Additional copy fee	<b>\$25</b>
Third-party commercial delivery (overnight or hand-delivery)	N/A
Packet update/Financial	<b>\$50</b>
Additional inspection	<b>\$50</b>

## Recent Cease and Desist Actions

At its meetings held on June 9, 2022, and December 8, 2022, the Board imposed a temporary cease and desist order against the declarant for the following condominium registrations 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.**

<p><b>The Summit at Birchwood Condominium</b>                  (Registration No. 0517131124)                  Brambleton, VA                  Declarant: The Summit at Birchwood Condominium Development, LLC                  Order adopted on June 9, 2022                  (Compliance Obtained on June 16, 2022)</p>	<p><b>River Creek Commons, a Condominium</b>                  (Registration No. 0517131240)                  Suffolk, VA                  Declarant: River Creek, LLC                  Order adopted on June 9, 2022</p>
<p><b>Alexandria Flats Condominium</b>                  (Registration No. 0517131201)                  Alexandria, VA                  Declarant: Alexandria Flats, LLC                  Order adopted on June 9, 2022</p>	<p><b>Fan Gallery Condominiums</b>                  (Registration No. 0517070200)                  Richmond, VA                  Declarant: Sixteen Fifty Seven Broad, LLC                  Order adopted on June 9, 2022</p>
<p><b>1220 Main Street Condominium</b>                  (Registration No. 0517131231)                  Lynchburg, VA                  Declarant: Rise Up Properties, LLC                  Order adopted on December 8, 2022                  (Compliance Obtained on January 3, 2023)</p>	<p><b>Briarwood Condominium</b>                  (Registration No. 0517090122)                  Dumfries, VA                  Declarant: Pegasus Development, LLC                  Order adopted on December 8, 2022</p>



## Recent Board Disciplinary Case Decisions

**File Number 2022-00949; Purple Sage Cluster, Inc.**

Consent Order adopted by the Board on September 22, 2022.

The property owners' association was charged with two violations of the Common Interest Community Ombudsman Regulations related to its handling of a complaint filed through the association complaint process. The association was charged with failing to provide the complainant with a written acknowledgment of receipt of the complaint within seven (7) days as required by 18 VAC 48-70-50.4. The association was also charged with failing to provide notice of the hearing of the complaint within a reasonable time prior to consideration as required by 18 VAC 48-70-50.7.

The association admitted to violation of the regulations, and agreed to pay monetary penalties of \$700 and board costs in the amount of \$150.

The terms of the order have been met.

**Those interested in receiving an appointment to the Common Interest Community Board, or any other DPOR regulatory board, may submit an application to the Secretary of the Commonwealth at the following website:**  
<https://www.commonwealth.virginia.gov/va-government/boards-and-commissions/>



## Common Interest Community Ombudsman's 2021-2022 Annual Report

In November 2022, the Common Interest Community Ombudsman issued the office's 2021-2022 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 the office, and conducting public education and outreach to constituent groups.

In the report, the Ombudsman noted that during the past year, the office responded to 1, 485 telephone calls and 2,318 emails. There was a significant decrease (23%) in the number of emails received by the Ombudsman; however, the previous year saw the single largest number of emails received by the office in its history. The number of phone calls was a 9% increase over the previous year. The Ombudsman noted that while in the previous year many questions and concerns were related to the holding of virtual meetings, this year the office heard from more owners who did not want to participate in virtual meetings, but instead wanted to meet in person. This creates a quandary since the law allows for virtual meetings, but there is no really viable option for someone who does not wish to participate virtually. The Ombudsman noted that, overall, "...virtual meetings appear to be a boon to associations and allow for greater participation by owners..."

In the last year, the Ombudsman's office received a total of 173 complaints. The majority of complaints received (69%) related to property owners' associations, and 29% related to condominium unit owners' associations. The Ombudsman reported that the greatest number of complaints related to associations failing to respond to complaints submit-

ted through the association complaint procedure, followed by complaints that associations failed to adopt a complaint procedure. Many other complaints related to access to books and records and lack of notice for meetings. Other subjects of complaint included reserves/budgets, and disclosure packets.

The Ombudsman received 36 NFADs 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 access to association books and records, followed by notice of meetings, method of communication, and disclosures. New NFAD topics included failure to file an annual report with the CIC Board, the right to serve on the board, and the use of technology.

The Ombudsman provided only a few presentations this past year. The Ombudsman noted there seemed to be fewer speaking opportunities in general, which was likely a lingering effect of the pandemic and the decrease in in-person gatherings. The Ombudsman reported that because of the decrease in speaking opportunities, the office is moving forward with more web-based outreach. In addition, the Ombudsman participated as a non-voting member of the committee that reviewed Senate Bill 693, and is currently a member of the Senate Bill 740 Workgroup.

For additional details, the Ombudsman's 2021-2022 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/>.

### CIC Board Conducts Review on Allowing Audio and Video Recordings to be Submitted to CIC Ombudsman (SB 693 Review)

As the result of legislation passed during the 2022 General Assembly Session, the CIC Board formed a committee to consider whether audio and video recordings could be submitted to the CIC Ombudsman (CICO) as part of a Notice of Final Adverse Decision (NFAD).

SB 693 required the Board to "...review the feasibility of allowing audio and video recordings to be submitted with a notice of final adverse decision as a record pertinent to the decision in accordance with § 54.1-2354.4 of the Code of

Virginia."

The legislation further required the Board to:

- ◆ Identify pertinent statutory and regulatory amendments necessary to allow for the submission of recordings;
- ◆ Identify any impediments to the submission of recordings, including information technology limitations and compliance with the provisions of the Virginia Freedom of Information Act (FOIA) and other public records laws;
- ◆ Consider whether allowing the submission of recordings would assist the CICO in the performance of duties with respect to

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## SB 693 Review (continued)

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any NFAD;

- ◆ Solicit and consider public comments; and
- ◆ 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.

At its June 2022 meeting, the Board authorized the formation of a committee to conduct the review. In coordination with the Board’s Chair, staff formed the review committee. The committee was comprised of common interest community attorneys, citizens residing in common interest communities, Board members, and the CIC Ombudsman (see adjacent table for the list of members).

Staff researched applicable laws and regulations, including those related to the CIC association complaint process and the Virginia FOIA, gathered information regarding DPOR’s technical and administrative capacity to receive audio and video recordings, collected and analyzed information regarding notices of final adverse decision filed with the CICO, reviewed procedures in other jurisdictions that have a common interest community ombudsman office or similar office, and compiled public comments received.

DPOR and the Board sought public comment by posting a General Notice on the Virginia Regulatory Town Hall on July 21, 2022. The Board accepted comments from July 26, 2022, through August 9, 2022. The Board received comments from only two individuals. The Board conducted a public hearing on August 9, 2022. No comments were received.

On August 9, 2022, following the public hearing, the Committee met to review resources and information gathered by staff and discuss the issues surrounding SB 693. The CICO provided the Committee with an overview of the association complaint process, including the requirements for filing a notice of final adverse decision. Committee members considered the research findings, and offered their own expertise and perspectives on the subject.

On September 22, 2022, the Committee met to review a draft report prepared by staff that included the Committee’s findings and conclusion. After review and revision, the Committee adopted a report for consideration by the Board.

The Committee concluded that § 54.1-2354.4 of the Code of Virginia would likely need amendment to clarify that audio and video recordings can be submitted as records pertinent to a decision. The Common Interest Community Ombudsman Regulations (18VAC48-70) would require significant amendment to provide the public with the requirements and processes for submitting audio and video recordings with NFADs. CICs would be required to amend their internal documents and policies in order to comply with these changes. Implementation of these changes by CICs are impediments that may not make such changes feasible.

DPOR has the technical capacity to receive and archive digital audio

### SB 693 Committee Members

Name	Role (Representation)
Lori Overholt (Chair)	CIC Board Member
Matt Durham	CIC Board Member (Citizen Residing in a CIC)
Paul Orlando	Former CIC Board Member (Resident in a CIC)
Sue Tarley	CIC Attorney
Jerry Wright	CIC Attorney
Heather Gillespie	CIC Ombudsman (non-voting member)
Drew Mulhare, (Ex-officio)	CIC Board Chair (CIC Manager)

and video recordings, but would need to establish clear guidelines prescribing acceptable file formats and procedures for submission of recordings. DPOR would need to provide appropriate training and resources for its public records management staff to perform redactions of recordings in order to timely and appropriately comply with the FOIA when requests for closed NFAD cases are received.

The CICO may be able to receive and review recordings, and DPOR’s public records management staff may be able to fulfill public records requests, without the need for additional staff. Additional staff would be required if there are a high number of NFADs that include recordings.

The committee also concluded that allowing for submission of audio and video recordings would be contrary to the role and purpose of the CICO and the association complaint process as designed by the General Assembly. Moreover, allowing for submission of audio and video recordings would not assist the CICO in performing the duties required by statute, and would likely be detrimental to the performing of these duties. The committee further concluded there was no substantial evidence for a change, and no identifiable public problem that allowing for submission of audio and video recordings would address. Moreover, the committee concluded that allowing for submission of recordings to the CICO may result in unintended negative impacts to CICs.

On September 22, 2022, the Board reviewed and considered the Committee’s findings and conclusion outlined in the report. The Board adopted the Committee’s findings and conclusion, and recommended against any legislative or regulatory changes to allow for the submission of audio and video recordings with an NFAD.

The report is available on the General Assembly’s Legislative Information System website:  
<https://rga.lis.virginia.gov/Published/2022/RD600>.

## DPOR Conducts Study Regarding Structural Integrity and Reserves for Capital Components in CICs (SB 740 Workgroup)

During the 2022 General Assembly Session, the legislature passed, and the Governor approved, SB 740. The measure required 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." The legislation came about as a result of the partial collapse of a condominium building in Surfside, Florida in June of 2021 that led to the deaths of nearly 100 individuals and left many others injured. In conducting the study, the Workgroup was to consider the following:

1. [T]he development of common interest communities, including initial budget reserve funding, the filing of "as built" plans and specifications with the locality and delivery of such plans to the association of such common interest community, along with other transition documents, and increasing requirements for the issuance of certificates of occupancy;
2. [G]overning documents;
3. [R]eserve study requirements, including requirements for the frequency of such studies, the qualification of persons conducting such studies, and disclosure of such studies to purchasers and existing owners;
4. [B]udget requirements;
5. [T]he authority of association boards to budget for reserves, expend funds for reserve projects, make special or additional assessments, and borrow funds to pay for projects;
6. [L]iability of associations and executive boards;
7. [I]nspections, including the authority of local governments to require inspections, funding for inspections, the scope, nature, and schedule of inspections, and qualifications of building inspectors;
8. [I]nsurance coverage, including the scope of coverage, availability of products, adequacy or need for new or alternate products, feasibility of insurance inspections, and cost;
9. [E]ducation of association board members and owners;
10. [J]udicial remedies, including an option to petition a court to authorize an assessment or alternative funding; and
11. [C]ommon interest community association man-

agement, including manager qualifications and self-management versus professional management.

The legislation required a diverse membership, including representatives from the CIC Board, local government, building officials, owners in CICs, CIC managers, developers, reserve specialists, insurance professionals, financial institutions, attorneys, the CIC Ombudsman, and others. The Workgroup is to report its findings and provide its recommendations, including any legislative recommendations, to the Chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology by April 1, 2023.

Although the Workgroup's subject is CICs, it is not a committee of the CIC Board. However, staff for the Board took the lead in forming the Workgroup and have provided a pivotal support role. Beginning in the spring of 2022 following the Governor's approval of SB 740, DPOR began forming the Workgroup. Given the number and diversity of its membership, the process for selecting members to the Workgroup took many weeks. DPOR selected Pia Trigiani, a CIC attorney and past Chair of the CIC Board to helm the Workgroup. Anne Sheehan, a CPA, was selected as the representative of the CIC Board on the Workgroup. (See Page #11 for a full list of the Workgroup's members.)

Because of the wide scope of the Workgroup's charge and its membership, DPOR contracted with the Center for Regional Analysis (CRA) at George Mason University to provide research and technical support. Additional support was provided by the Virginia Center for Housing Research at Virginia Tech, and the Dragas Center for Economic Analysis and Policy at Old Dominion University as part of CRA's team. CRA and its team have provided support by facilitating meetings of the Workgroup, including providing meeting space for most of the Workgroup's meetings and other logistical support; conducting a review of academic and professional literature on the issues identified in SB 740; conducting interviews of stakeholders and other key informants; conducting a survey of CICs; and preparing the Workgroup's report of findings and recommendations.

To date, the Workgroup has held four meetings at various locations around the Commonwealth.

The Workgroup held its first meeting at DPOR's offices in Henrico in August 2022. During the first meeting, the Workgroup received a presentation on the overview of the Workgroup's scope and CRA's role and responsibilities in facilitating the Workgroup. The Workgroup also received a presentation from Dawn Bauman, on behalf of Community Associations Institute (CAI), regarding CAI's response to the Florida condominium collapse and its public policy recommendations. Following these presenta-

*Continues on Page #11*

## SB 740 Workgroup (continued)

Continued from Page #10

### SB 740 Workgroup Members

Name	Role (Representation)
Walter Alcorn	Local Government
Jon Bach	CIC Manager
John "JB" Bailey	CIC Manager
Michelle Baldry	Reserve Specialist
Gary L. Beveridge	Insurance Professional
Jeffrey Brown	Local and State Building Official
Steven Y. Brumfield	Developer
Ron Clements	Local and State Building Official
Walter "Walt" Diercks	CIC Property Owner
Mark D. Dix	Property and Personal Injury Claims Attorney
Lee Frame	Local Government and Volunteer Community Leader
Heather Gillespie	CIC Ombudsman
Colin A. Horner	CIC Manager
Kimberly B. Kacani	Volunteer Community Leader
Erin Kormann	CIC Property Owner
Rafael A. Martinez	Financial Institution
Theresa Melson	Insurance Professional
Phoebe E. Neseth	Volunteer Community Leader
Edward J. O'Connell, III	Community Association Attorney
John Olivieri	Developer
Phoebe Rolen	CIC Property Owner
Anne Sheehan	Auditor and CIC Board Member
Chris Stone	Professional Engineer
Lucia Anna "Pia" Trigiani (Chair)	Community Association Attorney
Lynette Wuensch	Reserve Specialist

tions, the Workgroup divided into breakout groups to generate further discussion, including what outcomes the members would like to see, and issues that might pose challenges.

The Workgroup held its second meeting in Roanoke in October 2022. During the meeting, the Workgroup received presentations on (i) reserve studies; (ii) CIC governance; and (iii) characteristics of condominiums. Following the presentations, the Workgroup divided into breakout groups to discuss issues surrounding these topics. The Workgroup was also provided information regarding development of the survey.

The format of the Workgroup's third meeting in Arlington in November 2022 was similar to its October meeting. At this meeting, the Workgroup received presentations on structural integrity, liability for associations, insurance for CICs, and financing and borrowing for CICs. Following the presentations, the Workgroup divided into breakout groups to discuss issues surrounding these topics.

Prior to the Workgroup's fourth meeting, CRA conducted a survey of CICs registered with the CIC Board to obtain information regarding the characteristics of the association (e.g. numbers and types of units), their financial position (e.g. size of budget, reserves), and their conducting of reserve studies. The survey also sought input from the associations on issues of importance to them.

At the Workgroup's fourth meeting, held in Newport News, CRA and its team provided the Workgroup with the survey results. The Workgroup discussed the survey results. It also reviewed and considered potential recommendations that could be included in its final report.

The Workgroup's final meeting is scheduled for March 15, 2023 in Richmond. At that meeting, the Workgroup is expected to review and consider the final report and recommendations prepared by CRA and its team.

Information regarding the Workgroup's meetings, including meeting minutes, may be found at Virginia Regulatory Townhall (<https://townhall.virginia.gov>). (Search for meetings under Board: Department of Professional and Occupational Regulation.)

Additional information regarding the Workgroup may be obtained by contacting the CIC Board office ([cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov)).

### SB 740 Workgroup Meetings

Meeting Date	Location
August 5, 2022	DPOR, Perimeter Center, Second Floor Conference Center 9960 Mayland Dr. Richmond, VA 23233
October 19, 2022	Virginia Tech Roanoke Center Roanoke Higher Education Center 7th Floor, 108 N. Jefferson St. Roanoke, VA 24016
November 16, 2022	Virginia Tech Research Center Arlington 900 N. Glebe Rd. Arlington, VA 22203
February 7, 2023	Virginia Tech Newport News Center 700 Tech Center Parkway, Suite 305 Newport News, VA 23606
March 15, 2023	Virginia Tech Richmond Center 2810 N. Parham Rd., Suite 300 Henrico, VA 23294

# 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.

Matt Durham (Citizen Residing in a CIC) First four-year term ends June 30, 2025 <b>Board Chair</b>	David S. Mercer (Attorney) First four-year term ends June 30, 2023 <b>Board Vice-Chair</b>	Maureen A. Baker (Community Manager) First four-year term ends June 30, 2024
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	Thomas A. Mazzei (Community Manager) First four-year term ends June 30, 2026
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
Margaret "Meg" Tunstall (Developer) First four-year term ends June 30, 2026	Katherine E. (Katie) Waddell (Citizen Residing in a CIC) Second four-year term ends June 30, 2025	Demetrios "Mitch" Melis Director, DPOR <b>Board Secretary</b> (Ex officio/Non-voting)

## CIC Board Staff

- ◆ Trisha L. Lindsey  
Executive Director  
[Trisha.Lindsey@dpor.virginia.gov](mailto:Trisha.Lindsey@dpor.virginia.gov)
- ◆ Lisa T. Robinson  
Licensing Operations Administrator  
[Lisa.Robinson@dpor.virginia.gov](mailto:Lisa.Robinson@dpor.virginia.gov)
- ◆ Joseph C. Haughwout, Jr.  
CIC Board and Regulatory Administrator  
[Joseph.Haughwout@dpor.virginia.gov](mailto:Joseph.Haughwout@dpor.virginia.gov)
- ◆ Raven Custer  
Administrative Coordinator
- ◆ Lee Bryant  
Program Administration Specialist

## 2023 Meeting Dates

March 9, 2023 @ 10:00 a.m.

June 8, 2023 @ 10:00 a.m.

September 21, 2023 @ 10:00 a.m.

December 14, 2023 @ 10:00 a.m.

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

## Contact Us

### Common Interest Community Board

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Email: [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov)

### Office of the Common Interest Community Ombudsman

Heather S. Gillespie  
CIC Ombudsman

Phone: (804) 367-2941  
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