

1 TITLE 54.1.

2 PROFESSIONS AND OCCUPATIONS.

3 CHAPTER 23.3.

4 COMMON INTEREST COMMUNITIES.

5 **Drafting note: Sections in existing Chapter 29 of Title 55 related to the Common**  
6 **Interest Community Management Information Fund, the Common Interest Community**  
7 **Ombudsman, and the Common Interest Community Management Recovery Fund are**  
8 **relocated to Chapter 23.3 of Title 54.1, which contains provisions related to the Common**  
9 **Interest Community Board. Existing Chapter 23.3 of Title 54.1 is proposed to be divided**  
10 **into two articles: proposed Article 1, Common Interest Community Board, which contains**  
11 **10 existing sections and one new section from the Uniform Common Interest Ownership**  
12 **Act (UCIOA), and proposed Article 2, Common Interest Community Management**  
13 **Information Fund; Common Interest Community Ombudsman; Common Interest**  
14 **Community Management Recovery Fund, which contains sections from existing Chapter**  
15 **29 of Title 55.**

16 [Article 1.](#)

17 [Common Interest Community Board.](#)

18 **Drafting note: Existing sections in Chapter 23.3 (Common Interest Communities)**  
19 **of Title 54.1 and a new section from the Uniform Common Interest Ownership Act**  
20 **(UCIOA) are designated as proposed Article 1. Definitions are amended to reflect the**  
21 **relocated sections.**

22 § 54.1-2345. Definitions.

23 As used in this chapter, unless the context requires a different meaning:

24 "Association" ~~means the same as that term is defined in § 55-528~~ [includes condominium,](#)  
25 [cooperative, or property owners' associations.](#)

26 "Board" means the Common Interest Community Board.

27 "Common interest community" means ~~the same as that term is defined in § 55-528;~~ real  
28 estate subject to a declaration with respect to which a person, by virtue of the person's  
29 ownership of a lot subject to that declaration, is a member of the association and is obligated to  
30 pay assessments of common expenses, provided that for the purposes of this chapter only, a  
31 common interest community ~~shall~~ does not include any time-share project registered pursuant to  
32 the Virginia Real Estate Time-Share Act (§ ~~55-360~~ 55.1-xxx et seq.) or any additional land that  
33 is a part of such registration. "Common interest community" does not include an arrangement  
34 described in § 54.1-2345.1.

35 "Common interest community manager" means a person or business entity, including ~~but~~  
36 ~~not limited to~~ a partnership, association, corporation, or limited liability company, ~~who that,~~ for  
37 compensation or valuable consideration, provides management services to a common interest  
38 community.

39 "Declaration" means ~~the same as that term is defined in § 55-528~~ any instrument,  
40 however denominated, recorded among the land records of the county or city in which the  
41 development or any part thereof is located, that either (i) imposes on the association  
42 maintenance or operational responsibilities for the common area as a regular annual assessment  
43 or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of  
44 such lots, or on any other entity any mandatory payment of money as a regular annual  
45 assessment in connection with the provision of maintenance or services or both for the benefit of  
46 some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration"  
47 includes any amendment or supplement to the instruments described in this definition.

48 "Governing board" means the governing board of an association, including the executive  
49 organ of a condominium unit owners' association, the executive board of a cooperative  
50 proprietary lessees' association, and the board of directors or other governing body of a property  
51 owners' association.

52 "Lot" means ~~the same as that term is defined in § 55-528~~ (i) any plot or parcel of land  
53 designated for separate ownership or occupancy shown on a recorded subdivision plat for a

54 [development or the boundaries of which are described in the declaration or in a recorded](#)  
55 [instrument referred to or expressly contemplated by the declaration, other than a common area,](#)  
56 [and \(ii\) a unit in a condominium association or a unit in a real estate cooperative.](#)

57 "Management services" means (i) acting with the authority of an association in its  
58 business, legal, financial, or other transactions with association members and nonmembers; (ii)  
59 executing the resolutions and decisions of an association or, with the authority of the  
60 association, enforcing the rights of the association secured by statute, contract, covenant, rule, or  
61 bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or  
62 other property belonging to an association; (iv) preparing budgets, financial statements, or other  
63 financial reports for an association; (v) arranging, conducting, or coordinating meetings of an  
64 association or the governing body of an association; (vi) negotiating contracts or otherwise  
65 coordinating or arranging for services or the purchase of property and goods for or on behalf of  
66 an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on  
67 behalf of an association.

68 **Drafting note: As a result of the relocation of existing Chapter 29 of Title 55 to**  
69 **Chapter 23.3 of Title 54.1, definitions for "association," "common interest community,"**  
70 **"declaration," and "lot" are incorporated into the chapter-wide definitions of existing §**  
71 **54.1-2345. In addition, a cross-reference is added in the definition of "common interest**  
72 **community" to proposed § 54.1-2345.1, which contains related language from the Uniform**  
73 **Common Interest Ownership Act (UCIOA). In the definition of "common interest**  
74 **community manager," "but not limited to" is stricken following the term "including" on**  
75 **the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but**  
76 **not limited to."**

77 [§ 54.1-2345.1. Certain real estate arrangements and covenants not deemed to constitute a](#)  
78 [common interest community.](#)

79 [A. An arrangement between the associations for two or more common interest](#)  
80 [communities to share the costs of real estate taxes, insurance premiums, services, maintenance](#)

81 or improvements of real estate, or other activities specified in their arrangement or declarations  
82 does not create a separate common interest community, or an arrangement between an  
83 association and the owner of real estate that is not part of a common interest community to share  
84 the costs of real estate taxes, insurance premiums, services, maintenance or improvements of  
85 real estate, or other activities specified in their arrangement does not create a separate common  
86 interest community. Assessments against the lots in the common interest community required by  
87 such arrangement shall be included in the periodic budget for the common interest community,  
88 and the arrangement shall be disclosed in all required public offering statements and disclosure  
89 packets.

90 B. A covenant requiring the owners of separately owned parcels of real estate to share  
91 costs or other obligations associated with a party wall, driveway, well, or other similar use does  
92 not create a common interest community unless the owners otherwise agree.

93 **Drafting note: This proposed section, using language from the Uniform Common**  
94 **Interest Ownership Act (UCIOA), excludes the following from being deemed common**  
95 **interest communities: (i) contractual arrangements for cost sharing between two or more**  
96 **common interest communities or contractual arrangements between an association and**  
97 **the owner of real estate outside of the common interest community's boundary and (ii)**  
98 **certain covenants of separately owned or leased parcels of real estate.**

99 § 54.1-2346. License required; certification of employees; renewal; provisional license.

100 A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity  
101 offering management services to a common interest community on or after January 1, 2009,  
102 shall hold a valid license issued in accordance with the provisions of this ~~chapter~~ article prior to  
103 engaging in such management services.

104 B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity  
105 offering management services to a common interest community without being licensed in  
106 accordance with the provisions of this ~~chapter~~ article shall be subject to the provisions of §  
107 54.1-111.

108 C. On or after July 1, 2012, it shall be a condition of the issuance or renewal of the  
109 license of a common interest community manager that all employees of the common interest  
110 community manager who have principal responsibility for management services provided to a  
111 common interest community or who have supervisory responsibility for employees who  
112 participate directly in the provision of management services to a common interest community  
113 shall, within two years after employment with the common interest community manager, hold a  
114 certificate issued by the Board certifying the person possesses the character and minimum skills  
115 to engage properly in the provision of management services to a common interest community or  
116 shall be under the direct supervision of a certified employee of such common interest  
117 community manager. A common interest community manager shall notify the Board if a  
118 certificated employee is discharged or in any way terminates his active status with the common  
119 interest community manager.

120 D. It shall be a condition of the issuance or renewal of the license of a common interest  
121 community manager that the common interest community manager shall obtain and maintain a  
122 blanket fidelity bond or employee dishonesty insurance policy insuring the common interest  
123 community manager against losses resulting from theft or dishonesty committed by the officers,  
124 directors, and persons employed by the common interest community manager. Such bond or  
125 insurance policy shall include coverage for losses of clients of the common interest community  
126 manager resulting from theft or dishonesty committed by the officers, directors, and persons  
127 employed by the common interest community manager. Such bond or insurance policy shall  
128 provide coverage in an amount equal to the lesser of \$2 million or the highest aggregate amount  
129 of the operating and reserve balances of all associations under the control of the common  
130 interest community manager during the prior fiscal year. The minimum coverage amount shall  
131 be \$10,000.

132 E. It shall be a condition of the issuance or renewal of the license of a common interest  
133 community manager that the common interest community manager certifies to the Board (i) that  
134 the common interest community manager is in good standing and authorized to transact business

135 in Virginia; (ii) that the common interest community manager has established a code of conduct  
136 for the officers, directors, and persons employed by the common interest community manager to  
137 protect against conflicts of interest; (iii) that the common interest community manager provides  
138 all management services pursuant to written contracts with the associations to which such  
139 services are provided; (iv) that the common interest community manager has established a  
140 system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an  
141 independent certified public accountant reviews or audits the financial statements of the  
142 common interest community manager at least annually in accordance with standards established  
143 by the American Institute of Certified Public Accountants or by any successor standard-setting  
144 authorities.

145 F. The Board shall issue a provisional license to any person, partnership, corporation, or  
146 other entity offering management services to a common interest community on or before  
147 December 31, 2008, who makes application for licensure prior to January 1, 2009. Such  
148 provisional license shall expire on June 30, 2012, and shall not be renewed. This subsection  
149 shall not be construed to limit the powers and authority of the Board.

150 **Drafting note: Technical changes.**

151 § 54.1-2347. Exceptions and exemptions generally.

152 A. The provisions of this ~~chapter~~ article shall not be construed to prevent or prohibit:

153 1. An employee of a duly licensed common interest community manager from providing  
154 management services within the scope of the employee's employment by the duly licensed  
155 common interest community manager;

156 2. An employee of an association from providing management services for that  
157 association's common interest community;

158 3. A resident of a common interest community acting without compensation from  
159 providing management services for that common interest community;

160 4. A resident of a common interest community from providing bookkeeping, billing, or  
161 recordkeeping services for that common interest community for compensation, provided the

162 blanket fidelity bond or employee dishonesty insurance policy maintained by the association  
163 insures the association against losses resulting from theft or dishonesty committed by such  
164 person;

165 5. A member of the governing board of an association acting without compensation from  
166 providing management services for that association's common interest community;

167 6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties  
168 as such or any person acting under order of any court from providing management services for a  
169 common interest community;

170 7. A duly licensed attorney-at-law from representing an association or a common interest  
171 community manager in any business that constitutes the practice of law;

172 8. A duly licensed certified public accountant from providing bookkeeping or accounting  
173 services to an association or a common interest community manager;

174 9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing  
175 lots within a common interest community; or

176 10. An association, exchange agent, exchange company, managing agent, or managing  
177 entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§  
178 55-360 et seq.) from providing management services for such time-share project.

179 B. A licensee of the Board shall comply with the Board's regulations, notwithstanding  
180 the fact that the licensee would be otherwise exempt from licensure under subsection A.  
181 Nothing in this subsection shall be construed to require a person to be licensed in accordance  
182 with this [chapter article](#) if he would be otherwise exempt from such licensure.

183 **Drafting note: Technical changes.**

184 § 54.1-2348. Common Interest Community Board; membership; meetings; quorum.

185 There is hereby created the Common Interest Community Board (the Board) as a policy  
186 board, within the meaning of § 2.2-2100, in the executive branch of state government. Members  
187 of the Board shall be appointed by the Governor and consist of eleven members as follows:  
188 three shall be representatives of Virginia common interest community managers, one shall be a

189 Virginia attorney whose practice includes the representation of associations, one shall be a  
190 representative of a Virginia certified public accountant whose practice includes providing attest  
191 services to associations, one shall be a representative of the Virginia time-share industry, two  
192 shall be representatives of developers of Virginia common interest communities, and three shall  
193 be Virginia citizens, one of whom serves or who has served on the governing board of an  
194 association that is not professionally managed at the time of appointment and two of whom  
195 reside in a common interest community. Of the initial appointments, one representative of  
196 Virginia common interest community managers and one representative of developers of  
197 Virginia common interest communities shall serve terms of two years and one representative of  
198 Virginia common interest community managers and one representative of developers of  
199 Virginia common interest communities shall serve terms of three years; the Virginia attorney  
200 shall serve a term of three years; the Virginia certified public accountant shall serve a term of  
201 one year; the Virginia citizen who serves or who has served on the governing board of an  
202 association shall serve a term of two years, and the two Virginia citizens who reside in a  
203 common interest community shall serve terms of one year. All other initial appointments and all  
204 subsequent appointments shall be for terms for four years, except that vacancies may be filled  
205 for the remainder of the unexpired term. Each appointment of a representative of a Virginia  
206 common interest community manager to the Board may be made from nominations submitted  
207 by the Virginia Association of Community Managers, who may nominate no more than three  
208 persons for each manager vacancy. In no case shall the Governor be bound to make any  
209 appointment from such nominees. No person shall be eligible to serve for more than two  
210 successive four-year terms.

211 The Board shall meet at least once each year and at other such times as it deems  
212 necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve  
213 for a period of one year. A majority of the Board shall constitute a quorum. The Board is vested  
214 with the powers and duties necessary to execute the purposes of this ~~chapter~~ [article](#).

215 **Drafting note: Technical changes.**



216 § 54.1-2349. Powers and duties of the Board.

217 A. The Board shall administer and enforce the provisions of this ~~chapter article~~. In  
218 addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

219 1. Promulgate regulations necessary to carry out the requirements of this ~~chapter article~~  
220 in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) ~~to~~  
221 ~~include but not be limited to,~~ including the prescription of fees, procedures, and qualifications  
222 for the issuance and renewal of common interest community manager licenses. The Board shall  
223 annually assess each common interest community manager an amount equal to the lesser of (i)  
224 \$1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of  
225 one percent (0.05%) of the gross receipts from common interest community management during  
226 the preceding year. For the purposes of clause (ii), no minimum payment shall be less than \$10.  
227 The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of  
228 the Common Interest Community Management Information Fund established pursuant to § ~~55-~~  
229 529 54.1-2354.2;

230 2. Establish criteria for the licensure of common interest community managers to ensure  
231 the appropriate training and educational credentials for the provision of management services to  
232 common interest communities. Such criteria may include experiential requirements and shall  
233 include designation as an Accredited Association Management Company by the Community  
234 Associations Institute. As an additional alternative to such designation, the Board shall have  
235 authority, by regulation, to include one of the following: (i) successful completion of another  
236 Board-approved training program and certifying examination; or (ii) successful completion of a  
237 Virginia testing program to determine the quality of the training and educational credentials for  
238 and competence of common interest community managers;

239 3. Establish criteria for the certification of the employees of common interest community  
240 managers who have principal responsibility for management services provided to a common  
241 interest community or who have supervisory responsibility for employees who participate  
242 directly in the provision of management services to a common interest community to ensure the

243 person possesses the character and minimum skills to engage properly in the provision of  
244 management services to a common interest community. Such criteria shall include designation  
245 as a Certified Manager of Community Associations by the ~~National Board of Certification for~~  
246 Community Association Managers International Certification Board, designation as an  
247 Association Management Specialist by the Community Associations Institute, or designation as  
248 a Professional Community Association Manager by the Community Associations Institute. As  
249 an additional alternative to such designations, the Board shall have authority, by regulation, to  
250 include one of the following: (i) successful completion of another Board-approved training  
251 program as developed by the Virginia Association of Realtors or other organization, and  
252 certifying examination, or (ii) successful completion of a Virginia testing program to determine  
253 the quality of the training and educational credentials for and competence of the employees of  
254 common interest community managers who participate directly in the provision of management  
255 services to a common interest community. The fee paid to the Board for the issuance of such  
256 certificate shall be paid to the Common Interest Community Management Information Fund  
257 established pursuant to § ~~55-529~~ 54.1-2354.2;

258 4. Approve the criteria for accredited common interest community manager training  
259 programs;

260 5. Approve accredited common interest community manager training programs;

261 6. Establish, by regulation, standards of conduct for common interest community  
262 managers and for employees of common interest community managers certified in accordance  
263 with the provisions of this ~~chapter article~~;

264 7. Establish, by regulation, an education-based certification program for persons who are  
265 involved in the business or activity of providing management services for compensation to  
266 common interest communities. The Board shall have the authority to approve training courses  
267 and instructors in furtherance of the provisions of this ~~chapter article~~; and

268 8. Issue a certificate of registration to each association that has properly filed in  
269 accordance with this chapter; and

270 9. Develop and publish best practices for the content of declarations consistent with the  
271 requirements of the Property Owners' Association Act (§ ~~55-508~~ 55.1-xxx et seq.).

272 B. 1. The Board shall have the sole responsibility for the administration of this ~~chapter~~  
273 article and for the promulgation of regulations to carry out the requirements thereof.

274 2. The Board shall also be responsible for the enforcement of this ~~chapter article~~,  
275 provided that the Real Estate Board shall have the sole responsibility for the enforcement of this  
276 ~~chapter article~~ with respect to a real estate broker, real estate salesperson, or real estate  
277 brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also  
278 licensed as a common interest community manager.

279 3. For purposes of enforcement of this ~~chapter article~~ or Chapter ~~4.2 XX~~ (§ ~~55-79.39~~  
280 55.1-xxx et seq.), ~~21 XX~~ (§ ~~55-360~~ 55.1-xxx et seq.), ~~24 XX~~ (§ ~~55-424~~ 55.1-xxx et seq.), or ~~26~~  
281 XX (§ ~~55-508~~ 55.1-xxx et seq.) of Title ~~55~~ 55.1, any requirement for the conduct of a hearing  
282 shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to §  
283 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

284 C. The Board is authorized to obtain criminal history record information from any state  
285 or federal law-enforcement agency relating to an applicant for licensure or certification. Any  
286 information so obtained is for the exclusive use of the Board and shall not be released to any  
287 other person or agency except in furtherance of the investigation of the applicant or with the  
288 authorization of the applicant or upon court order.

289 **Drafting note: In subdivision A 1, "but not limited to" is stricken in conjunction**  
290 **with "to include" on the basis of § 1-218, which states that throughout the Code**  
291 **"'Includes' means includes, but not limited to." Proposed subdivision A 8 is relocated from**  
292 **existing subsection H of § 55-530 as a general power of the Common Interest Community**  
293 **Board to establish uniform systems of licensing and registration relating to common**  
294 **interest communities. Technical changes are made.**

295 § 54.1-2350. Annual report and disclosure packets.

296 In addition to the provisions of § 54.1-2349, the Board shall:

297 1. Administer the provisions of ~~Chapter 29 Article 2~~ (§ ~~55-528 54.1-2354.1~~ et seq.) ~~of~~  
298 ~~Title 55~~;

299 2. Develop and disseminate an association annual report form for use in accordance with  
300 §§ ~~55-79.93-1 55.1-xxx~~, ~~55-504.1 55.1-xxx~~, and ~~55-516.1 55.1-xxx~~; and

301 3. Develop and disseminate a one-page form to accompany association disclosure  
302 packets required pursuant to § ~~55-509.5 55.1-xxx~~, which form shall summarize the unique  
303 characteristics of property owners' associations generally and shall make known to prospective  
304 purchasers the unusual and material circumstances affecting a lot owner in a property owners'  
305 association, including ~~but not limited to~~ the obligation of a lot owner to pay regular annual or  
306 special assessments to the association, the penalty for failure or refusal to pay such assessments,  
307 the purposes for which such assessments may be used, and the importance the declaration of  
308 restrictive covenants and other governing documents play in association living.

309 **Drafting note: In subdivision 3, "but not limited to" is stricken in conjunction with**  
310 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**  
311 **means includes, but not limited to." Technical changes are made.**

312 § 54.1-2351. General powers and duties of Board concerning associations.

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

319 B. If it appears that any governing board has engaged, is engaging, or is about to engage  
320 in any act or practice in violation of this ~~chapter article~~, Chapter ~~4.2 XX~~ (§ ~~55-79.39 55.1-xxx~~ et  
321 seq.), ~~24 XX~~ (§ ~~55-360 55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-424 55.1-xxx~~ et seq.), or ~~26 XX~~ (§ ~~55-~~  
322 ~~508 55.1-xxx~~ et seq.) of Title ~~55 55.1~~, or any of the Board's regulations or orders, the Board  
323 without prior administrative proceedings may bring suit in the appropriate court to enjoin that

324 act or practice or for other appropriate relief. The Board is not required to post a bond or prove  
325 that no adequate remedy at law exists.

326 C. The Board may intervene in any action or suit involving a violation by a declarant or  
327 a developer of a time-share project of this ~~chapter article~~, Chapter ~~4.2 XX~~ (§ ~~55-79.39 55.1-xxx~~  
328 et seq.), ~~21 XX~~ (§ ~~55-360 55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-424 55.1-xxx~~ et seq.), or ~~26 XX~~ (§ ~~55-~~  
329 ~~508 55.1-xxx~~ et seq.) of Title ~~55 55.1~~, or any of the Board's regulations or orders.

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

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

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

339 G. Without limiting the remedies that may be obtained under this ~~chapter article~~, the  
340 Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have  
341 the authority to enforce the provisions of this section and may institute proceedings in equity to  
342 enjoin any person, partnership, corporation, or any other entity violating this ~~chapter article~~,  
343 Chapter ~~4.2 XX~~ (§ ~~55-79.39 55.1-xxx~~ et seq.), ~~21 XX~~ (§ ~~55-360 55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-~~  
344 ~~424 55.1-xxx~~ et seq.), or ~~26 XX~~ (§ ~~55-508 55.1-xxx~~ et seq.) of Title ~~55 55.1~~, or any of the  
345 Board's regulations or orders. Such proceedings shall be brought in the name of the  
346 Commonwealth by the Board in the circuit court or general district court of the city or county in  
347 which the unlawful act occurred or in which the defendant resides.

348 H. The Board may assess a monetary penalty to be paid to the Common Interest  
349 Community Management Information Fund of not more than \$1,000 per violation against any  
350 governing board that violates any provision of this ~~chapter article~~, Chapter ~~4.2 XX~~ (§ ~~55-79.39~~

351 ~~55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-360~~ ~~55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-424~~ ~~55.1-xxx~~ et seq.), or ~~26~~  
352 ~~XX~~ (§ ~~55-508~~ ~~55.1-xxx~~ et seq.) of Title ~~55~~ ~~55.1~~, or any of the Board's regulations or orders. In  
353 determining the amount of the penalty, the Board shall consider the degree and extent of harm  
354 caused by the violation. No monetary penalty may be assessed under this ~~chapter article~~,  
355 Chapter ~~4.2 XX~~ (§ ~~55-79.39~~ ~~55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-360~~ ~~55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-~~  
356 ~~424~~ ~~55.1-xxx~~ et seq.), or ~~26 XX~~ (§ ~~55-508~~ ~~55.1-xxx~~ et seq.) of Title ~~55~~ ~~55.1~~, or any of the  
357 Board's regulations or orders unless the governing board has been given notice and an  
358 opportunity to be heard pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The  
359 penalty may be sued for and recovered in the name of the Commonwealth.

360 **Drafting note: Technical changes.**

361 § 54.1-2352. Cease and desist orders.

362 A. The Board may issue an order requiring the governing board of the association to  
363 cease and desist from the unlawful practice and to take such affirmative action as in the  
364 judgment of the Board will carry out the purposes of this ~~chapter article~~, if the Board determines  
365 after notice and hearing that the governing board of an association has:

366 1. Violated any statute or regulation of the Board governing the association regulated  
367 pursuant to this ~~chapter article~~, including engaging in any act or practice in violation of this  
368 ~~chapter article~~, Chapter ~~4.2 XX~~ (§ ~~55-79.39~~ ~~55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-360~~ ~~55.1-xxx~~ et  
369 seq.), ~~24 XX~~ (§ ~~55-424~~ ~~55.1-xxx~~ et seq.), or ~~26 XX~~ (§ ~~55-508~~ ~~55.1-xxx~~ et seq.) of Title ~~55~~ ~~55.1~~,  
370 or any of the Board's regulations or orders;

371 2. Failed to register as an association or to file an annual report as required by statute or  
372 regulation;

373 3. Materially misrepresented facts in an application for registration or an annual report;  
374 or

375 4. Willfully refused to furnish the Board information or records required or requested  
376 pursuant to statute or regulation.

377 B. If the Board makes a finding of fact in writing that the public interest will be  
378 irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order.  
379 Prior to issuing the temporary cease and desist order, the Board shall give notice of the proposal  
380 to issue a temporary cease and desist order to the person. Every temporary cease and desist  
381 order shall include in its terms a provision that upon request a hearing will be held promptly to  
382 determine whether or not it becomes permanent.

383 **Drafting note: Technical changes.**

384 § 54.1-2353. Protection of the interests of associations; appointment of receiver for  
385 common interest community manager.

386 A. A common interest community manager owes a fiduciary duty to the associations to  
387 which it provides management services with respect to the manager's handling the funds or the  
388 records of each association. All funds deposited with the common interest community manager  
389 shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or  
390 accounts in an FDIC-insured financial institution separate from the assets of the common  
391 interest community manager. The funds shall be the property of the association and shall be  
392 segregated for each depository in the records of the common interest community manager in a  
393 manner that permits the funds to be identified on an association basis. All records having  
394 administrative or fiscal value to the association that a common interest community manager  
395 holds, maintains, compiles, or generates on behalf of a common interest community are the  
396 property of the association. A common interest community manager may retain and dispose of  
397 association records in accordance with a policy contained in the contract between the common  
398 interest community manager and the association. Within a reasonable time after a written  
399 request for any such records, the common interest community manager shall provide copies of  
400 the requested records to the association at the association's expense. The common interest  
401 community manager shall return all association records that it retains and any originals of legal  
402 instruments or official documents that are in the possession of the common interest community  
403 manager to the association within a reasonable time after termination of the contract for

404 management services without additional cost to the association. Records maintained in  
405 electronic format may be returned in such format.

406           B. If the Board has reasonable cause to believe that a common interest community  
407 manager is unable to properly discharge its fiduciary responsibilities to an association to which  
408 it provides management services, the Board may submit an ex parte petition to the circuit court  
409 of the city or county wherein the common interest community manager maintains an office or is  
410 doing business for the issuance of an order authorizing the immediate inspection by and  
411 production to representatives of the petitioner of any records, documents, and physical or other  
412 evidence belonging to the subject common interest community manager. The court may issue  
413 such order without notice to the common interest community manager if the petition, supported  
414 by affidavit of the petitioner and such other evidence as the court may require, shows reasonable  
415 cause to believe that such action is required to prevent immediate loss of property of one or  
416 more of the associations to which the subject common interest community manager provides  
417 management services. The court may also temporarily enjoin further activity by the common  
418 interest community manager and take such further action as shall be necessary to conserve,  
419 protect, and disburse the funds involved, including the appointment of a receiver. The papers  
420 filed with the court pursuant to this subsection shall be placed under seal.

421           C. If the Board has reasonable cause to believe that a common interest community  
422 manager is unable to properly discharge its fiduciary responsibilities to an association to which  
423 it provides management services, the Board may file a petition with the circuit court of the  
424 county or city wherein the subject common interest community manager maintains an office or  
425 is doing business. The petition may seek the following relief: (i) an injunction prohibiting the  
426 withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to  
427 the control of the subject common interest community manager; and (ii) the appointment of a  
428 receiver for all or part of the funds or property of the subject common interest community  
429 manager. The subject common interest community manager shall be given notice of the time  
430 and place of the hearing on the petition and an opportunity to offer evidence. The court, in its



431 discretion, may require a receiver appointed pursuant to this section to post bond, with or  
432 without surety. The papers filed with the court under this subsection shall be placed under seal  
433 until such time as the court grants an injunction or appoints a receiver. The court may issue an  
434 injunction, appoint a receiver, or provide such other relief as the court may consider proper if,  
435 after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of  
436 property of one or more of the associations to which the subject common interest community  
437 manager provides management services.

438 D. In any proceeding under subsection C, any person or entity known to the Board to be  
439 indebted to or having in his possession property, real or personal, belonging to or subject to the  
440 control of the subject common interest community manager's business and which property the  
441 Board reasonably believes may become part of the receivership assets, shall be served with a  
442 copy of the petition and notice of the time and place of the hearing.

443 E. The court shall describe the powers and duties of the receiver in its appointing order,  
444 which may be amended from time to time. The receiver shall, unless otherwise ordered by the  
445 court in the appointing order, (i) prepare and file with the Board a list of all associations  
446 managed by the subject common interest community manager; (ii) notify in writing all of the  
447 associations to which the subject common interest community manager provides management  
448 services of the appointment; and take whatever action the receiver deems appropriate to protect  
449 the interests of the associations until such time as the associations have had an opportunity to  
450 obtain a successor common interest community manager; (iii) facilitate the transfer of records  
451 and information to such successor common interest community manager; (iv) identify and take  
452 control of all bank accounts, including without limitation trust and operating accounts, over  
453 which the subject common interest community manager had signatory authority in connection  
454 with its management business; (v) prepare and submit an accounting of receipts and  
455 disbursements and account balances of all funds under the receiver's control for submission to  
456 the court within four months of the appointment and annually thereafter until the receivership is  
457 terminated by the court; (vi) attempt to collect any accounts receivable related to the subject

458 common interest community manager's business; (vii) identify and attempt to recover any assets  
459 wrongfully diverted from the subject common interest community manager's business, or assets  
460 acquired with funds wrongfully diverted from the subject common interest community  
461 manager's business; (viii) terminate the subject common interest community manager's business;  
462 (ix) reduce to cash all of the assets of the subject common interest community manager; (x)  
463 determine the nature and amount of all claims of creditors of the subject common interest  
464 community manager, including associations to which the subject common interest community  
465 manager provided management services; and (xi) prepare and file with the court a report of such  
466 assets and claims proposing a plan for the distribution of funds in the receivership to such  
467 creditors in accordance with the provisions of subsection F.

468 F. Upon the court's approval of the receiver's report referenced in subsection E, at a  
469 hearing after such notice as the court may require to creditors, the receiver shall distribute the  
470 assets of the common interest community manager and funds in the receivership first to clients  
471 whose funds were or ought to have been held in a fiduciary capacity by the subject common  
472 interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant  
473 to subsection G, and thereafter to the creditors of the subject common interest community  
474 manager, and then to the subject common interest community manager or its successors in  
475 interest.

476 G. A receiver appointed pursuant to this section shall be entitled, upon proper  
477 application to the court in which the appointment was made, to recover an award of reasonable  
478 fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then  
479 the shortfall shall be paid by the Common Interest Community Management Recovery Fund as  
480 a cost of administering the Fund pursuant to ~~§ 55-530.1~~ [§ 54.1-2354.5](#), to the extent that the said  
481 Fund has funds available. The Fund shall have a claim against the subject common interest  
482 community manager for the amount paid.

483 H. The court may determine whether any assets under the receiver's control should be  
484 returned to the subject common interest community manager.

485 I. If the Board shall find that any common interest community manager is insolvent, that  
486 its merger into another common interest community manager is desirable for the protection of  
487 the associations to which such common interest community manager provides management  
488 services, and that an emergency exists, and, if the board of directors of such insolvent common  
489 interest community manager shall approve a plan of merger of such common interest  
490 community manager into another common interest community manager, compliance with the  
491 requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest  
492 community manager and the approval by the Board of such plan of merger shall be the  
493 equivalent of approval by the holders of more than two-thirds of the outstanding shares of such  
494 insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et  
495 seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager  
496 is insolvent, that the acquisition of its assets by another common interest community manager is  
497 in the best interests of the associations to which such common interest community manager  
498 provides management services, and that an emergency exists, it may, with the consent of the  
499 boards of directors of both common interest community managers as to the terms and conditions  
500 of such transfer, including the assumption of all or certain liabilities, enter an order transferring  
501 some or all of the assets of such insolvent common interest community manager to such other  
502 common interest community manager, and no compliance with the provisions of §§ 13.1-723  
503 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such  
504 transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide  
505 that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the  
506 stockholders of record of the insolvent common interest community manager for the purpose of  
507 providing such shareholders an opportunity to challenge the finding that the common interest  
508 community manager is insolvent. The relevant books and records of such insolvent common  
509 interest community manager shall remain intact and be made available to such shareholders for  
510 a period of 30 days after such notice is sent. The Board's finding of insolvency shall become  
511 final if a hearing before the Board is not requested by any such shareholder within such 30-day

512 period. If, after such hearing, the Board finds that such common interest community manager  
513 was solvent, it shall rescind its order entered pursuant to this subsection and the merger or  
514 transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such  
515 common interest community manager was insolvent, its order shall be final.

516 J. The provisions of this ~~chapter article~~ are declared to be remedial. The purpose of this  
517 ~~chapter article~~ is to protect the interests of associations adversely affected by common interest  
518 community managers who have breached their fiduciary duty. The provisions of this ~~chapter~~  
519 ~~article~~ shall be liberally administered in order to protect those interests and thereby the public's  
520 interest in the quality of management services provided by Virginia common interest  
521 community managers.

522 **Drafting note: Technical changes.**

523 § 54.1-2354. Variation by agreement.

524 Except as expressly provided in this ~~chapter article~~, provisions of this ~~chapter article~~  
525 may not be varied by agreement, and rights conferred by this ~~chapter article~~ may not be waived.  
526 All management agreements entered into by common interest community managers shall  
527 comply with the terms of this ~~chapter article~~ and the provisions of Chapter ~~4.2 XX~~ (§ ~~55-79.39~~  
528 ~~55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-360 55.1-xxx~~ et seq.), ~~24 XX~~ (§ ~~55-424 55.1-xxx~~ et seq.), or ~~26~~  
529 ~~XX~~ (§ ~~55-508 55.1-xxx~~ et seq.) of Title ~~55 55.1~~, as applicable.

530 **Drafting note: Technical changes.**

531 ~~CHAPTER 29.~~

532 ~~COMMON INTEREST COMMUNITY MANAGEMENT INFORMATION FUND.~~

533 ~~Article 2.~~

534 ~~Common Interest Community Management Information Fund; Common Interest Community~~

535 ~~Ombudsman; Common Interest Community Management Recovery Fund.~~

536 **Drafting note: Existing Chapter 29 of Title 55 is relocated as proposed Article 2 of**  
537 **Chapter 23.3 of Title 54.1. The relocation places provisions that are related to the**  
538 **Common Interest Community Management Information Fund, the Common Interest**

**539 Community Ombudsman, and the Common Interest Community Management Recovery**  
**540 Fund in the same chapter with the Common Interest Community Board.**

541 § ~~55-528~~ 54.1-2354.1. Definitions.

542 As used in this ~~chapter~~ article, unless the context requires a different meaning:

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

544 "Balance of the fund" means cash, securities that are legal investments for fiduciaries  
545 under the provisions of subdivisions A 1, 2, and 4 of § 2.2-4519, and repurchase agreements  
546 secured by obligations of the United States government or any agency thereof, and shall not  
547 mean accounts receivable, judgments, notes, accrued interest, or other obligations to the fund.

548 ~~"Board" means the Common Interest Community Board.~~

549 "Claimant" means upon proper application to the Director, a receiver for a common  
550 interest community manager appointed pursuant to § 54.1-2353 in those cases in which there are  
551 not sufficient funds to restore all funds that were or ought to have been held in a fiduciary  
552 capacity by the subject common interest community manager or to pay an award of reasonable  
553 fees, costs, and expenses to the receiver.

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

559 ~~"Declaration" means any instrument, however denominated, recorded among the land~~  
560 ~~records of the county or city in which the development or any part thereof is located, that either~~  
561 ~~(i) imposes on the association maintenance or operational responsibilities for the common area~~  
562 ~~as a regular annual assessment or (ii) creates the authority in the association to impose on lots,~~  
563 ~~or on the owners or occupants of such lots, or on any other entity any mandatory payment of~~  
564 ~~money as a regular annual assessment in connection with the provision of maintenance or~~  
565 ~~services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or~~

566 ~~the common area. "Declaration" includes any amendment or supplement to the instruments~~  
567 ~~described in this definition.~~

568 "Director" means the Director of the Department of Professional and Occupational  
569 Regulation.

570 ~~"Governing board" means the governing board of an association, including the executive~~  
571 ~~organ of a condominium unit owners' association, the executive board of a cooperative~~  
572 ~~proprietary lessees' association, and the board of directors of a property owners' association.~~

573 ~~"Lot" means (i) any plot or parcel of land designated for separate ownership or~~  
574 ~~occupancy shown on a recorded subdivision plat for a development or the boundaries of which~~  
575 ~~are described in the declaration or in a recorded instrument referred to or expressly~~  
576 ~~contemplated by the declaration, other than a common area, and (ii) a unit in a condominium~~  
577 ~~association or a unit in a real estate cooperative.~~

578 **Drafting note: Definitions for "association," "common interest community,"**  
579 **"declaration," and "governing board" are stricken in this section because they are**  
580 **relocated to existing § 54.1-2345, which contains chapter-wide definitions for Chapter 23.3**  
581 **of Title 54.1 and thus they apply to this article. The definitions of "board" and "lot" are**  
582 **also stricken in this section because they are already in existing § 54.1-2345 and thus apply**  
583 **to the entire chapter.**

584 § ~~55-529~~ 54.1-2354.2. Common Interest Community Management Information Fund.

585 A. There is hereby created the Common Interest Community Management Information  
586 Fund, referred to in this section as "the Fund," to be used in the discretion of the Board to  
587 promote the improvement and more efficient operation of common interest communities  
588 through research and education. The Fund shall be established on the books of the Comptroller.  
589 The Fund shall consist of money paid into it pursuant to §§ 54.1-2349, ~~55-79.93:1~~ 55.1-xxx, ~~55-~~  
590 ~~504.1~~ 55.1-xxx, and ~~55-516.1~~ 55.1-xxx, and such money shall be paid into the state treasury and  
591 credited to the Fund. ~~The Fund shall be established on the books of the Comptroller, and any~~  
592 funds Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any

593 ~~moneys remaining in such the Fund at the end of the biennium, including interest thereon, at the~~  
594 ~~end of each fiscal year~~ shall not revert to the general fund but, at the discretion of the Board,  
595 shall remain in the Fund or shall be transferred to the Common Interest Community  
596 Management Recovery Fund established pursuant to § ~~55-530.1~~ 54.1-2354.5. ~~Interest earned on~~  
597 ~~the Fund shall be credited to the Fund.~~

598 B. Expenses for the operations of the Office of the Common Interest Community  
599 Ombudsman, including the compensation paid to the Common Interest Community  
600 Ombudsman, shall be paid first from interest earned on deposits constitution the Fund and the  
601 balance from the moneys collected annually in the Fund. The Board may use the remainder of  
602 the interest earned on the balance of the Fund and of the moneys collected annually and  
603 deposited in the Fund for financing or promoting the following:

604 1. Information and research in the field of common interest community management and  
605 operation;

606 2. Expeditious and inexpensive procedures for resolving complaints about an association  
607 from members of the association or other citizens;

608 3. Seminars and educational programs designed to address topics of concern to  
609 community associations; and

610 4. Other programs deemed necessary and proper to accomplish the purpose of this  
611 article.

612 **Drafting note: Proposed subsection A is amended to reflect updated language for**  
613 **statutory special funds. Proposed subsection B is relocated from existing subsections B and**  
614 **D of § 55-530 because it relates to uses of the Common Interest Community Management**  
615 **Information Fund. There are also technical changes.**

616 ~~§ 55-530~~ 54.1-2354.3. ~~Powers of the Board; Common-interest community ombudsman;~~  
617 ~~final adverse decisions~~ Interest Community Ombudsman; appointment; powers and duties.

618 ~~A. The Board shall administer the provisions of this chapter pursuant to the powers~~  
619 ~~conferred by § 54.1-2349 and this chapter.~~

620           ~~B.~~ The Director in accordance with § 54.1-303 shall appoint a Common Interest  
621 Community Ombudsman (the Ombudsman) and shall establish the Office of the Common  
622 Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good  
623 standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office  
624 ~~of the Common Interest Community Ombudsman~~ in the performance of its duties under this  
625 ~~chapter article. The expenses for the operations of the Office of the Common Interest~~  
626 ~~Community Ombudsman, including the compensation paid to the Ombudsman, shall be paid~~  
627 ~~first from interest earned on deposits constituting the fund and the balance from the moneys~~  
628 ~~collected annually in the fund.~~

629           ~~C.~~B. The Office ~~of the Common Interest Community Ombudsman~~ shall:

630           1. Assist members in understanding ~~their~~ rights and the processes available to them  
631 according to the laws and regulations governing common interest communities and respond to  
632 general inquiries;

633           2. ~~Answer inquiries from members and other citizens by telephone, mail, electronic mail,~~  
634 ~~and in person;~~

635           3. ~~Provide to members and other citizens information concerning common interest~~  
636 ~~communities upon request;~~

637           4. Make available, either separately or through an existing ~~Internet~~ website ~~utilized by~~  
638 ~~the Director~~, information as set forth in subdivision 3 concerning common interest communities  
639 and such additional information as may be deemed appropriate;

640           ~~5.~~3. Receive ~~the~~ notices of final adverse decisions;

641           6. ~~In conjunction with complaint and inquiry data maintained by the Director, maintain~~  
642 ~~data on inquiries received, the types of assistance requested, notices of final adverse decisions~~  
643 ~~received, any actions taken, and the disposition of each such matter;~~

644           ~~7.~~4. Upon request, assist members in understanding the rights and processes available  
645 under the laws and regulations governing common interest communities and provide referrals to



646 public and private agencies offering alternative dispute resolution services, with a goal of  
647 reducing and resolving conflicts among associations and their members;

648 ~~8.5.~~ Ensure that members have access to the services provided through the Office ~~of the~~  
649 ~~Common Interest Community Ombudsman~~ and that the members receive timely responses from  
650 the representatives of the Office ~~of the Common Interest Community Ombudsman~~ to the  
651 inquiries;

652 6. Maintain data on inquiries received, types of assistance requested, notices of final  
653 adverse decisions received, actions taken, and the disposition of each such matter;

654 ~~9.7.~~ Upon request to the Director by (i) any of the standing committees of the General  
655 Assembly having jurisdiction over common interest communities or (ii) the Housing  
656 Commission, provide to the Director for dissemination to the requesting parties assessments of  
657 proposed and existing common interest community laws and other studies of common interest  
658 community issues;

659 ~~10.8.~~ Monitor changes in federal and state laws relating to common interest  
660 communities;

661 ~~11.9.~~ Provide information to the Director that will permit the Director to report annually  
662 on the activities of the Office of the Common Interest Community Ombudsman to the standing  
663 committees of the General Assembly having jurisdiction over common interest communities and  
664 to the Housing Commission. The Director's report shall be filed by December 1 of each year,  
665 and shall include a summary of significant new developments in federal and state laws relating  
666 to common interest communities each year; and

667 ~~12.10.~~ Carry out activities as the Board determines to be appropriate.

668 ~~D. The Board may use the remainder of the interest earned on the balance of the fund~~  
669 ~~and of the moneys collected annually and deposited in the fund for financing or promoting the~~  
670 ~~following:~~

671 ~~1. Information and research in the field of common interest community management and~~  
672 ~~operation;~~

673 ~~2. Expeditious and inexpensive procedures for resolving complaints about an association~~  
674 ~~from members of the association or other citizens;~~

675 ~~3. Seminars and educational programs designed to address topics of concern to~~  
676 ~~community associations; and~~

677 ~~4. Other programs deemed necessary and proper to accomplish the purpose of this~~  
678 ~~chapter.~~

679 § 54.1-2354.4. Association complaint procedures; final adverse decisions; certificate of  
680 registration.

681 ~~E.-A.~~ The Board shall establish by regulation a requirement that each association shall  
682 establish reasonable procedures for the resolution of written complaints from the members of  
683 the association and other citizens. Each association shall adhere to the written procedures  
684 established pursuant to this subsection when resolving association member and citizen  
685 complaints. The procedures shall include ~~but not be limited to~~ the following:

686 1. A record of each complaint shall be maintained for no less than one year after the  
687 association acts upon the complaint.

688 2. Such association shall provide complaint forms or written procedures to be given to  
689 persons who wish to register written complaints. The forms or procedures shall include the  
690 address and telephone number of the association or its common interest community manager to  
691 which complaints shall be directed and the mailing address, telephone number, and electronic  
692 ~~mail mailing~~ address of the Office ~~of the Common Interest Community Ombudsman~~. The forms  
693 and written procedures shall include a clear and understandable description of the complainant's  
694 right to give notice of adverse decisions pursuant to this section.

695 ~~F.-B.~~ A complainant may give notice to the Board of any final adverse decision in  
696 accordance with regulations promulgated by the Board. The notice shall be filed within 30 days  
697 of the final adverse decision, shall be in writing on forms prescribed by the Board, shall include  
698 copies of all records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The  
699 fee shall be collected by the Director and paid directly into the state treasury and credited to the

700 Common Interest Community Management Information Fund, ~~pursuant to § 55-301.1~~ 54.1-  
701 2354.2. The Board may, for good cause shown, waive or refund the filing fee upon a finding  
702 that payment of the filing fee will cause undue financial hardship for the member. The Director  
703 shall provide a copy of the written notice to the association that made the final adverse decision.

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

716 ~~H. The Board shall issue a certificate of filing to each association which has properly~~  
717 ~~filed in accordance with this title. The certificate shall include the date of registration and a~~  
718 ~~unique registration number assigned by the Board.~~

719 ~~I. The Board may prescribe regulations which shall be adopted, amended or repealed in~~  
720 ~~accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose~~  
721 ~~of this chapter.~~

722 **Drafting note: Existing § 55-530 is divided for clarity and logical order in the**  
723 **following manner: (i) provisions relating to the Common Interest Community**  
724 **Ombudsman in existing subsections B (part) and C are designated as proposed § 54.1-**  
725 **2354.3; (ii) existing subsections B (part) and D is relocated as proposed subsection B of §**  
726 **54.1-2354.2; (iii) provisions relating to complaint procedures, final adverse decisions, and**

727 registration in existing subsections E, F, and G are designated as § 54.1-2354.4; and  
728 existing subsection H is relocated to subdivision A 8 of § 54.1-2349, which outlines the  
729 general powers and duties of the Common Interest Community Board. Existing  
730 subsections A and I are recommended for repeal because they are duplicative of the  
731 authority granted the Common Interest Community Board by existing § 54.1-2349 and  
732 unnecessary with the relocation of existing Chapter 29 of Title 55 to Chapter 23.3 of Title  
733 54.1. Language in existing subsection C outlining the responsibilities of the Ombudsman is  
734 condensed for clarity. In proposed subsection A of § 54.1-2354.4, "but not limited to" is  
735 stricken following the term "include" on the basis of § 1-218, which states that throughout  
736 the Code "'Includes' means includes, but not limited to." Technical changes are made.

737 § ~~55-530.1~~ 54.1-2354.5. Common Interest Community Management Recovery Fund.

738 A. There is hereby created the Common Interest Community Management Recovery  
739 Fund ~~(the Fund)~~, referred to in this section as "the Fund," to be used in the discretion of the  
740 Board to protect the interests of associations.

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

746 All assessments, except initial assessments, for the Fund shall be deposited within three  
747 business days after their receipt by the Director, in one or more federally insured banks, savings  
748 and loan associations, or savings banks located in the Commonwealth. Funds deposited in  
749 banks, savings institutions, or savings banks, ~~to the extent~~ in excess of insurance afforded by the  
750 Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under  
751 the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in  
752 federally insured banks, savings and loan associations, or savings banks located in the  
753 Commonwealth shall not be considered investment of such funds for purposes of this section.

754 Funds maintained by the Director may be invested in securities that are legal investments for  
755 fiduciaries under the provisions of § 64.2-1502.

756 Interest earned on the deposits constituting the Fund shall be used for administering the  
757 Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the  
758 Common Interest Community Management Information Fund, [established pursuant to § 54.1-](#)  
759 [2354.2](#), or accrue to the Fund.

760 C. On and after July 1, 2011, the minimum balance of the Fund shall be \$150,000.  
761 Whenever the Director determines that the principal balance of the Fund is or will be less than  
762 such minimum principal balance, the Director shall immediately inform the Board. At the same  
763 time, the Director may recommend that the Board transfer a fixed amount from the Common  
764 Interest Community Management Information Fund to the Fund to bring the principal balance of  
765 the Fund to the amount required by this subsection. Such transfer shall be considered by the  
766 Board within 30 days of the notification of the Director.

767 D. If any such transfer of funds is insufficient to bring the principal balance of the Fund  
768 to the minimum amount required by this section, or if a transfer to the ~~fund~~ [Fund](#) has not  
769 occurred, the Board shall assess each association and each common interest community  
770 manager, within 30 days of notification by the Director, a sum sufficient to bring the principal  
771 balance of the Fund to the required minimum amount. The amount of such assessment shall be  
772 allocated among the associations and common interest community managers in proportion to ~~the~~  
773 each payor's most recently paid annual assessment, or if an association or common interest  
774 community manager has not paid an annual assessment previously, in proportion to the average  
775 annual assessment most recently paid by associations or common interest community managers,  
776 respectively. The Board may order an assessment at any time in addition to any required  
777 assessment. Assessments made pursuant to this subsection may be issued by the Board (i) after a  
778 determination made by it or (ii) at the time of license renewal.

779 Notice to common interest community managers and the governing boards of  
780 associations of these assessments shall be by first-class mail, and payment of such assessments

781 shall be made by first-class mail addressed to the Director within 45 days after the mailing of  
782 such notice.

783 E. If any common interest community manager fails to remit the required payment  
784 within 45 days of the mailing, the Director shall notify the common interest community  
785 manager by first-class mail at the latest address of record filed with the Board. If no payment  
786 has been received by the Director within 30 days after mailing the second notice, the license  
787 shall be automatically suspended. The license shall be restored only upon the actual receipt by  
788 the Director of the delinquent assessment.

789 F. If any association fails to remit the required payment within 45 days of the mailing,  
790 the Director shall notify the association by first-class mail at the latest address of record filed  
791 with the Board. If no payment has been received by the Director within 30 days after mailing  
792 the second notice, it shall be deemed a knowing and willful violation of this section by the  
793 governing board of the association.

794 G. At the close of each fiscal year, whenever the balance of the ~~fund~~ Fund exceeds \$5  
795 million, the amount in excess of \$5 million shall be transferred to the Virginia Housing Trust  
796 Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36. Except for payments of  
797 costs as set forth in this ~~chapter~~ article and transfers pursuant to this subsection, there shall be no  
798 transfers out of the ~~fund~~ Fund, including transfers to the general fund, regardless of the balance  
799 of the ~~fund~~ Fund.

800 H. A claimant may seek recovery from the ~~fund~~ Fund subject to the following  
801 conditions:

802 1. A claimant may file a verified claim in writing to the Director for a recovery from the  
803 Fund.

804 2. Upon proper application to the Director, in those cases in which there are not  
805 sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to  
806 restore all funds that were or ought to have been held in a fiduciary capacity by the subject  
807 common interest community manager, the Director shall report to the Board the amount of any

808 shortfall to the extent that there are not sufficient funds (i) to pay any award of fees, costs, and  
809 expenses pursuant to subsection G of § 54.1-2353 by the court appointing the receiver; or (ii) to  
810 restore all funds that were or ought to have been held in a fiduciary capacity by the subject  
811 common interest community manager, as certified by the court appointing the receiver.

812 3. If the Board finds there has been compliance with the required conditions, the Board  
813 shall issue a directive ordering payment of the amount of such shortfall to the claimant from the  
814 ~~fund Fund~~, provided that in no event shall such payment exceed the balance in the ~~fund Fund~~.  
815 When the ~~fund Fund~~ balance is not sufficient to pay the aggregate amount of such shortfall, the  
816 Board shall direct that payment ~~shall~~ be applied first in satisfaction of any award of reasonable  
817 fees, costs, and expenses to the receiver and second to restore the funds that were or ought to  
818 have been held in a fiduciary capacity by the subject common interest community manager. If  
819 the Board has reason to believe that there may be additional claims against the ~~fund Fund~~, the  
820 Board may withhold any ~~payment(s)~~ payment from the ~~fund Fund~~ for a period of not more than  
821 one year. After such one-year period, if the aggregate of claims received exceeds the ~~fund Fund~~  
822 balance, the ~~fund Fund~~ balance shall be prorated by the Board among the claimants and paid in  
823 the above payment order from the ~~fund Fund~~ in proportion to the amounts of claims remaining  
824 unpaid.

825 4. The Director shall, subject to the limitations set forth in this subsection, pay to the  
826 claimant from the ~~fund Fund~~ such amount as shall be directed by the Board upon the execution  
827 and delivery to the Director by such claimant of an assignment to the Board of the claimant's  
828 rights on its behalf and on behalf of the associations receiving distributions from the ~~fund Fund~~  
829 against the common interest community manager to the extent that such rights were satisfied  
830 from the ~~fund Fund~~.

831 5. The claimant shall be notified in writing of the findings of the Board. The Board's  
832 findings shall be considered a case decision as defined in § 2.2-4001, and judicial review of  
833 these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-  
834 4000 et seq.).

