

Common Interest Community Board



Office of the Common Interest Community Ombudsman

The 2008 General Assembly enacted, and the Governor signed, legislation creating the **Common Interest Community Board** and the **Office of the Common Interest Community Ombudsman** at the Department of Professional and Occupational Regulation (DPOR).

The new law (<http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0851>) is effective July 1, 2008, and DPOR is working on the necessary staffing, regulatory and programmatic elements required to implement its provisions as quickly as possible. At the same time, the Governor is seeking to identify members to serve on the newly created Board. Individuals wishing to submit nominations for the new Board may obtain application forms from the Office of the Secretary of the Commonwealth (<http://www.commonwealth.virginia.gov>).

Although starting a new regulatory program takes time, we understand many Virginians have questions about the new Board and Ombudsman. We hope the following information is helpful in learning about the new law and what to expect.

Please continue to check the DPOR website (www.dpor.virginia.gov) for progress updates, including anticipated timeframes for emergency regulations, provisional licenses, and complaint processing.

What does the new law mean for Associations?

- Common interest communities subject to the new law include Property Owners' Associations, Condominium Associations, and Cooperative Associations. If your community has a governing body, collects mandatory assessments, and maintains common areas (such as a lake or playground), it likely falls under the new law.
- In addition to the existing annual report requirement and fee, Associations must pay an annual assessment of 0.02 percent of their annual gross assessment income, plus a one-time \$25 assessment to finance the Recovery Fund.
- Property Owners' Associations and Condominium Associations must obtain a blanket fidelity bond/employee dishonesty insurance policy (minimum coverage of \$10,000; \$1 million maximum).
- Associations must provide documents and records to the Ombudsman upon request, in order to assist members with using the complaint process.

- Associations must establish reasonable procedures for resolution of written complaints, including:
 - Maintaining records of each complaint for at least one year after acting on complaint;
 - Providing complaint forms/written procedures to individuals wishing to file written complaints; and
 - Informing Association members of their right to file a Notice of Adverse Decision with the Ombudsman.

What is the Common Interest Community Board and what will it do?

- Common Interest Community (CIC) Board is composed of 11 members appointed by the Governor:
 - 3 CIC Managers;
 - 1 attorney who represents Associations;
 - 1 Certified Public Accountant (CPA) who provides services to Associations;
 - 1 timeshare industry representative;
 - 2 developers of Associations; and
 - 3 citizens (one who serves on Association governing body and two Association residents).
- CIC Board promulgates regulations, in accordance with Administrative Process Act, to:
 - Establish fees, procedures and qualifications for licensure;
 - Establish educational and training criteria for licensure and certification; and
 - Establish standards of conduct for licensees.
- CIC Board may not intervene in the internal activities of Associations, unless necessary to prevent or remedy violations of regulatory requirements or statutes.
- CIC Board is authorized to bring suit and intervene in court actions where it appears an Association or Manager has violated Board regulations or statutes governing common interest communities (Property Owners' Association Act, Condominium Act, Cooperative Act, or Timeshare Act). CIC Board also may issue cease-and-desist orders against Association governing bodies.
- CIC Board may impose a monetary penalty of up to \$1,000 per violation against any person or firm – licensed or unlicensed – who violates its statutes or regulations. Before issuing any monetary penalty, the CIC Board must grant the person or firm the opportunity for a hearing pursuant to the Administrative Process Act.
- CIC Board enforces its own statutes and regulations, except in the case of real estate licensees who also are licensed as CIC Managers. The Virginia Real Estate Board will retain enforcement jurisdiction over licensed real estate brokers/salespersons who are simultaneously licensed as CIC Managers.
- CIC Board promotes research on CIC topics and supports seminars and educational programs designed to improve understanding about Associations.

What will the Ombudsman do?

- Assist individuals in understanding and exercising their rights in resolving issues with their Associations.
- Receive complaints – Notices of Adverse Decision – from individuals who allege an Association governing body violated legal requirements (statutes, regulations, or Association governing documents). Notices must be filed within 30 days of the final adverse decision, must be submitted in writing on Board forms, must include supporting documentation, and must include a \$25 filing fee (CIC Board may waive for demonstrated hardship).
- Maintain data on inquiries, requests for assistance, complaint notices, and resolution of disputes.
- Issue non-binding explanations of laws and regulations governing Associations. In addition, DPOR Director may determine whether an Association's final adverse decision complies or conflicts with legal requirements – such Director's determination is final but non-binding.
- Offer referrals to alternative dispute resolution services.

Who needs to be licensed and what is required?

- The new law provides for three levels of regulation for Association management services:
 - Licensure for firms (CIC Managers) – whether corporations, partners or sole proprietors – providing “management services” to a common interest community.
 - *Mandatory* certification for the managing or supervisory employees of licensed firms who are involved in direct management services.
 - *Voluntary* certification as an option for non-supervisory employees who are not otherwise required by law to hold an individual license.
- As of January 1, 2009, any firm – corporation, partner or sole proprietor – providing “management services” to an Association must hold a license issued by the CIC Board. Management services include acting on behalf of an Association in its business, legal, or financial transactions; exercising control over Association money or property; and conducting Association meetings (see § 54.1-2345).
- As of July 1, 2011, every individual management or supervisory employee of a licensed CIC Manager – who is involved in direct management services – must hold a mandatory certification issued by the CIC Board (within two years after employment).
- Individuals exempt from the licensure requirements include: uncompensated members of Association governing bodies, court-ordered receivers, attorneys, and CPAs providing certain services to Associations, time-share associations and agents, and certain real estate licensees (see § 54.1-2347).
- Provisional CIC Manager licenses will be issued to existing managers who apply for licensure by December 31, 2008. Provisional licenses expire on June 30, 2011 and will not be renewed.
 - **NOTE:** The application process for provisional CIC Manager licenses will begin once the CIC Board adopts emergency regulations, sometime this fall.

- Licensed CIC Managers must pay an annual assessment of 0.02 percent of their annual gross receipts, plus a one-time \$25 initial assessment to finance the Recovery Fund.
- Licensed CIC Managers must obtain a blanket fidelity bond/employee dishonesty insurance policy (minimum coverage of \$10,000; \$2 million maximum).
- Licensed CIC Managers must establish a code of conduct to protect against conflicts of interest; must use written contracts with Associations; must establish internal accounting controls; and must use a CPA to review/audit financial statements annually.
- Licensed CIC Managers must maintain separate fiduciary trust accounts for Association funds.

What is a Receiver? What is the Recovery Fund?

- CIC Board may petition the court to appoint a receiver if a CIC Manager appears unable to discharge its fiduciary responsibilities to an Association. Court-appointed receiver may take action to protect Association interests, including exercising control of all bank accounts. CIC Board also may petition court for an injunction to prohibit CIC Manager from withdrawing association monies or disposing of association assets.
- The Common Interest Community Management Recovery Fund is a trust fund used to pay court-appointed receivers and to restore Association monies in the event a CIC Manager fails to discharge its fiduciary responsibilities.
- The Recovery Fund is financed by \$25 from each licensed CIC Manager upon initial licensure, plus \$25 paid once from Associations. The law requires a minimum Fund balance of \$150,000 by July 1, 2011. If necessary to meet the minimum balance requirements, the CIC Board may impose special assessments on each Association and licensed CIC Manager.