

MERCERTRIGIANI

VIRGINIA COMMON INTEREST COMMUNITY BOARD

Created by 2008 legislation adopted by the Virginia General Assembly, the Virginia Common Interest Community Board is an eleven-member citizen board appointed by the Governor. Members include:

- 3 common interest community managers;
- 1 community association attorney;
- 1 community association accountant;
- 1 representative of the time-share industry;
- 2 developer representatives;
- 3 citizens:
 - ❖ 2 common interest community residents;
 - ❖ 1 current or former board member.

The Common Interest Community Board is housed within the Virginia Department of Professional and Occupational Regulation.

PROPERTY REGISTRATION PROGRAM

The Common Interest Community Board administers the property registration programs previously administered by the Virginia Real Estate Board for the registration and regulation of residential condominiums and timeshare development sales.

MANAGEMENT FIRM LICENSURE

- ***Regulation of Community Managers.*** The Common Interest Community Board promulgates regulations to establish the criteria and standards of conduct for licensure of community association management firms *and* the certification of community managers.
- ***Compliance.*** The Common Interest Community Board is responsible for enforcement of statutory and legislative requirements for licensure and certification:
 - The Common Interest Community Board is authorized to seek injunctive relief and has the power to assess a monetary penalty of not more than \$1,000 for violations of the law.
 - The Common Interest Community Board is empowered with the authority to seek receivership of a common interest community management firm if the Board determines that the management firm cannot properly discharge its fiduciary duties to its community association clients.
 - In seeking receivership, the Common Interest Community Board has authority to require immediate inspection and production of records and to enjoin the withdrawal of bank deposits.
- ***Common Interest Community Management Information Fund.*** The Common Interest Community Board administers the Common Interest Community Management Information Fund (previously administered by the Real Estate Board).

- **Recovery Fund.** Common interest community management firms and common interest communities are required to contribute to a recovery fund to protect associations.
 - Managers are assessed a fee of \$25 upon initial application for licensure.
 - Common interest communities must make a contribution of \$25 upon filing of the annual report.

ANNUAL REPORT FILING FEE AND ASSESSMENT

Community associations are required to file an annual report (previously filed with the Real Estate Board) with the Common Interest Community Board. Community associations pay a flat fee with the annual report together with an annual assessment established by the Common Interest Community Board.

MANAGEMENT FIRM LICENSURE

Entities offering management services must obtain and maintain a license with the Common Interest Community Board. The Common Interest Community Board establishes criteria for the licensure of management firms that will include experience and educational requirements. The Common Interest Community Board approves accredited management training programs.

- **Conditions for Licensure.** As conditions for licensure, a management firm must:
 - Be in good standing and have and established code of conduct to avoid conflicts of interest as well as internal accounting controls to prevent the risk of fraud.
 - Certify to the Common Interest Community Board that services are provided to community associations under a written form contract.
 - Undergo an annual independent review or audit of the management firm's books and records.
- **Insurance Coverage.** Management firms are required to carry blanket fidelity bond or employee dishonesty insurance that protects the management firm and communities managed by the management firm from loss. The insurance coverage must be in an amount equal to the lesser of \$2,000,000, or the highest aggregate amount of both the operating and reserve balances of all associations under the control of the management firm, but in no event less than \$10,000.

MANAGER CERTIFICATION

Persons within a management firm who have the principal responsibility for providing management services or who have supervisory responsibility for employees who participate directly in the provision of management, must obtain certification from the Common Interest Community Board within two years after employment by the management firm.

- A number of exceptions exist from the management certification requirement:
 - Employees of the Association are not required to obtain certification.
 - Volunteer association board members are not required to obtain certification.

- Common interest community management firms must notify the Common Interest Community Board if a certificated manager (employee) is discharged or terminates active status with the firm.

ASSOCIATION INSURANCE REQUIREMENTS

- Associations must maintain blanket fidelity bond or employee dishonesty policies to cover losses resulting from theft or dishonesty by association officers, directors, employees, or the managing agent or management employees.
- Insurance must be in an amount equal to the lesser of \$1,000,000 or reserve balances plus one-fourth of the average annual assessment (with a minimum of \$10,000 in coverage).

RESALE DISCLOSURE

In legislation adopted by the Virginia General Assembly in 2023, the Condominium Act, the Property Owners' Association Act and Real Estate Cooperative Act were amended to remove resale disclosure requirements and consolidate all statutory requirements in a single statute – the *Virginia Resale Disclosure Act*.

The Resale Disclosure Act contains helpful definitions for terms frequently used in the context of resale disclosure. The disclosure document that sellers must provide to purchasers is a – **resale certificate** – tracking terminology from the oldest of the common interest community laws – the Condominium Act and the language used in the uniform acts.

- Statements required to be included in the resale certificate are updated, reordered and redrafted to improve clarity.
- New disclosure statements concerning parking, home businesses and rental restrictions.
- Disclosure statements must be provided in a standardized resale certificate form developed and published by the Common Interest Community Board.
- Payment for the resale certificate must be provided upon written request – rather than paid out of settlement proceeds.

The Common Interest Community Board sets and adjusts maximum fees for resale disclosure.

- Maximum allowable fees effective January 12, 2023.
- Adjustment no less than annual increases for the five-year period in the United States Average Consumer Price Index.
- Association must publish fees.