

# VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

## CHAPTER 557

*An Act to amend and reenact §§ 54.1-300, as it shall become effective, 54.1-2349, 54.1-2351, 54.1-2352, 55-79.2, 55-79.93:1, 55-399, 55-399.1, 55-504.1, 55-509.6, 55-516.1, and 55-530.1 of the Code of Virginia, relating to common interest communities.*

[S 1143]

Approved March 27, 2009

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-300, as it shall become effective, 54.1-2349, 54.1-2351, 54.1-2352, 55-79.2, 55-79.93:1, 55-399, 55-399.1, 55-504.1, 55-509.6, 55-516.1, and 55-530.1 of the Code of Virginia are amended and reenacted as follows:**

§ 54.1-300. (Effective July 1, 2009) Definitions.

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

"Board" means the Board for Professional and Occupational Regulation.

"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

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

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

"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.

"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.

"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.

"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists and Wetland Professionals, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, and Virginia Board for Asbestos, Lead, and Home Inspectors, *and Common Interest Community Board.*

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

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

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) \$1,000, (or such other amount as the Board may establish by regulation), or (ii) *five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding calendar year. For the purposes of clause (ii), no minimum payment shall be less than \$10.00. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529. 0.02 percent of the gross receipts from common interest community management during the preceding calendar year to be remitted to the State Treasurer and placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529;*

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program 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 common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers 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 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, 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 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;

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; and

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

B. The Board shall have the sole responsibility for the administration of this chapter and for the promulgation of regulations to carry out the requirements thereof. The Board shall also be responsible for the enforcement of this chapter, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.

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

§ 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, 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 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 ~~person~~ *governing board* has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, 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, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, 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.

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, 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, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, 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 ~~person who governing board~~ that violates any provision of this section. 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 section unless the ~~person governing board~~ has been given ~~the opportunity for a hearing 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.

§ 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, 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, including engaging in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, 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.

§ 55-79.2. Definitions.

As used in this chapter unless the context otherwise requires:

(a) "Apartment" means an apartment, apartment dwelling unit, unit, house or home which 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 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 such accessories as may be appurtenant thereto, such as garage space, storage space, balcony, terrace and patio. 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 ~~Real Estate~~ *Common Interest Community* Board;

(c) "Condominium" means the ownership of a single unit in a 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 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 owns an apartment within the building or buildings;

(f) "Council of co-owners" means all 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 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) The land whether leased or in fee simple, on which the building or buildings stand;

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

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

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

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

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

(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 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 special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and the like;

(j) "Majority of co-owners" means more than fifty 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;

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

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

§ 55-79.93:1. Annual report by unit owners' association.

A. The unit owners' association shall file an annual report in a form and at such time as prescribed by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of the declarant control period pursuant to § 55-79.74. *The annual report shall be accompanied by a fixed fee in an amount established by the agency.*

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

~~C. The annual report shall be accompanied by a fixed fee in an amount established by the agency, together with an annual assessment in an amount equal to the lesser of \$1,000 (or such other amount as the agency may establish by regulation) or 0.02 percent of the unit owners' association's gross assessment income during the preceding calendar year, to be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529. The unit owners association shall also remit to the agency an annual payment as follows:~~

~~1. The lesser of:~~

~~a. \$1,000 or such other amount as established by agency regulation; or~~

~~b. Five hundredths of one percent (0.05%) of the unit owners' association's gross assessment income during the preceding calendar year.~~

~~2. For the purposes of clause b of subsection C, no minimum payment shall be less than \$10.00.~~

~~D. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529.~~

§ 55-399. Investigations.

A. The Board may:

1. Make necessary public or private investigations within or outside this Commonwealth to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order issued hereunder, or to aid in the enforcement of this chapter in prescribing rules and forms hereunder;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Board determines, as to all facts and circumstances concerning the matter to be investigated.

B. For the purpose of any investigation or proceeding under the chapter, the Board may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Board under this chapter, wherein witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the ~~City of Richmond~~ *County of Henrico* and such proceeding shall be held before the Board sitting in regular session, but not less frequently than monthly.

D. Upon failure to obey a subpoena or to answer questions propounded by the Board, and upon reasonable notice to all persons affected thereby, the Board may apply to the Circuit Court of the ~~City of Richmond~~ *County of Henrico* for an order compelling compliance.

E. Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

§ 55-399.1. Proceedings before the Board.

A. Any proceeding or hearing of the Board under this chapter wherein witnesses are subpoenaed and their attendance required for the taking of evidence or the production of documents to ascertain material evidence, shall take place in the ~~City of Richmond~~ *County of Henrico*.

B. Except as otherwise provided in this chapter, all hearings under this chapter shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and shall be conducted by a hearing officer in accordance with § 2.2-4024.

§ 55-504.1. Annual report by associations.

A. The association shall file an annual report in a form and at such time as prescribed by regulations of the agency. The filing of the annual report required by this section shall commence upon the termination of any declarant control period reserved pursuant to § 55-460. *The annual report shall be accompanied by a fixed fee in an amount established by the agency.*

B. The agency may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the agency.

C. ~~The annual report shall be accompanied by a fixed fee in an amount established by the agency, together with an annual assessment in an amount equal to the lesser of \$1,000 (or such other amount as the agency may establish by regulation) or 0.02 percent of the association's gross assessment income during the preceding calendar year to be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529. The association shall also remit to the agency an annual payment as follows:~~

1. ~~The lesser of:~~

a. ~~\$1,000 or such other amount as established by agency regulation; or~~

b. ~~Five hundredths of one percent (0.05%) of the unit owners' associations' gross assessment income during the preceding calendar year.~~

2. ~~For the purposes of clause b of subsection C, no minimum payment shall be less than \$10.00.~~

D. ~~The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529.~~

§ 55-509.6. Fees for disclosure packet; associations managed by a common interest community manager.

A. The association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required § 55-509.5, and for such other services as set out in this section. The seller or his authorized agent shall specify whether the disclosure packet shall be delivered electronically or in hard copy, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent or settlement agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent.

B. A reasonable fee may be charged by the preparer as follows for:

1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and as required to prepare the association disclosure packet, a fee not to exceed \$100;

2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150 for no more than two hard copies or (ii) electronic format, a fee not to exceed \$125 for no more than two electronic copies. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

3. At the option of the seller or his authorized agent, *with the consent of the association or the common interest community manager*, expediting the inspection, preparation and delivery of the disclosure packet, an additional expedite fee not to exceed \$50;

4. At the option of the seller or his authorized agent, an additional hard copy of the disclosure packet, a fee not to exceed \$25 per hard copy; ~~for each hard copy requested other than a hard copy for the seller, purchaser, or the settlement agent;~~

5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet; and

6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of establishing the purchaser as the owner of the property in the records of the association, a fee not to exceed \$50.

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds or credit card payments at the time the request for the disclosure packet is made.

For purposes of this section, an expedite fee shall only be charged if the inspection and preparation of delivery of the disclosure packet are completed within five business days of the request for a disclosure packet.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and responsibilities of the association under this chapter. The association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so the seller or his authorized agent will know such fees at the time of requesting the

packet.

D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale of the lot and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the association disclosure packet, except for the costs of any disclosure packet update or financial update, which costs shall be the responsibility of the requestor, payable at settlement. Neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time of the request is made for the association disclosure packet.

E. If settlement does not occur within 90 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be assessed against the lot owner and shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the disclosure packet update or financial update may be charged by the preparer not to exceed \$50. At the option of the purchaser or his authorized agent, the requestor may request that the association or the common interest community manager perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed \$100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. Neither the association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requestor may request that the specified update be provided in hard copy or in electronic form.

J. No association or common interest community manager may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requestor asks that the specified update be provided in electronic format, neither the association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or his authorized agent.

K. When an association disclosure packet has been delivered as required by § 55-509.5, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55-509.5, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The preparer of the association disclosure packet shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

§ 55-516.1. Annual report by association.

A. The association shall file an annual report in a form and at such time as prescribed by regulations

of the Common Interest Community Board. *The annual report shall be accompanied by a fixed fee in an amount established by the Board.*

B. The Common Interest Community Board may accept copies of forms submitted to other state agencies to satisfy the requirements of this section if such forms contain substantially the same information required by the Common Interest Community Board.

C. *The annual report shall be accompanied by a fixed fee in an amount established by the Common Interest Community Board, together with an annual assessment in an amount equal to the lesser of \$1,000 (or such other amount as the Board may establish by regulation) or 0.02 percent of the association's gross assessment income during the preceding calendar year to be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529. The association shall also remit to the agency an annual payment as follows:*

1. *The lesser of:*
  - a. *\$1,000 or such other amount as established by agency regulation; or*
  - b. *Five hundredths of one percent (0.05%) of the unit owners' associations' gross assessment income during the preceding calendar year.*

2. *For the purposes of clause b of subsection C, no minimum payment shall be less than \$10.00.*

D. *The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529.*

§ 55-530.1. Common Interest Community Management Recovery Fund.

A. There is hereby created the Common Interest Community Management Recovery Fund (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 hereof 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 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. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 26-40.01.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest, at the discretion of the Board, may be transferred to the Common Interest Community Management Information Fund or accrue to the Fund.

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

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

Notice to common interest community managers and the governing boards of associations of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within 45 days after the mailing of such notice.

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

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

G. At the close of each fiscal year, whenever the balance of the fund exceeds \$5 million, the amount in excess of \$5 million shall be transferred to the Virginia Housing Partnership Revolving Fund, § 36-137. Except for payments of costs as set forth in this chapter and transfers pursuant to this subsection, there shall be no transfers out of the fund, including transfers to the general fund, regardless of the balance of the fund.

H. A claimant may seek recovery from the fund subject to the following conditions:

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

2. Upon proper application to the Director, in those cases in which there are not sufficient funds to pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, the Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § 54.1-2353 by the court appointing the receiver; or (ii) to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager, as certified by the court appointing the receiver.

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

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

5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a case decision as defined in § 2.2-4001, and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 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 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. 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 on his account, plus interest at the judgment rate of interest from the date of payment from the 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 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.