


Commonwealth of Virginia		
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Andrew Kubincanek, Program Coordinator		
Administrative Law Advisory Committee		

## Administrative Law Advisory Committee

### 2017 Appointments

#### Committee Member

#### Term Expiration

Mike Quinan - *Christian and Barton*

12/2016

**Mike Quinan** - Mike Quinan practices principally in the areas of business litigation, administrative law, and public utility regulation. He regularly handles cases at the Virginia State Corporation Commission and other state agencies, as well as in state and federal courts throughout the Commonwealth, and he maintains a wide range of expertise in regulatory matters. He serves as general counsel to the Virginia Bar Association, formerly served as the firm's managing partner, and has presented continuing legal education seminars statewide on issues relating to litigation, practice management, and law office technology.

Paul Kugelman - *OAG*

New Member

**Paul Kugelman** - Paul Kugelman has worked for the Office of the Attorney General for nearly 14 years and has chaired its APA Committee for about three years. He has been intimately involved in the office's review of APA bills and is the office's regulatory coordinator. He has represented the Virginia Marine Resources Commission, the Department of Game and Inland Fisheries, and the Commonwealth's 47 soil and water conservation districts, and currently represents the Department of Mines, Minerals and Energy, which includes advising the leadership of the Department and interacting with state and federal agencies. He is an advocacy instructor with the U.S. Office of Surface Mining's National Training Program, teaching on evidence preparation and testimony for APA matters and expert testimony in APA matters. He has chaired the Richmond Bar Association's Energy and Environmental Law Section for the past two and a half years and taught three continuing legal education courses on the Virginia APA.

Thomas A. Lisk, Chair  
Roger L. Chaffe  
Jeffrey S. Gore

Edward A. Mullen  
Eric M. Page  
Karen Perrine

Mike Quinan  
Alexander F. Skirpan, Jr.  
Brooks Smith  
Kristi Wright

## **Title 55 Recodification Work Group By Selected Sub-Work Group**

### **Rental Conveyance Sub-Work Group (7)**

John G. "Chip" Dicks (FutureLaw)  
Christie Marra (Virginia Poverty Law Center, Inc.)  
Brian M. Gordon (Virginia Apartment and Office Building Association)  
Tyler Craddock (Virginia Manufactured and Modular Housing Association)  
Phil Abraham (Vectre Corportation)  
Phil Storey (Legal Aid Justice Center)  
John Rick (Attorney)

### **Common Interest Community Sub-Work Group (10)**

Phillip Richardson (Eck, Collins & Richardson)  
Robert Diamond (Reed Smith)  
John G. "Chip" Dicks (FutureLaw)  
Heather Gillespie (Department of Professional and Occupational Regulation)  
Trisha Henshaw (DPOR)  
Lucia Anna Trigiani (Mercer Trigiani)  
David Mercer (Mercer Trigiani)  
Edward Mullen (Reed Smith)  
Jeremy Moss (Vandevender Black)  
Nicole Brenner (Reed Smith)

### **Real Estate Conveyance Sub-Work Group (17)**

Larry J. McElwain (Scott Kroner, PLC)  
Melvin E. Tull, III (Virginia Bankers Association)  
Philip W. Richardson (Eck, Collins & Richardson)  
John G. "Chip" Dicks (FutureLaw)  
Professor Eric Kades (William & Mary Law School)  
Hon. John Frey (Clerk of the Circuit Court, Fairfax County)  
Mary Broz Vaughan (DPOR)  
Lucia Anna Trigiani (Mercer Trigiani)  
Edward Mullen (Reed Smith)  
David Mercer (Mercer Trigiani)  
Benjamin D. Leigh (Atwill, Troxell & Leigh, P.C.)  
Phil Abraham (Vectre Corportation)  
Ann K. Crenshaw (Kaufman & Canoles)  
Neil Kessler (Troutman Sanders)  
Laura Farley (Virginia Association of REALTORS)  
Jeffrey Palmore (Reed Smith)  
Professor Alex Johnson (University of Virginia)

## **Title 55.1 Proposed Subtitles**

### **Subtitle I Real Estate Conveyances**

- 1. Creation and Limitation of Estates; Their Qualities, §§ 55-1 through 55-25.1.**
- 3. Property Rights of Married Women, §§ 55-35 through 55-47.1.**
- 4. Form and Effect of Deeds and Covenants; Liens, §§ 55-48 through 55-79.06.**
- 5. Fraudulent and Voluntary Conveyances, Bulk and Conditional Sales, etc.; Writings Necessary to Be Recorded, §§ 55-80 through 55-105.**
- 8. Clouds on Title, §§ 55-153 through 55-155.**
- 15. Apportionment of Moneys; Management of Institutional Funds, §§ 55-253 through 55-277.**
- 20. Virginia Solar Easements Act, §§ 55-352 through 55-359.**

### **Subtitle II Real Estate Settlements and Recordation**

- 6. Recordation of Documents, §§ 55-106 through 55-142.15.**
- 27. Virginia Residential Property Disclosure Act, §§ 55-517 through 55-525.**
- 27.1. Exchange Facilitators Act, §§ 55-525.1 through 55-525.7.**
- 27.2. Real Estate Settlements, §§ 55-525.8 through 55-525.15.**
- 27.3. Real Estate Settlement Agents, §§ 55-525.16 through 55-525.32.**
- 28. Commercial Real Estate Broker's Lien Act, §§ 55-526, 55-527**

### **Subtitle III Rental Conveyances**

- 13. Landlord and Tenant, §§ 55-217 through 55-248.**
- 13.2. Virginia Residential Landlord and Tenant Act, §§ 55-248.2 through 55-248.40.**
- 13.3. Manufactured Home Lot Rental Act, §§ 55-248.41 through 55-248.52.**
- 14. Emblements, §§ 55-249 through 55-252.**
- 25. Transfer of Deposits, § 55-507**

## Title 55.1 Proposed Subtitles

<b>Subtitle IV</b> <b>Common Interest Communities</b>
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| <p><b>26. Property Owners' Association Act, §§ 55-508 through 55-516.2</b></p> <p><b>4.2. Condominium Act, §§ 55-79.39 through 55-79.103.</b></p> <p><b>4.1. Horizontal Property, §§ 55-79.1 through 55-79.38.</b></p> <p><b>24. Virginia Real Estate Cooperative Act, §§ 55-424 through 55-506.</b></p> <p><b>21. The Virginia Real Estate Time-Share Act, §§ 55-360 through 55-400.</b></p> <p><b>19. Subdivided Land Sales Act, §§ 55-336 through 55-351.</b></p> |
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<b>Subtitle V</b> <b>Miscellaneous</b>
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| <p><b>10. Escheats Generally, §§ 55-168 through 55-201.1.</b></p> <p><b>11.1. Disposition of Unclaimed Property, §§ 55-210.1 through 55-210.30.</b></p> <p><b>11. Estrays and Drift Property, §§ 55-202 through 55-210.</b></p> <p><b>23. Virginia Self-Service Storage Act, §§ 55-416 through 55-423.</b></p> <p><b>9. Assignments for Benefit of Creditors, §§ 55-156 through 55-167.</b></p> <p><b>18. Trespasses; Fences, §§ 55-298 through 55-335.</b></p> |
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## **Subtitle IV Common Interest Communities**

### **Proposed Order of Chapters**

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|-----------------------|--|
| <b>Chapter XX (1)</b> | <b>Property Owners' Association Act</b> <i>(Existing Chapter 26; 1989)</i>     |
| <b>Chapter XX (2)</b> | <b>Virginia Condominium Act</b> <i>(Existing Chapter 4.2; 1974)</i>            |
| <b>Chapter XX (3)</b> | <b>Horizontal Property</b> <i>(Existing Chapter 4.1; 1962)</i>                 |
| <b>Chapter XX (4)</b> | <b>Virginia Real Estate Cooperative Act</b> <i>(Existing Chapter 24; 1982)</i> |
| <b>Chapter XX (5)</b> | <b>Virginia Real Estate Timeshare Act</b> <i>(Existing Chapter 21; 1981)</i>   |
| <b>Chapter XX (6)</b> | <b>Subdivided Land Sales Act</b> <i>(Existing Chapter 19; 1978)</i>            |

CHAPTER ~~4.1~~ XX [3].HORIZONTAL PROPERTY ACT.

**Drafting note:** Existing Chapter 4.1, Horizontal Property, of Title 55 is retained as proposed Chapter XX [3] of Subtitle IV. It is retitled as the Horizontal Property Act based on the short title contained in existing § 55-79.1. This proposed chapter is divided into four articles for consistency with the other chapters in this subtitle. Numerous existing sections are recommended for repeal as obsolete because as of July 1, 1974, Horizontal Property Act was superseded by the Virginia Condominium Act (§ 55-79.39 et seq.). Therefore, no new developments may be established under a horizontal property regime.

Article 1.General Provisions.

**Drafting note:** Proposed Article 1 contains general provisions for the Horizontal Property Act.

§ ~~55-79.1~~. Title.

~~This chapter shall be known as the "Horizontal Property Act."~~

**Drafting note:** Existing § 55-79.1 is recommended for repeal on the basis of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation. The short title is retained in the title (caption) of the proposed chapter.

§ ~~55-79.2~~ 55.1-xxx. Definitions.

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

(a) "Apartment" means ~~an apartment, apartment dwelling unit, unit, house or home which a dwelling that~~ is an enclosed space consisting of one or more rooms occupying all or part of one or more floors in a building ~~or buildings~~ of one or more floors ~~or stories~~ regardless of whether it ~~be is~~ designed or used for residence, for office, for the operation of any industry or business, or for any other type of independent use, or combination of uses, ~~and shall include provided that the dwelling has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.~~ "Apartment" also includes such accessories as may be appurtenant

~~thereto, such as garage space, storage space, balcony, terrace and patio to such dwelling.~~

~~Provided that the apartment has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare;~~

~~(b) "Board" means the Common Interest Community Board;~~

~~(c) "Condominium" means the ownership of a single unit in a multiple-unit multiple-unit structure with common elements in a condominium project;~~

~~(d) "Condominium project" means a real estate condominium project; a plan or project whereby four or more apartments, rooms, office spaces, or other units existing or proposed, whether the unit involves a single structure, attached to or detached from other units, or is in one or more multiple-unit multiple-unit structures, on contiguous parcels of real estate are offered or proposed to be offered for sale;~~

~~(e) "Co-owner" means a person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof who, that owns an apartment within the building or buildings;~~

~~(f) "Council of co-owners" means all of the co-owners as defined in subsection (e) of this section, acting as a group in accordance with the bylaws of the horizontal property regime;~~

~~(g) "Developer" means a person who that undertakes to develop a real estate condominium project;~~

~~(h) "General common elements," unless otherwise provided in the master deed or lease, means and includes:~~

~~(1) 1. The land, whether leased or in fee simple, on which the building or buildings stand stands;~~

~~(2) 2. The foundations, main walls, roofs, halls, lobbies, stairways, and entrances and exits or communication ways;~~

~~(3) 3. The basements, flat roofs, yards, and gardens, except as otherwise provided or stipulated;~~

~~(4)~~ 4. The premises for the lodging of janitors or persons in charge of the building ~~or~~  
buildings, except as otherwise provided or stipulated;

~~(5)~~ 5. The compartments or installations of central services ~~such as,~~ including power,  
light, gas, cold and hot water, refrigeration, reservoirs, water tanks, and pumps, ~~and the like~~;

~~(6)~~ 6. The elevators, garbage incinerators, and, ~~in general~~ all other devices or  
installations existing for common use; and

~~(7)~~ 7. All other elements of the property rationally of common use or necessary to its  
existence, upkeep, and safety;

~~(i)~~ "Limited common elements" means ~~and includes~~ those common elements ~~which that~~  
are agreed upon by all of the co-owners to be reserved for the use of a certain number of  
apartments to the exclusion of the other apartments, ~~such as~~ including special corridors,  
stairways and elevators, and sanitary services common to the apartments of a particular floor,  
~~and the like~~;

~~(j)~~ "Majority of co-owners" means more than ~~fifty~~ 50 percent of the votes of the co-  
owners computed in accordance with the bylaws of the horizontal property regime;

~~(k)~~ "Master deed" or "master lease" means the deed or lease recording the property of  
the horizontal property regime;

~~(l)~~ "Person" means an individual, firm, corporation, partnership, association, trust, or  
other legal entity or any combination ~~thereto;~~ thereof.

~~(m)~~ "Property" means ~~and includes~~ the land, whether ~~leasehold~~ leased or in fee simple,  
~~and the building or buildings,~~ all improvements and structures ~~thereon~~ on such land, and all  
easements, rights, and appurtenances belonging ~~thereto;~~ to such land.

~~(n)~~ "To record" means to record pursuant to the laws of ~~this~~ the Commonwealth relating  
to the recordation of deeds.

**Drafting note: The definition of "Board" is deleted as unnecessary; all references to  
the Common Interest Community Board are in existing sections that are recommended for  
repeal as obsolete. In the definitions of "apartment," "general common elements," and**



"property," the plural "buildings" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Language is updated for modern usage and technical changes are made.

~~§ 55-79.14 55.1-xxx. Laws relating to exemptions made applicable; property~~ Property taxes assessed on individual apartments.

~~The laws relating to exemptions as set out in Title 34 shall be applicable to the individual apartments which shall have the benefit of said exemption in those cases the same as in ownership of any other property.~~ Property taxes assessed by the Commonwealth or by any ~~municipality~~ locality shall be assessed on and collected on the individual apartments and not on the property, ~~building or buildings~~ as a whole, or on the common elements.

**Drafting note:** The first sentence is stricken as unnecessary because there is no reason the homestead exemptions found in Title 34 would not be available to apartment owners. The term "municipality" is updated to the more modern term "locality." "Building or buildings" is stricken as unnecessary because those structures are encompassed in the term "property" and "or on the common elements" is added for consistency with other tax assessment provisions in Subtitle IV and clarifies that local tax assessors do not assess taxes against anything other than the individual apartment.

~~§ 55-79.32 55.1-xxx.~~ Chapter additional and supplemental.

The provisions of this chapter shall be in addition and supplemental to all other provisions of law, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail.

**Drafting note:** No change.

## Article 2.

### Creation and Alteration of Horizontal Property Regimes.

**Drafting note:** Proposed Article 2 contains sections related to the creation, alteration, and termination of horizontal property regimes.

~~§ 55-79.3 55.1-xxx.~~ Establishment of horizontal property regime.

A. Whenever a horizontal property regime is established when a developer, the sole owner, or the co-owners of a building one or more buildings ~~expressly declare, through the recordation of record~~ a master deed or lease, which ~~shall set forth~~ includes the particulars enumerated ~~by in~~ § ~~55~~ 79.7, ~~their desire to submit their property to the regime established by this chapter, there shall be thereby established a horizontal property regime~~ 55.1-xxx.

B. Pursuant to § 55.1-xxx [55-79.40], this chapter is superseded by the Virginia Condominium Act (§ 55.1-xxx et seq.) as of July 1, 1974. No new developments may be established under the provisions of this chapter after that date.

**Drafting note: Language is updated for modern usage. Subsection B is added to note that the Horizontal Property Act is superseded by the Virginia Condominium Act (§ 55.1-xxx et seq.) as of July 1, 1974.**

§~~55-79.34~~ 55.1-xxx. Partition.

(a) A. The common elements, both general and limited, shall remain undivided. No apartment owner, or any other person, shall bring any suit or other proceeding for partition or division of the co-ownership of the common elements as provided under § ~~55.79.6 of this chapter 55.1-xxx.~~

~~(b)~~ B. Nothing contained in this section shall be construed as a limitation on partition by the owners of one or more apartments in a horizontal property regime as to the individual ownership of such apartment or apartments without terminating the regime or as to the ownership of property outside the regime: ~~Provided, provided~~ that upon partition of any such individual apartment ~~the same~~ it shall be sold as an entity and shall not be partitioned in kind.

**Drafting note: Technical changes.**

Article 3.

## Management of Horizontal Property Regimes.

**Drafting note: Proposed Article 3 contains sections related to the management of horizontal property regimes.**

§ ~~55-79.4~~ 55.1-xxx. Apartments subject to individual titles and interests; recording; transfer of garage unit.

Once the property is ~~submitted to the~~ established as a horizontal property regime, an apartment in the building ~~or buildings is a separate parcel of real property and~~ may be individually conveyed and encumbered ~~and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely,~~ independent of the other apartments in the building ~~or buildings of which they form a part~~, and the corresponding individual titles and interests shall be recordable. A garage unit sold to a co-owner as a limited common element may be sold or transferred by him to another co-owner in the same horizontal property regime independently of and separately from his apartment.

**Drafting note: The plural "buildings" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural.**

**Language is updated for modern usage.**

§ ~~55-79.5~~ 55.1-xxx. Joint or common ownership.

Any apartment may be jointly or commonly owned by more than one person.

**Drafting note: No change.**

§ ~~55-79.6~~ 55.1-xxx Exclusive and common rights of owners.

An apartment owner ~~shall have~~ has an exclusive right to his apartment and ~~shall have~~ has a common right to a share, with other co-owners, in the common elements of the property.

**Drafting note: Technical changes.**

§ ~~55-79.7~~ 55.1-xxx. Master deed or lease; recordation; particulars.

A master deed or lease shall be recorded in the same manner and subject to the same provisions of law as are other deeds; ~~provided;~~ that no state or local recordation tax upon the value of the property transferred shall apply to any such deed ~~or portion thereof~~ recorded solely for the purpose of complying with the provisions of § ~~55-79.3~~ 55.1-xxx.

~~Provisions shall be made for the recordation of the individual apartments on subsequent resales, mortgages and other encumbrances, as is done with all other real estate recordation.~~ The

master deed or lease ~~to which § 55-79.3 refers~~ required pursuant to § 55-xxx shall ~~express~~ include the following particulars:

~~(a)~~ 1. The description of the land, whether leased or in fee simple, and the building ~~or~~ buildings, expressing their respective areas;

~~(b)~~ 2. The general description and the number of each apartment, expressing its area, location, and any other data necessary for its identification;

~~(c)~~ 3. The description of the general common elements of the building ~~or buildings~~; and

~~(d)~~ 4. The provisions requiring the council of co-owners to maintain insurance on the horizontal property regime.

**Drafting note: Language in the second paragraph is deleted as obsolete. The plural "buildings" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.**

~~§ 55-79.8~~ 55.1-xxx. Deeds of individual apartments.

The deed of each individual apartment shall express the particulars prescribed under ~~(a)~~ and (b) subdivisions 1 and 2 of ~~§ 55-79.7~~ 55.1-xxx relative to the apartments concerned and shall also express all encumbrances ~~thereon~~ on such apartments.

**Drafting note: Technical changes.**

~~§ 55-79.9~~ 55.1-xxx. Regrouping or merger of estates with principal property.

All of the co-owners or such lesser percentage as may be authorized in the master deed, or the sole owner of a building ~~or buildings~~ constituted into a horizontal property regime, may by deed waive this regime and regroup, amend the master deed, or merge the records of the filial estates with the principal property, provided, that the filial estates are unencumbered, or if they are encumbered, that the creditors in whose behalf the encumbrances are recorded accept as security the undivided portions of the property owned by the debtors.

**Drafting note: The plural "buildings" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. A technical change is made.**

§ ~~55-79.10~~ 55.1-xxx. Merger not to bar subsequent ~~horizontal property regime~~  
condominium.

The merger provided for in § ~~55-79.9~~ 55.1-xxx shall ~~in no way not~~ bar the subsequent  
constitution of the property into ~~another horizontal property regime~~ a condominium whenever  
so desired ~~and upon observance of~~ provided that the ~~provisions~~ requirements of ~~this chapter the~~  
Virginia Condominium Act (§ 55.1-xxx et seq.) are met.

**Drafting note: "Horizontal property regime" is updated to "condominium"**  
**because as of July 1, 1974, no new developments may be established under a horizontal**  
**property regime. Technical changes are made.**

§ ~~55-79.11~~ 55.1-xxx. Bylaws governing administration of buildings.

The administration of every building ~~or buildings constituted into~~ established as a  
horizontal property regime shall be governed by bylaws approved and adopted by the council of  
co-owners. The bylaws may be amended from time to time by the council or the governing  
board provided for in the council's bylaws.

**Drafting note: The plural "buildings" is stricken on the basis of § 1-227, which**  
**states that throughout the Code any word used in the singular includes the plural.**  
**Technical changes are made.**

§ ~~55-79.12~~ 55.1-xxx. Books and records; inspection; audit.

The administrator, ~~or~~ board of administration, or ~~the~~ person appointed by the bylaws of  
the regime, shall keep a book with a detailed account of the receipts and expenditures affecting  
the building and its administration and specifying the maintenance and repair expenses of the  
common elements and any other expenses incurred by or ~~in~~ on behalf of the regime. Both the  
book and vouchers accrediting the entries made ~~thereon in the book~~ shall be available for  
examination by all the co-owners ~~at convenient hours on working days~~ during business hours  
that shall be set and announced for general knowledge. All books and records shall be kept in  
accordance with good accounting procedures and be audited at least once a year by an auditor  
outside of the organization.

215           **Drafting note: Technical changes.**

216           § ~~55-79.13~~ 55.1-xxx. Contributions by co-owners.

217           All co-owners are bound to contribute pro rata toward the expenses of administration  
218 and of maintenance and repairs of the general common elements, and, in the ~~proper~~ appropriate  
219 case, of the limited common elements of the building ~~or buildings~~, and toward any other  
220 expenses lawfully agreed upon by the council of co-owners.

221           If a co-owner fails to contribute his share as ~~set forth above~~ provided in this section, the  
222 manager or board of directors of the council of co-owners, or, in a proper case, an aggrieved co-  
223 owner, may maintain an action at law on behalf of the council of co-owners to recover sums  
224 due, for damages, ~~and or~~ in equity for injunctive relief.

225           No co-owner shall be exempt from contributing toward such expenses by waiver or  
226 nonuse of the use or enjoyment of the common elements, both general and limited, or by  
227 abandonment of the apartment belonging to him.

228           ~~Said~~ Such contributions may be determined and a lien, as the master deed may provide  
229 upon default in the payment of any such contribution, may be perfected by filing in the clerk's  
230 office ~~wherein in which~~ the master deed is recorded a memorandum showing the name of the  
231 delinquent co-owner, the name of the council of co-owners as claimant of the lien, the amount  
232 of the claim, and a description of the property on which a lien is claimed verified by oath of the  
233 agent of the council of co-owners. The clerk shall record and index such lien as provided in §  
234 43-4.1 and shall charge such fees as are provided by law. Such lien shall be released as provided  
235 in §§ ~~55-66.3~~ 55.1-xxx through ~~55-66.6~~ 55.1-xxx upon payment ~~of by~~ by the co-owner of his  
236 contributions.

237           **Drafting note: The plural "buildings" is stricken on the basis of § 1-227, which**  
238 **states that throughout the Code any word used in the singular includes the plural.**  
239 **Technical changes are made.**

240           § ~~55-79.15~~ 55.1-xxx. Payment of assessments upon conveyance of apartment: priority.

241 Upon the sale or conveyance of an apartment, all unpaid assessments against a co-owner  
242 for his pro rata share in the expenses ~~to which § 55-79.13 refers~~ provided for in § 55.1-xxx shall  
243 first be paid out of the sale price or by the purchaser in ~~preference~~ priority over any other  
244 assessments or charges of whatever nature except the following:

245 ~~(a)~~ 1. Assessments, liens, and charges in favor of the Commonwealth or any  
246 ~~municipality~~ locality for taxes past due and unpaid on the apartment; and

247 ~~(b)~~ 2. Payments due under mortgages duly recorded.

248 **Drafting note: The term "preference" is changed to the more legally appropriate**  
249 **term "priority." The term "municipality" is updated to the more modern term "locality."**  
250 **Technical changes are made.**

251 ~~§ 55-79.35~~ 55.1-xxx. Liens or encumbrances.

252 ~~(a)~~ A. Subsequent to establishment of a horizontal property regime as provided in this  
253 chapter, and while the property remains subject to this chapter, no lien shall ~~thereafter~~ arise or  
254 be effective against the property as a whole or against the common elements. During such  
255 period, liens or encumbrances shall arise or be created and enforced only against each apartment  
256 and the percentage of undivided interest in the common areas and facilities appurtenant to such  
257 apartment in the same manner and under the same conditions in every respect as liens or  
258 encumbrances may arise or be created upon or against any other separate parcel of real property  
259 subject to individual ownership; ~~provided,~~ that no labor performed or materials furnished with  
260 the consent or at the request of an apartment owner or ~~his~~ such owner's agent ~~or his,~~ contractor,  
261 or subcontractor, shall be the basis for the filing of a mechanic's lien against the apartment or  
262 any other property of any other apartment owner not expressly consenting to or requesting the  
263 same, except that such express consent shall be deemed to be given by the owner of any  
264 apartment in the case of emergency repairs ~~thereto~~ to such apartment. Labor performed or  
265 materials furnished for the common ~~areas~~ elements and facilities, if duly authorized by the  
266 council of co-owners, the manager, or the board of directors in accordance with this chapter, the  
267 master deed, or the bylaws, shall be deemed to be performed or furnished with the express

consent of each apartment owner and shall be the basis for the filing of a mechanic's lien against each of the apartments and shall be subject to the provisions of ~~subparagraph (b) hereunder~~ subsection B. Notice of ~~said such~~ lien may be served on the manager or the board of directors of the council of co-owners.

~~(b) In the event of filing of B. If~~ a lien is filed against two or more apartments and their respective percentage interest in the common elements, the apartment owners of the separate apartments may remove their ~~apartment~~ apartments and their percentage ~~interest~~ interests in the common elements appurtenant ~~thereto~~ to such apartments from ~~said the~~ lien by payment of the fractional or proportional amounts attributable to each of the apartments affected, or they may file a written undertaking with surety approved by the court ~~of the fractional or proportional amounts attributable to each of the apartments affected~~. ~~Said Such~~ individual payment, or amount of bond, shall be computed by reference to the percentage established pursuant to the bylaws of the horizontal property regime. After such partial payment, filing of bond, partial discharge, or release, or other satisfaction, the apartment and its percentage interest in the common elements shall ~~thereafter~~ be free and clear of such lien. Such partial payment, indemnity, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce ~~his~~ its rights against any apartment and its percentage interest in the common elements not so paid, indemnified, satisfied, or discharged.

**Drafting note: In subsection A, "as a whole or against the common elements" is added for consistency with other tax assessment provisions in Subtitle IV and clarifies that local tax assessors do not assess taxes against anything other than the individual apartment. In subsection A, the term "common areas" is updated to use the term, "common elements," because "common elements" is used in the defined terms "general common elements" and "limited common elements." Technical changes are made.**

~~§ 55-79.36 55.1-xxx~~. Rule against perpetuities; rule restricting unreasonable restraints on alienation.



294       The ~~rule~~ rules of property law known as the rule against perpetuities, and ~~the rule of~~  
295 ~~property law known as~~ the rule restricting unreasonable restraints on alienation, shall not be  
296 applied to defeat any of the provisions of this chapter or of any provisions of any master deed or  
297 lease, bylaws, or other document executed in accordance with this chapter as to the  
298 ~~condominium project~~ horizontal property regime. This exemption shall not apply to estates in  
299 the individual ~~condominiums~~ apartments.

300       **Drafting note: The term "condominium project" is changed to "horizontal**  
301 **property regime" and the term "condominiums" is changed to "apartments" because the**  
302 **rules for condominium projects are found in the Virginia Condominium Act (§ 55.1-xxx et**  
303 **seq.).**

304       § ~~55-79.37~~ 55.1-xxx. Liability of owner.

305       ~~(1)~~ A. The liability of the owner of an apartment for pro rata expenses shall be limited to  
306 the amounts ~~for which he is~~ assessed from time to time in accordance with this chapter, the  
307 master deed or lease ~~and, or~~ the bylaws.

308       ~~(2)~~ B. The owner of an apartment shall not be personally liable with respect to the  
309 negligence of any other co-owner except insofar as the negligent co-owner is acting for the  
310 council of co-owners.

311       **Drafting note: Technical changes.**

312       § ~~55-79.38~~ 55.1-xxx. Compliance by co-owner with bylaws and administrative rules and  
313 regulations.

314       Each co-owner shall comply ~~strictly~~ with the bylaws of the horizontal property regime  
315 and with the administrative rules and regulations adopted pursuant ~~thereto to such bylaws~~, as  
316 ~~either of the same~~ may be ~~lawfully~~ amended from time to time, and with the covenants,  
317 conditions ~~and, or~~ restrictions set forth in the deed ~~of his to the~~ individual apartment. Failure to  
318 comply with any ~~of the same shall be ground~~ such bylaws, rules and regulations, or covenants,  
319 conditions, or restrictions is grounds for an action by the manager or board of directors of the

council of co-owners, or, in a proper case, an aggrieved owner, on behalf of the council of co-owners to recover sums due, for damages and for injunctive relief.

**Drafting note: Technical changes.**

Article 4.

Protection of Purchasers.

**Drafting note: Proposed Article 4 contains a section related to the protection of horizontal property purchasers.**

~~§ 55-79.21:1~~ § 55.1-xxx. Deposits to be held in escrow.

Any deposit made with a reservation to purchase or a contract to purchase shall be held in escrow in a separate fund for such deposits designated as such until the deed for which a deposit was made is delivered to the depositor.

**Drafting note: No change.**

~~§ 55-79.16. Developer to notify Board prior to offering project for sale.~~

~~Prior to the time when a condominium project is to be offered for sale in this Commonwealth, the developer shall notify the Board in writing of his intention to sell such offerings.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.17. Notice to be accompanied by fee and questionnaire.~~

~~The notice of intention shall be accompanied by a fee of \$100 and by a verified copy of a questionnaire properly filled in. The questionnaire will be in such form and content as will require full disclosure of all material facts reasonably available.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.18. Inspection of project by Board.~~

~~After appropriate notification has been made pursuant to §§ 55-79.16 and 55-79.17, an inspection of the condominium project may be made by the Board.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.19. Fee for inspection.~~

~~When an inspection is to be made of projects, the notice of intention shall be accompanied by the filing fee, together with an amount estimated by the Board to be necessary to cover the actual expenses of such inspection, not to exceed seventy five dollars a day for each day consumed in the examination of the project plus reasonable first class transportation expenses, which shall be paid as a fee to the commissioner inspecting such project from the special fund established in § 55-79.31.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.20. Waiver of initial inspection.~~

~~The Board may waive initial inspection when in its opinion, a preliminary or final public report can be substantially drafted and issued from the contents of the questionnaire and other or subsequent inquiries. Failure of the Board to notify the developer of its intent to inspect his project within ten days after notification of intention is properly filed pursuant to §§ 55-79.16 and 55-79.17 will be construed a waiver of such inspection.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.21. Public reports by Board of examinations.~~

~~When the Board makes an examination of any project, it shall make a public report of its findings, which shall contain all material facts reasonably available. A public report shall neither be construed to be an approval nor disapproval of a project. No unit in a condominium project shall be offered for sale until the Board shall have issued a final or substitute public report thereon, nor shall reservations to purchase be taken until the Board has issued a preliminary, final or substitute public report.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.21:2. Management contract of developer limited to five years.~~

~~No management contract for management of all or part of a condominium project may be entered into by a developer for a period of longer than five years.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.22. When preliminary report may be issued.~~

~~A preliminary public report may be issued by the Board upon receipt of a notice of intention filing which is complete except for some particular requirement, or requirements, which is, or are, at the time not fulfilled, but which may reasonably be expected to be completed.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.23. Prerequisites to sale of units by developer; purchasers' receipts for reports.~~

~~The developer shall not enter into a binding contract or agreement for the sale of any unit in a condominium project until~~

~~(a) A true copy of the Board's final or substitute public report thereon with all supplementary public reports, if any has been issued, has been given to the prospective purchaser,~~

~~(b) The latter has been given an opportunity to read same, and,~~

~~(c) His receipt taken therefor.~~

~~Receipts taken for any public report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the Board or its deputies, for a period of three years from the date the receipt was taken.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.24. Subsequent investigations by Board; reports.~~

~~If, after a final or substitute public report has been issued, the Board shall deem it necessary to conduct further inquiries or investigations in order to protect the general public in its real estate transactions, the Board may issue a supplementary public report describing the findings thereof. Upon the issuance of a supplementary public report, it shall be the duty of the developer to issue a true copy thereof to all purchasers.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.25. Copies of Board's public report.~~

~~The true copies of the Board's public report shall be an exact reproduction of those prepared by the Board.~~

401           **Drafting note: Recommended for repeal as obsolete.**

402           ~~§ 55-79.26. Notice by developer of change in project.~~

403           ~~It is unlawful for the developer of the project, after it is submitted to the Board, to~~  
404 ~~materially change the setup or value or use of such offering without first notifying the Board in~~  
405 ~~writing of such intended change and substantially notifying all purchasers and prospective~~  
406 ~~purchasers of such change.~~

407           **Drafting note: Recommended for repeal as obsolete.**

408           ~~§ 55-79.27. Hearings by Board.~~

409           ~~When a final, preliminary or substitute public report is not issued within a reasonable~~  
410 ~~time after notice of intention is properly filed pursuant to §§ 55-79.16 and 55-79.17, or if the~~  
411 ~~developer is materially grieved by the form or content of a public report, the developer may, in~~  
412 ~~writing, request and shall be given a hearing by the Board within a reasonable time after receipt~~  
413 ~~of request.~~

414           **Drafting note: Recommended for repeal as obsolete.**

415           ~~§ 55-79.28. False statements or representations; violation of statute or order of Board.~~

416           ~~Every officer, agent or employee of any company, and every other person who~~  
417 ~~knowingly authorizes, directs or aids in the publication, advertisement, distribution or~~  
418 ~~circulation of any false statement or representation concerning any project offered for sale or~~  
419 ~~lease, and every person who, with knowledge that any advertisement, pamphlet, prospectus or~~  
420 ~~letter concerning any said project contains any written statement that is false or fraudulent,~~  
421 ~~issues, circulates, publishes or distributes the same, or causes it to be issued, circulated,~~  
422 ~~published or distributed, or who, in any other respect, violates or fails to comply with any of the~~  
423 ~~provisions set forth in §§ 55-79.16 through 55-79.29, or who in any other respect violates or~~  
424 ~~fails, omits, or neglects to obey, observe or comply with any order, decision, demand or~~  
425 ~~requirement of the Board under §§ 55-79.16 through 55-79.29, shall be punished by a fine not~~  
426 ~~exceeding \$2,500 or by confinement for a term not exceeding one year, or both.~~

427           **Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.29. Investigation by Board upon belief of violation by developer; examination of records, etc.~~

~~If the Board has reason to believe that a developer is violating any provision set forth in §§ 55-79.16 to 55-79.29, or the rules and regulations of the Board made pursuant thereto, the Board may investigate the developer's project and examine the books, accounts, records and files used in the project of the developer. For the purposes of examination, the developer is required to keep and maintain records of all sales transactions and of the funds received by him pursuant thereto, and to make them accessible to the Board upon reasonable notice and demand.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.30. Enjoining violations.~~

~~Whenever the Board believes from satisfactory evidence that any person has violated any of the provisions of §§ 55-79.16 to 55-79.29, or the rules and regulations of the Board made pursuant thereto, it may conduct an investigation on such matter, and bring an action in the name of the people of the Commonwealth of Virginia in any court of competent jurisdiction against such person to enjoin such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.31. Fees credited to special fund; expenditure.~~

~~All fees collected under this chapter shall be remitted by the Board to the Treasurer of this Commonwealth, and shall be placed to the credit of the special fund of the Real Estate Board, which is hereby established and shall be expended solely for compliance with the provisions of this chapter.~~

**Drafting note: Recommended for repeal as obsolete.**

~~§ 55-79.33. Supplemental rules and regulations by planning and zoning commissions.~~

~~Whenever they deem it proper, the planning and zoning commission of any county or municipality may adopt supplemental rules and regulations not inconsistent with general law~~

454 ~~governing a horizontal property regime established under this chapter in order to implement this~~  
455 ~~program.~~

456 **Drafting note: Recommended for repeal as obsolete.**

457 #

1 CHAPTER ~~19~~ XX [6].

2 SUBDIVIDED LAND SALES ACT.

3 **Drafting note: Existing Chapter 19, Subdivided Land Sales Act, of Title 55 is**  
4 **retained as proposed Chapter XX [6] of Subtitle IV.**

5 ~~§ 55-336. Short title.~~

6 ~~This chapter may be cited as the Subdivided Land Sales Act of 1978.~~

7 **Drafting note: Existing § 55-336 is recommended for repeal on the basis of § 1-244,**  
8 **which states that the caption of a subtitle, chapter, or article operates as a short title**  
9 **citation.**

10 ~~§ 55-337~~ 55.1-xxx. Definitions.

11 ~~When As~~ used in this chapter, unless the context ~~otherwise~~ requires a different meaning:

12 ~~1.~~ "Agent" means any person who represents or acts for or on behalf of a developer in  
13 the disposition of any lot ~~or lots~~ in a subdivision; ~~but shall~~ does not include an ~~attorney at law~~  
14 attorney whose representation of another person consists solely of rendering legal services.

15 ~~2.~~ "Blanket encumbrance" means a trust, deed, mortgage, judgment, ~~or any other lien or~~  
16 encumbrance, securing or evidencing the payment of money and affecting the land ~~in toto~~  
17 comprising the subdivision to be offered and sold or leased or affecting more than ~~ten~~ 10 lots or  
18 parcels of such lands, or an agreement affecting more than ~~ten~~ 10 lots or parcels of such lands  
19 by which the developer holds ~~said such~~ subdivision under option, contract, sale, ~~or trust~~  
20 agreement. ~~The term shall~~ "Blanket encumbrance" does not include mechanics' liens, taxes, ~~or~~  
21 assessments levied by a public authority, or easements granted to public utilities or  
22 governmental agencies for the purpose of bringing services to the lot or parcel within the  
23 subdivision.

24 ~~3.~~ "Developer" means any person who offers, directly or indirectly, for disposition, any  
25 ~~lots lot~~ in a subdivision, but ~~shall~~ does not include a trustee under a deed of trust securing an  
26 indebtedness or other obligation who sells lots within such subdivision under foreclosure  
27 proceedings, ~~provided~~ that the purpose in so doing is not to evade the provisions of this chapter.



28 ~~5.~~ "Disposition" or "sale" means any lease, assignment, or exchange, or any interest in  
29 any lot ~~which~~ that is a part of or included in a subdivision.

30 ~~10.~~ "Land sales installment contract" means any installment contract for the sale or  
31 disposition of land ~~whereby~~ by which the purchaser does not receive a deed conveying the  
32 property purchased until ~~part~~ some or all installment payments have been made as called for in  
33 the contract and record title to ~~said~~ such property remains in another pending full performance  
34 of the contract.

35 ~~9.~~ "Lot" means any unit, parcel, division, ~~or~~ piece of land, or interest in land except  
36 utility easements if such interest carries with it the exclusive right to use a specific portion of  
37 property.

38 ~~6.~~ "Offer" means any inducement, solicitation, media advertisement, or attempt  
39 performed by or on behalf of a developer ~~which~~ that has as its objective the disposition of a lot  
40 ~~or lots~~ in a subdivision.

41 ~~7.~~ "Person" means any individual, corporation, government or governmental agency,  
42 business trust, estate, trust, partnership, unincorporated association, two or more of any of the  
43 foregoing having a joint or common interest, or any other legal or commercial entity.

44 ~~8.~~ "Purchaser" means a person who acquires or attempts to acquire any lot ~~or lots~~ in a  
45 subdivision.

46 ~~4.~~ "Subdivision" means:

47 ~~a. 1.~~ Any subdivision of land into ~~one hundred~~ 100 or more lots, whether contiguous or  
48 not, where any such lots ~~therein~~ are, from July 1, 1978, sold or disposed of, by land sales  
49 installment contracts, and pursuant to a common promotional plan, where lot purchasers within  
50 ~~said~~ such subdivision have use of and access to the facilities and amenities within such  
51 subdivision for which the ~~said~~ lot owners are assessed on a regular or special basis for the use  
52 and enjoyment ~~thereof~~ of such lot; and

53 ~~b. 2.~~ Any existing subdivision of land of ~~thirty~~ 30 or more lots ~~wherein~~ in which the  
54 developer has concluded its sales effort for a period of six consecutive months and has

transferred to the association described in subdivision A 1 of § ~~55-344~~ 55.1-xxx all the title, control, and maintenance responsibilities of the common areas and common facilities.

**Drafting note: The numbered definitions are rearranged from numerical to alphabetical order pursuant to current style for the Code. In the definitions of "agent," "offer," and "purchaser," "or lots" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Language is updated for modern usage and technical changes are made.**

§ ~~55-338~~ 55.1-xxx. Exemptions.

Unless the method of disposition is adopted for the purposes of evasion of this chapter, the provisions of this chapter shall not apply to:

1. The sale of a subdivision to a single purchaser for his own account in a single or isolated transaction;
2. The disposition of lots in a subdivision if each lot in the subdivision is at least five acres ~~or more~~ in size;
3. The disposition of a lot on which there is a residential, commercial, or industrial building, or as to a lot upon which there is a legal obligation on the part of the seller to construct such a building within a period of two years from the date of disposition;
4. The disposition of land pursuant to court order, provided that the court reviews and approves the disposition on an individual basis;
5. The disposition of cemetery lots;
6. Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust on real estate;
7. Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;
8. Offers or dispositions of any interest in real estate, oil, gas, or other minerals or any royalty interest ~~therein in such real estate, oil, gas, or other minerals~~ if the offers or dispositions of such interests are regulated as securities by the United States or by ~~this~~ the Commonwealth;

9. The disposition of a lot ~~or lots~~ to any person whose purpose in acquiring the land is to engage in the business of constructing residential, commercial, or industrial buildings ~~thereon~~ on such land;

10. The lease of a lot where the right to possession or the rental term does not exceed one year in the aggregate and where the conditions of the lease do not obligate the lessee to renew;

11. The sale or lease of condominium units registered pursuant to the Virginia Condominium Act (§ ~~55-79.39~~ 55.1-xxx et seq.); or

12. The disposition of real estate ~~which~~ that is zoned or otherwise designated by the appropriate governmental authority for, or restricted by a valid recorded declaration of covenants to, commercial or industrial use.

**Drafting note: In subdivision 9, "or lots" is stricken on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.**

~~§§ 55-339 through 55-340.1. Repealed.~~

**Drafting note: Repealed by Acts 1996, c. 372.**

~~§ 55-341~~ 55.1-xxx. Transfer of ownership.

It ~~shall be~~ is unlawful for the developer to transfer fee simple ownership of ~~lots or~~ parcels a lot or parcel within a subdivision to a ~~lot~~ purchaser by any other means than by a general or special warranty deed or other deed complying with ~~Title 55,~~ Chapter 4 (§ ~~55-48~~ 55.1-xxx et seq.).

**Drafting note: The phrase "lots or parcels" is stricken and replaced with the phrase "a lot or parcel" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. The word "lot" is stricken before "purchaser" because "purchaser" is a defined term. Technical changes are made.**

~~§ 55-342~~ 55.1-xxx. Blanket encumbrances.

108           A. It ~~shall be~~ is unlawful for any developer or agent to sell or lease ~~lots a lot~~ in a  
109 subdivision that is subject to a blanket encumbrance unless the blanket encumbrance or effective  
110 supplemental agreement contains a release provision permitting legal title to individual lots or  
111 other interest contracted for to be obtained free and clear of the blanket encumbrance. Nothing  
112 ~~herein in this section~~ shall be construed to limit either the conditions upon which such release  
113 may be premised or the modification or amendment of such release provision as to (i) any  
114 purchaser other than a purchaser under an installment sales contract; or (ii) ~~purchasers any~~  
115 purchaser under an installment sales ~~contracts which are~~ contract that is executed subsequent to  
116 the recordation of the amendment or modification.

117           B. Unless blanket encumbrance release provisions provide that the lien of the blanket  
118 encumbrance is subordinate to the rights of persons purchasing from the developer or agent and  
119 that those purchasers have the unconditional right to obtain legal title or other interest contracted  
120 for free and clear of the blanket encumbrance upon compliance with the terms and conditions of  
121 the purchase or lease, it ~~shall be~~ is unlawful for a developer or agent to sell or lease lots ~~unless~~  
122 except in compliance with one of the following conditions ~~is complied with~~:

123           1. Any earnest money deposit or advance or other payment made by the purchaser on  
124 account of the purchase of a lot is placed in an escrow account ~~which that is a trust account~~  
125 maintained in a federally insured depository located in the Commonwealth and that fully  
126 protects the interest of the purchaser until ~~either~~:

127           a. Fee title or other interest contracted for is conveyed to the purchaser free and clear of  
128 the blanket encumbrance; ~~or~~

129           b. Either the developer or purchaser defaults under the contract and a final determination  
130 as to the ~~dispersal disbursal~~ of sums paid is made by ~~either~~ a court of competent jurisdiction; or

131           c. The developer voluntarily orders the return of the money to the purchaser. ~~Such~~  
132 ~~escrow shall be held in a trust account maintained in a federally insured depository located in~~  
133 ~~the Commonwealth of Virginia; or~~

2. Title to the subdivision is held in trust under a trust agreement until a proper release is obtained and legal title or other interest contracted for is conveyed to the purchaser.

**Drafting note: In subdivision A, the word "lots" is stricken and replaced with "a lot" on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. The deleted sentence in subdivision B 1 c is relocated to subdivision B 1 because it applies to all of subdivision B 1. Language is updated for clarity and technical changes are made.**

~~§ 55-343~~ 55.1-xxx. Restraints on alienation.

~~It shall be~~ Provided that selling or leasing a lot is not specifically prohibited by recorded covenant, it is unlawful to restrain the owner of a lot in a subdivision from offering ~~that such~~ lot for sale or lease, ~~provided leasing of the lot is not specifically prohibited by recorded covenant,~~ or from selling or leasing such lot. Any deed restriction or recorded covenant ~~which that~~ creates a right of first refusal in excess of ~~thirty~~ 30 days or creates a sales restraint ~~which that~~ denies lot owners the right to post for-sale signs of reasonable size, ~~shall be~~ is null and void.

**Drafting note: Wording is reorganized to clarify that the exception to the general rule against restraints on alienation applies to both offering a lot for sale or lease and actually selling or leasing a lot. Technical changes are made.**

~~§ 55-344~~ 55.1-xxx. Management, regulation, and control of subdivisions ~~in which there are with~~ common facilities or property owners' associations.

A. The covenants, deed restrictions, articles of incorporation, bylaws, or other instruments for the management, regulation, and control of subdivisions ~~which that~~ include facilities or amenities for which the lot owners are assessed on a regular or special basis for the use, enjoyment, and maintenance ~~thereof of such facilities or amenities~~ shall provide for, ~~but need not be limited to~~ at a minimum:

1. Formation of an association to be composed of lot owners within the subdivision, such formation occurring prior to the sale of the first lot within the subdivision by the developer;

2. A description of the areas or interests to be owned or controlled by the association, which shall include those facilities or amenities for which the lot owners are subject to ~~special~~ ~~or~~ regular or special assessments;

3. The transfer of title ~~and~~, control, and maintenance responsibilities of common areas and common facilities to the association, which transfer is to take place no later than at such time as the developer transfers legal or equitable ownership of at least ~~seventy-five~~ 75 percent of the lots within the subdivision to purchasers of such lots or when all of the amenities and facilities are completed, whichever shall occurs first ~~occur~~, but in no event any sooner than two years from the date the developer sells his first lot within the subdivision should the developer elect to retain title to the common areas and common facilities for such period. The transfer herein of such title, control, and maintenance responsibilities required of the developer shall not exonerate ~~him the developer~~ from the responsibility of completion of the common areas and facilities once the transfer takes place.

Nothing ~~herein in this section~~ shall preclude the developer from transferring the common areas and common facilities for consideration, provided, that (i) ~~that~~ such consideration does not exceed the lesser of the fair market value ~~thereof of such common areas and common facilities~~ at the time of transfer or the actual cost expended by the developer ~~therefor, for such common areas and common facilities~~ and (ii) ~~that~~ the developer affirmatively discloses the following information to the purchaser, in writing, at the time the initial contract of purchase is signed:

a. That the common areas and common facilities will be transferred only upon payment of consideration by the association;

b. The terms upon which such transfer will be made; and

c. An estimate of the amount of consideration to be paid by the association.

In the event the developer seeks payment for the areas or facilities transferred, the association shall have the option of deferring such payment ~~therefor~~, evidenced by a deed of trust note covering a period of not less than five years at the legal rate of interest allowed in ~~this~~

186 the Commonwealth, and secured by a deed of trust covering the ~~facilities or~~ areas or facilities  
187 transferred;

188 4. Procedures for determining and collecting regular assessments to defray expenses  
189 attributable to the ownership, use, enjoyment, and operation of common areas and facilities  
190 transferred to the association;

191 5. Procedures for establishing and collecting special assessments for capital  
192 improvements or other purposes;

193 6. Procedures to be employed upon the annexation of additional land to the existing  
194 subdivision ~~which procedures~~ that shall disclose whether or not per capita assessments on  
195 account of such annexation shall be subject to an increase, in the event additional amenities or  
196 common facilities are provided lot owners within the subdivision;

197 7. Such procedures and restrictions, if any, ~~as that~~ as that apply ~~with respect~~ to the voluntary or  
198 involuntary resale of a lot within a subdivision by a purchaser or his agent, which ~~procedures~~  
199 ~~and restrictions, if any,~~ shall be established prior to the sale of the first lot by the developer  
200 within the subdivision;

201 8. Monetary penalties or use privilege and voting suspension of members for breaches of  
202 the restrictions, bylaws, or other instruments for management and control of the subdivision, or  
203 for nonpayment of regular or special assessments, with procedures for hearings for the  
204 disciplined members;

205 9. Creation of a board of directors or other governing body for the association with the  
206 members of the board or body to be elected by a vote of members of the association in good  
207 standing at an annual meeting or special meeting to be held not later than six months after the  
208 transfer of the areas of facilities ~~outlined~~ provided for in subdivision 3 ~~above~~;

209 10. Enumeration of the power of the board of directors or governing body ~~which are that~~  
210 is consistent with and not otherwise provided by law;

11. The preparation of an annual balance sheet and operating statement for each fiscal year with provision for distribution of a copy of the reports to each member of the association in good standing within ~~ninety~~ 90 days after the end of the fiscal year;

12. Quorum requirements for meetings of members of the association who are in good standing; and

13. Such other provisions as may be required by ~~Chapter 10~~ the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) ~~of Title 13.1~~, if the association is a Virginia nonstock corporation.

B. Any developer of a subdivision, successor or otherwise, ~~which~~ when such subdivision is subject to the provisions of this chapter, shall be obligated to complete the facilities and amenities as promised and outlined in subsection A ~~of this section~~ by the initial developer of the subdivision subject to the transfer of title ~~and~~ , control, and maintenance responsibilities of common areas and common facilities to the lot owners' association. The foregoing shall not be deemed to apply to any purchaser at foreclosure or grantee in a deed in lieu of foreclosure, provided that the purchaser or grantee is a financial institution and the mortgagee, creditor, or beneficiary under the instrument being foreclosed or giving rise to the deed in lieu of foreclosure. ~~The term financial institution shall mean~~ For the purposes of this subsection, "financial institution" means a bank, savings institution, real estate investment trust, insurance company, pension or profit sharing trust, or other institution regularly engaged in the business of making real estate loans. For purposes of this subsection, the lot owners' association shall not be deemed a developer if at a meeting of its members in good standing a vote is taken ~~whereby and~~ and at least ~~fifty~~ 50 percent of the members vote to be exempt from the requirements of this subsection.

C. The association, once formed and in existence, and the title owner of the common areas and common facilities within the subdivision and which has been in existence for a period of at least five years, shall have the authority to pass special assessments against and raise the annual assessments of the members of the association and to collect ~~said~~ such assessments from



such members according to law, if the purpose in so doing is for the maintenance of ~~the~~  
aforesaid such common areas and common facilities. The authority ~~hereby~~ granted and  
conferred upon the association ~~shall exist by this subsection exists~~ only where the restrictions  
and covenants of record ~~have no~~ do not contain specific language ~~contained therein which that~~  
precludes the adoption of special assessments or increases the annual dues or assessments.

D. The association shall have a lien on every lot within its subdivision for unpaid regular  
or special assessments levied against ~~that~~ such lot in accordance with the provisions of this  
chapter. The lien, once perfected, shall be prior to all other liens and encumbrances except (i)  
real estate tax liens on ~~that~~ such lot, (ii) liens and encumbrances recorded prior to the perfected  
lien, and (iii) any sums unpaid on any first mortgages or first deeds of trust recorded prior to the  
perfection of the lien for regular or special assessments and securing institutional lenders. The  
provisions of this subsection shall not affect the priority of mechanics' and materialmen's liens.

Notwithstanding any other provision of this chapter, or any other provisions of law  
requiring documents to be recorded in the miscellaneous lien books or the deed books of the  
clerk's office of any court, from July 1, 1978, all memoranda of liens arising under this  
subsection shall, in the discretion of the clerk, be recorded in the miscellaneous lien books or the  
deed books in such clerk's office. Any memorandum shall be indexed in the general index to  
deeds, and such general index shall identify the lien as a lien for subdivision regular or special  
assessments.

The association, in order to perfect the lien given by this subsection, shall file before the  
expiration of ~~ninety~~ 90 days from the time such ~~special~~ regular or ~~regular~~ special assessment  
became due and payable in the clerk's office of the county or city in which the subdivision is  
situated, a memorandum, verified by the oath of the president of the association, which  
memorandum shall contain:

1. A description of the subdivision;
2. The name or names of ~~the persons constituting~~ the owners of the lot;

264 3. The amount of unpaid ~~special regular~~ or ~~regular special~~ assessments currently due or  
265 past due applicable to the lot, together with the date when each fell due; and

266 4. The date of issuance of the memorandum.

267 ~~It shall be the duty of the~~ The clerk in whose office the memorandum ~~shall be~~ is filed ~~as~~  
268 ~~hereinabove provided to shall~~ record and index ~~the same~~ such memorandum as provided in this  
269 subsection, in the names of the persons identified ~~therein~~ in such memorandum, as well as in the  
270 name of the association. The cost of recording ~~such the~~ memorandum shall be taxed against the  
271 person found liable for any judgment or decree enforcing such lien. It ~~shall be~~ is lawful for ~~such~~  
272 the memorandum to be filed as one statement listing ~~therein~~ the ~~above required~~ information  
273 required in subdivisions 1 through 4 and each of the lot owners whose property within the  
274 subdivision is lien ~~thereby~~. The cost of filing shall be as provided in subdivision A 2 of §  
275 17.1-275.

276 No suit to enforce any lien perfected under this subsection shall be brought after one  
277 year from the time when the memorandum of lien was recorded; however, the filing of a petition  
278 to enforce any such lien in any suit ~~wherein in which~~ such petition may be properly filed shall  
279 be regarded as the institution of a suit under this subsection; ~~and provided, further, that nothing~~  
280 ~~herein~~. Nothing in this subsection shall be construed to extend the time within which any such  
281 lien may be perfected. Nothing shall preclude the association from filing a single suit listing all  
282 unpaid delinquent and enumerated lot owners as defendants; and obtaining judgment against  
283 those so adjudicated by the court hearing the ~~cause~~ suit.

284 The judgment or decree in an action brought pursuant to this subsection shall include,  
285 without limitation, reimbursement for costs and ~~attorney's~~ attorney fees, together with the  
286 interest at the maximum lawful rate for the sums secured by the lien from the time each ~~such~~  
287 sum became due and payable.

288 When payment or satisfaction is made of a debt secured by the lien perfected by this  
289 subsection, the lien shall be released in accordance with the provisions of § ~~55-66.3~~ 55.1-xxx.

For the purposes of § ~~55-66.3~~ 55.1-xxx, the president or secretary of the association ~~shall be~~  
deemed is the duly authorized agent of the lien creditor.

Nothing in this subsection shall be construed to prohibit the recovery of sums for which  
this subsection creates a lien.

Any lot owner within the subdivision having executed a contract for the disposition of  
the lot, ~~shall be~~ is entitled, upon request, to a recordable statement setting forth the amount of  
unpaid regular or special assessments currently levied against that lot. Such request shall be in  
writing, directed to the president of the association, and delivered to the principal office of the  
association. Failure of the association to furnish or make available such a statement within five  
business days from the receipt of such written request shall extinguish the lien created by this  
subsection as to the lot involved. Payment of a fee not exceeding ~~fifteen dollars~~ \$15 may be  
required as a prerequisite to the issuance of such a statement if the bylaws of the association so  
provide.

E. ~~Upon~~ If, upon July 1, 1978, and a subdivision becoming subject to the terms ~~thereof~~  
and ~~the~~ requirements outlined in subdivisions A 1 through 8 ~~of subsection A of this section~~ have  
not been performed, then the requirements shall have to be fully complied with within a period  
of ~~ninety~~ 90 days from July 1, 1978, and upon failure to fully perform all of such requirements  
within the ~~ninety-day~~ 90-day period the failure so to do shall constitute a violation of this  
subsection.

F. Each lot owner within a subdivision ~~which that~~ falls within the ~~definition~~ scope of this  
chapter shall be responsible for his pro rata share of the cost of maintaining the common ~~areas~~  
facilities and common ~~facilities~~ areas owned by the association. For purposes of this subsection,  
"common facilities and common areas ~~shall be defined to mean~~" means only the roads and lakes  
within the subdivision, and ~~maintenance shall include~~ "maintaining" includes any orderly  
program for the continued upkeep and improvement of such roads and lakes. The association  
~~shall have~~ has the responsibility of determining the pro rata share assessed against each lot

owner, and such amount assessed ~~thereby~~ shall be in addition to the annual or special assessment otherwise obligated by each member of the association.

G. ~~Providing~~ If a subdivision of land meets the requirement in subdivision 2 of the definition of subdivision as detailed in subdivision 4 b of provided in § 55-337 is complied with 55.1-xxx, then the property owners' association ~~at of~~ the subject subdivision ~~shall have~~ has the powers and duties enumerated in subsections C, D, and F ~~of this section~~ as well as the rights and authority to establish those procedures outlined in subdivisions A 4, ~~A~~ 5, and ~~A~~ 6 and the penalties in subdivision A 8 ~~herein, but shall also have and also has~~ the obligations imposed by such subdivisions and those of subdivisions A 9 through ~~A~~ 12.

**Drafting note: Language is updated for modern usage and technical changes are made.**

~~§§ 55-345, 55-346. Repealed.~~

**Drafting note: Repealed by Acts 1996, c. 372.**

~~§ 55-347~~ 55.1-xxx. Penalties.

Any person violating any of the provisions of §§ ~~55-341~~ 55.1-xxx through ~~55-344~~ shall be 55.1-xxx is guilty of a Class 2 misdemeanor. At the discretion of the court, any imprisonment may ~~be rendered to~~ run concurrently with imprisonment ~~rendered or~~ imposed by any court for violation of any law similar to the provisions of this chapter.

**Drafting note: Technical changes.**

~~§ 55-348. Repealed.~~

**Drafting note: Repealed by Acts 1996, c. 372.**

~~§ 55-349. Repealed.~~

**Drafting note: Repealed by Acts 2015, c. 709, cl. 2.**

~~§ 55-350. Repealed.~~

**Drafting note: Repealed by Acts 1996, c. 372.**

~~§ 55-351. Reserved.~~

344 #

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

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

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

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

§ 54.1-2345.1. Certain real estate arrangements and covenants not deemed to constitute a common interest community.

A. An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance



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

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

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

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

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

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

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

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

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

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

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

**Drafting note: Technical changes.**

§ 54.1-2347. Exceptions and exemptions generally.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Drafting note: Technical changes.**

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

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

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

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

**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

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

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

5. Approve accredited common interest community manager training programs;

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

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

8. Issue a certificate of registration to each association that has properly filed in 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:



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Drafting note: Technical changes.**

§ 54.1-2352. Cease and desist orders.

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

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

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

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

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

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

**Drafting note: Technical changes.**

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

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

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

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

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

H. The court may determine whether any assets under the receiver's control should be 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



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

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

**Drafting note: Technical changes.**

§ 54.1-2354. Variation by agreement.

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

**Drafting note: Technical changes.**

~~CHAPTER 29.~~

~~COMMON INTEREST COMMUNITY MANAGEMENT INFORMATION FUND.~~

Article 2.

Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund.

**Drafting note: Existing Chapter 29 of Title 55 is relocated as proposed Article 2 of Chapter 23.3 of Title 54.1. The relocation places provisions that are related to the 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~~

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

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

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

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

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

~~§ 55-529.54.1-2354.2.~~ Common Interest Community Management Information Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

All assessments, except initial assessments, for the Fund shall be deposited within three business days after their receipt by the Director, in one or more federally insured banks, savings and loan associations, or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions, or savings banks, ~~to the extent~~ in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations, or savings banks located in the 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.).

6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court that is contrary to any distribution recommended or authorized by it.

7. Upon payment by the Director to a claimant from the ~~fund~~ Fund as provided in this subsection, the Board shall immediately revoke the license of the common interest community manager whose actions resulted in payment from the ~~fund~~ Fund. The common interest community manager whose license was so revoked shall not be eligible to apply for a license as a common interest community manager until he has repaid in full the amount paid from the ~~fund~~ Fund on his account, plus interest at the judgment rate of interest from the date of payment from the ~~fund~~ Fund.

8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary action against any common interest community manager for any violation of statute or regulation, nor shall the repayment in full by a common interest community manager of the amount paid from the ~~fund~~ Fund on such common interest community manager's account nullify or modify the effect of any disciplinary proceeding against such common interest community manager for any such violation.

**Drafting note: Technical changes.**

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## **The Virginia Code Commission and Unconstitutional Laws**

Historically, the Virginia Code Commission (Commission) has been understandably reticent to wade into questions regarding what to do with laws that remain in the Virginia Code after having been held to be unconstitutional. The Commission's reluctance to act serves as a tacit recognition that the response to a court decision declaring a law to be unconstitutional often involves issues of public policy that are better left to the General Assembly to address. However, the Commission has on occasion recommended legislative changes, either as part of a title revision or as stand-alone legislation, in response to a finding that a particular law is unconstitutional.

### **Commission Authority—Obsolete Statutes**

Pursuant to Va. Code § 30-151, the Virginia Code Commission is responsible for identifying "obsolete chapters, articles, sections, or enactments" in the Code of Virginia and the Acts of Assembly and making recommendations to the General Assembly for the repeal or amendment of such obsolete statutes and acts. This responsibility was conferred upon the Commission in 2000 with the enactment of Va. Code § 30-151. 2000 Acts ch. 153. Moreover, though apparently absent during the intervening years, the Commission's responsibility to identify obsolete statutes and acts mirrors the responsibility given to the then-named Commission on Code Recodification when it was created in 1946.<sup>1</sup>

It shall not omit any unrepealed matter but may report to the General Assembly by separate report, numbered to correspond with the sections in the revision, such matters as it considers obsolete, unnecessary, confusing or inconsistent, and needing repeal.

1946 Acts Ch. 400.

"Obsolete" is defined as "that which is no longer used." Black's Law Dictionary 1077 (6th ed. 1999). The Commission expounded upon the standard it employed in determining whether a particular statute was obsolete in its Separate Supplemental Report that was submitted with its Report to the General Assembly at the 1948 Session.

It should be said at this point that the Commission has considered a statute obsolete and to be eliminated only when it is obsolete in the sense that it can no longer be considered an effective statute, in actual operation and controlling. The Commission has omitted no statutes as obsolete which are obsolete only in the sense that they have become antiquated, are no longer in tune with the times, and should be adapted to modern conditions.

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<sup>1</sup> When the Commission on Code Recodification was renamed the Virginia Code Commission and made a permanent legislative body in 1948, its responsibilities no longer included the identification of obsolete statutes, presumably because it had already completed the task. 1948 Acts ch. 262. Although the Commission lacked express authority to review the Code for obsolete statutes, it was given the authority to gradually revise Code titles in 1954. 1954 Acts ch. 706. This authority is currently found in Va. Code § 30-152.

*Separate Supplemental Report of the Commission on Code Recodification with Explanatory Notes and Recommendations 4 (1947).*

Arguably, a statute that has been held to be unconstitutional could be considered to be obsolete as that term is defined in Black's in that it can no longer be used, as well as under the standard employed by the Commission in that it can no longer be considered an effective statute in actual operation. However, the Commission clearly delineated between statutes that were obsolete and those that had been held to be unconstitutional in its Report.

It has been the intention of the Commission to omit statutes and parts of statutes which have been in whole or in part repealed, expressly or by clear implication, and statutes which have expired by their own terms, or have been superseded by more recent legislation, or have otherwise become obsolete. . . .

Statutes which have, by the Supreme Court of Appeals of Virginia, been declared unconstitutional in their entirety have been omitted, except in one or two instances where the Assembly has with apparent deliberate intent re-enacted the statute after the decision of the Court. Statutes which have been declared unconstitutional only as applied to certain persons or circumstances have been included.

*Report of the Commission on Code Recodification and Proposed Code of Virginia xiii (1947).*

It is evident from the distinction drawn between obsolete and unconstitutional statutes that the Commission showed greater deference to the will of the General Assembly when determining whether or not to recommend that statutes that had been held unconstitutional be omitted from the Code of 1950 as opposed to determining what to do with those that were merely deemed by the Commission to be obsolete. For example, the Commission noted that § 3476 of the Code of 1919 was held unconstitutional by the Supreme Court of Virginia in 1885. *Supplemental Report* at 25 (citing *Blair v. Marye*, 80 Va. 485 (1885)). The Commission noted further that, despite this holding, the General Assembly reenacted that section three times since 1885. *Id.* In light of the obvious intent of the General Assembly to retain this statute notwithstanding the Court's decision as to its constitutionality, the Commission concluded that the section should be "included unchanged in the proposed Code." *Id.* Despite this deference, the Commission did not shy away from recommending the omission of unconstitutional statutes from the Code of 1950 when there was no indication that the General Assembly disagreed with the court's decision. *See, e.g., Supplemental Report* at 28 (recommending omission of §§ 3043 through 3053, which were held unconstitutional in *Irvine v. Clifton Forge* 124 Va. 781 (1918)).

## **Examples of Unconstitutional Laws Not Acted on by the Commission**

### **Miscegenation Statutes—*Loving v. Virginia***

In *Loving v. Virginia*, 388 U.S. 1 (1967), the U.S. Supreme Court struck down Virginia's miscegenation laws. These laws prohibited marriage between "a white person and a colored person" and made persons who had entered into such marriages subject to criminal penalties,

including imprisonment. The Supreme Court held that Virginia's miscegenation laws violated both the Equal Protection and Due Process Clauses of the 14th Amendment to the U.S. Constitution. *Loving* at 11.

The Supreme Court issued its opinion in *Loving* on June 12, 1967. Legislation that repealed Virginia's miscegenation laws was introduced and passed during the next regular session of the General Assembly in 1968. 1968 Acts ch. 318. There is no record of the Commission's involvement in the development of this legislation.

### **School Desegregation—*Brown v. Board of Education***

The 1902 Constitution of Virginia required that public schools be racially segregated: "White and colored children shall not be taught in the same school." Va. Const. of 1902, § 140. This provision, along with similar provisions from other states, was ruled unconstitutional by the U.S. Supreme Court in *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). In *Brown*, the U.S. Supreme Court struck down the prevailing concept of "separate, but equal" as violative of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution and invalidated § 140. *Brown* at 495.

Instead of any attempt to remove § 140 from the Constitution, the *Brown* decision was met in Virginia by "massive resistance" and, later, "freedom of choice" laws. 2 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 883 (1974). The General Assembly enacted laws to "close any public schools where white and colored children were enrolled together, to cut off state funds to such schools, to pay tuition grants to children in nonsectarian private schools, and to extend state retirement benefits to teachers in newly created private schools. *Griffin v. County School Bd. of Prince Edward County*, 377 U.S. 218, 221 (1964). The Virginia Supreme Court held that the majority of these laws were violative of § 129 of the Constitution of Virginia of 1902, which required the establishment and maintenance of a system of public schools in the Commonwealth. *Harrison v. Day*, 200 Va. 439 (1959).

In addition to enacting legislation in response to *Brown*, a Constitutional Convention was called in 1956 to amend § 141 of the Constitution of Virginia of 1902 to allow state funds to be used to make "tuition grants" for students at private schools. 2 Howard at 950. Prior to the Convention, § 141 precluded the use of public funds to be used to pay tuition at private schools. *Id.* The Supreme Court of Virginia held that these tuition grants were not unconstitutional. *Harrison* at 452-53. Ten years later, the U.S. District Court for the Eastern District of Virginia held that the tuition grants program was unconstitutional in violation of the Equal Protection Clause of the 14th Amendment. *Griffin v. State Bd. of Educ.*, 296 F. Supp. 1178 (E.D. Va. 1969). However, unlike the Supreme Court's decision in *Brown* with respect to § 140, the court in *Griffin* did not hold that § 141 was facially unconstitutional, but only unconstitutional in its application. The provision allowing for tuition grants to private schools was retained in the current Constitution of Virginia at Art. VIII, § 10.

While there were many attempts to perpetuate the provisions of § 140, none of which were successful in the long term, there was no attempt to remove § 140 from the Constitution of Virginia where it remained until the revised Constitution was adopted in 1971. The Commission



on Constitutional Revision noted that § 140 had been held unconstitutional in *Brown* and recommended its deletion from the proposed Constitution. *Report of the Commission on Constitutional Revision* 254, 257 (1969).

### **Poll Taxes—24th Amendment to the U.S. Constitution**

Several sections of the 1902 Constitution of Virginia required that voters must pay a poll tax as a prerequisite to voting. In addition to age and residency requirements, the Constitution required that a voter have "paid his State poll taxes." Va. Const. of 1902, § 18. The Constitution also fixed the amount of the poll tax at \$1.50 and required that a prospective voter have paid for the three years preceding when such voter registered to vote. Va. Const. of 1902, §§ 20, 21, 173.<sup>2</sup> (likewise requiring payment of poll tax as a condition of voting). Sections 20 and 173 of the Constitution set the amount of the poll tax at \$1.50 and section 21 required that poll taxes have been paid for the previous three years.

On February 4, 1964, the 24th Amendment to the U.S. Constitution was ratified. This amendment prohibited the payment of a poll tax or any other tax as a prerequisite to voting in federal elections. U.S. Const. amend. 24, § 1. While the 24th amendment only applies to federal elections, the U.S. Supreme Court specifically held that the poll tax contained in Virginia's Constitution violated the Equal Protection Clause of the 14th Amendment of the U.S. Constitution. "[W]ealth or fee paying has, in our view, no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned." *Harper v. Va. Bd. of Elec.*, 383 U.S. 663, 670 (1966).

Although proposed amendments to remove the poll tax provisions from the Constitution of Virginia were introduced in the wake of the *Harper* decision, none of those amendments passed the General Assembly.<sup>3</sup> In fact, in anticipation of the ratification of the 24th Amendment, the General Assembly amended its election laws in an attempt to maintain the use of poll taxes in state and local elections. 1963 Acts ch. 2. These amendments effectively established dual qualifications for voters, i.e., a voter who had paid his poll tax could register to vote in all elections while a voter who had not could only register for federal elections. This attempt did not last long as it was held to be unconstitutional eight days after the *Harper* decision. *Haskins v. Davis*, 253 F. Supp. 642 (E.D. Va. 1966).

Similar to the response to *Brown* with respect to § 140 of the Constitution of Virginia of 1902 and school desegregation, there were many attempts to perpetuate the constitutional provisions requiring the payment of a poll tax as a condition of voting; attempts to eliminate these provisions did not pass the General Assembly. The poll tax provisions remained in the

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<sup>2</sup> Veterans, both Union and Confederate, of the "late war between the States" and their wives or widows were exempt from paying the poll tax. Va. Const. of 1902 § 22.

<sup>3</sup> See, e.g., HJR 9 (1968); SJR 7 (1968). There was an attempt to eliminate the poll tax in Virginia long before the 24th Amendment was ratified. In 1949, several amendments to the Virginia Constitution relating to voters and elections, including the elimination of the poll tax, were put before the voters. The amendments failed on a vote of 56,687 for and 206,542 against. Virginia Department of Elections Database, available at [http://historical.elections.virginia.gov/ballot\\_questions/view/3544/](http://historical.elections.virginia.gov/ballot_questions/view/3544/) (last visited Apr. 13, 2017).

Constitution of Virginia until the revised Constitution was adopted in 1971 when the Commission on Constitutional Revision recommended its deletion from the proposed Constitution. *Report of the Commission on Constitutional Revision* 104-05 (1969).

## **Examples of Unconstitutional Laws Acted on by the Commission**

### **Abortion—*Roe v. Wade***

In 1971, the General Assembly passed HJR 41, which directed the Commission to study and revise the criminal laws of the Commonwealth, including Title 18.1. At the time of the commencement of this revision by the Commission, Virginia had an absolute prohibition on the performance of abortions. Va. Code § 18.1-62. Prior to the completion of the revision of Title 18.1, the U.S. Supreme Court decided *Roe v. Wade*, 410 U.S. 113 (1973), which recognized a woman's right to terminate her pregnancy during the first trimester.

As part of its revision of Title 18.1, the Commission decided to address the effect of *Roe* on Virginia's abortion law and propose amendments to accommodate that decision.

In view of the 1973 decision of the Supreme Court of the United States in *Roe v. Wade*, 93 S. Ct. 705, in which it is held that during the first trimester of pregnancy "the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that in his medical judgment, the patient's pregnancy should be terminated.", it has been necessary to amend the abortion law to save its constitutionality.

*Revision of Title 18.1 of the Code of Virginia* 4 (1973). The Commission proposed revisions to Virginia's abortion laws to reflect the trimester test announced in *Roe. Id.* at 35-36. The final version of these laws enacted by the General Assembly closely followed the recommendations of the Commission. 1975 Acts chs. 14, 15.

### **Laws Identified as Obsolete**

Since Va. Code § 30-151 was enacted in 2000, the Commission has, as a part of its review of the Code for obsolete statutes, recommended to the General Assembly that several statutes held to be unconstitutional be repealed.

In 2007, the chairman of the Commission at the time, Delegate R. Steven Landes, introduced HB 1689, which repealed two sections, Va. Code §§ 10.1-1408.3 and 10.1-1454.3, and eliminated a subsection from another section, Va. Code § 10.1-1408.1(Q), that regulated the transportation of municipal solid waste. Six years earlier, the U.S. Court of Appeals for the Fourth Circuit found that these provisions violated the dormant Commerce Clause contained in art. 1, § 8, cl. 3 of the U.S. Constitution. *Waste Mgmt. Holdings v. Gilmore*, 252 F.3d 316 (2001), *cert. denied*, 535 U.S. 904 (2002). These sections and subsection were identified as obsolete by Commission staff and presented to the Commission as possible candidates for repeal and, at the Commission's meeting on November 9, 2006, the Commission approved introducing legislation

providing for their repeal. The bill ultimately passed the House of Delegates on a 74-22 vote and the Senate of Virginia on a 38-0 vote and was signed into law by the Governor. 2007 Acts ch. 23.

In 2016, Senator Ryan McDougle introduced SB 372, which repealed several obsolete tax statutes. One of the sections repealed was Va. Code § 58.1-3825.1, which imposed a transient occupancy tax in certain localities in Northern Virginia. The Supreme Court of Virginia held that this section constituted an unconstitutional delegation of taxing authority to a non-elected body in violation of art. I, § 6 of the Constitution of Virginia. *Marshall v. N. Va. Trans. Auth.*, 275 Va. 419 (2008). Va Code § 58.1-3825.1 was identified as obsolete by Commission staff and presented to the Commission as a possible candidate for repeal, along with numerous other tax provisions that had been rendered obsolete for various other reasons.<sup>4</sup> At the Commission's meeting on July 20, 2015, the Commission approved introducing legislation providing for the section's repeal. The bill ultimately passed the Senate of Virginia on a 39-0 vote and the House of Delegates on a 100-0 vote and was signed into law by the Governor. 2016 Acts ch. 305.

## Conclusion

It is evident that the Commission has determined that it has the authority to recommend legislative action to address laws that have been held to be unconstitutional, whether those recommendations were made as a part of a title revision or made pursuant to the Commission's responsibility to review the Code for obsolete laws. It is equally evident, however, that the Commission does not make such recommendations lightly and exhibits great deference to the actions of the General Assembly, especially when the General Assembly continues to legislate in the same subject matter.

Ultimately, the Commission's decision to act or not to act has no substantive bearing on the legal landscape. A law held to be unconstitutional cannot be enforced regardless of whether or not it is left on the books. Virginia's history on school desegregation and poll taxes bear this out. Despite not having amended its Constitution in a timely manner (17 years in the case of school desegregation and five years for poll taxes) and despite repeated attempts to circumvent the effects of the court decisions declaring such laws unconstitutional, Virginia was required to comply with those decisions.

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<sup>4</sup> The transient occupancy tax had already been declared null and void by the General Assembly. 2008 Acts ch. 652.

**2017 SESSION****SB 782 Same-sex marriages; civil unions.**

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**SUMMARY AS INTRODUCED:**

**Same-sex marriages; civil unions.** Repeals the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage. These prohibitions are no longer valid due to the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (June 26, 2015).

**FULL TEXT**

**07/18/16 Senate:** Prefiled and ordered printed; offered 01/11/17 17100125D pdf

**HISTORY**

**07/18/16 Senate:** Prefiled and ordered printed; offered 01/11/17 17100125D

**07/18/16 Senate:** Referred to Committee for Courts of Justice

**01/16/17 Senate:** Passed by indefinitely in Courts of Justice with letter (10-Y 2-N)

## 2017 SESSION

INTRODUCED

17100125D

## SENATE BILL NO. 782

Offered January 11, 2017

Prefiled July 18, 2016

A BILL to repeal §§ 20-45.2 and 20-45.3 of the Code of Virginia, relating to same-sex marriages; civil unions.

Patrons—Ebbin, Edwards and Lewis; Delegates: Kory, Levine and Sickles

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-45.2 and 20-45.3 of the Code of Virginia are repealed.

INTRODUCED

SB782

## TEXT OF SECTIONS

**§ 20-45.2. Marriage between persons of same sex.**

A marriage between persons of the same sex is prohibited. Any marriage entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created by such marriage shall be void and unenforceable.

1975, c. 644; 1997, cc. 354, 365.

**§ 20-45.3. Civil unions between persons of same sex.**

A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.

2004, c. 983.

**2017 SESSION****SJ 216 Constitutional amendment marriage; marriage (first reference).**

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edit: summary | title | catch | history

**SUMMARY AS INTRODUCED:**

**Constitutional amendment (first resolution); marriage.** Proposes the repeal of the constitutional amendment dealing with marriage that was approved by referendum at the November 2006 election. That amendment to the Bill of Rights (i) defines marriage as "only a union between one man and one woman"; (ii) prohibits the Commonwealth and its political subdivisions from creating or recognizing "a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage"; and (iii) prohibits the Commonwealth or its political subdivisions from creating or recognizing "another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage." The provisions of this section of the Constitution of Virginia are no longer valid as a result of the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (June 26, 2015).

**FULL TEXT**

07/18/16 Senate: Prefiled and ordered printed; offered 01/11/17 17100124D pdf

01/31/17 Senate: Committee substitute printed 17104944D-S1 pdf

**HISTORY**

07/18/16 Senate: Prefiled and ordered printed; offered 01/11/17 17100124D

07/18/16 Senate: Referred to Committee on Privileges and Elections

01/20/17 Senate: Assigned to P&amp;E sub: Constitutional Amendments

01/31/17 Senate: Committee substitute printed 17104944D-S1

01/31/17 Senate: Incorporates SJ216 (Locke)

01/31/17 Senate: Passed by indefinitely in Privileges and Elections with letter (8-Y 6-N)

**2017 SESSION****SENATE SUBSTITUTE**

17104944D

**SENATE JOINT RESOLUTION NO. 216****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Privileges and Elections

on January 31, 2017)

(Patrons Prior to Substitute—Senators Ebbin and Locke [SJ 220])

*Proposing the repeal of Section 15-A of Article I of the Constitution of Virginia, relating to marriage.*

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Repeal Section 15-A of Article I of the Constitution of Virginia as follows:

**ARTICLE I****BILL OF RIGHTS****~~Section 15-A. Marriage.~~**

~~That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions.~~

~~This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.~~

**SENATE SUBSTITUTE**

SJ216S1