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HOUSE BILL NO. 468

Offered January 13, 2010

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A BILL to amend and reenact §§ 54.1-2347, 54.1-2348, 54.1-2349, and 55-530 of the Code of Virginia, relating to common interest communities; powers and duties of Common Interest Community Board.

 Patron—Watts

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2347, 54.1-2348, 54.1-2349, and 55-530 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2347. Exceptions and exemptions generally.

A. The provisions of this chapter 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 record keeping services for that common interest community, provided that any compensation paid to the resident does not exceed 0.2 percent of the annual gross assessment income of that association;*

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

5-6. 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;

6-7. 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;

7-8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

8-9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

9-10. 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 if he would be otherwise exempt from such licensure.

§ 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, *at least one of whom resides in a common interest community that is not professionally managed at the time of appointment*. 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

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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 four times 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.

§ 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;

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 *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.

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.

§ 55-530. Powers of the Board; Common interest community ombudsman; complaints.

A. The Board shall administer the provisions of this chapter pursuant to the powers 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 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. 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. 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 declaration and bylaws of the association;

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 and such additional information as may be deemed appropriate;

5. Receive the notices of complaint filed;

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

7. Upon request, assist members in using the procedures and processes available to them in the association, including nonbinding explanations of laws or regulations governing common interest communities or interpretations thereof by the Board, and referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members. Such assistance may require the review of the declaration and other records of an association. An association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time upon request;

8. 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;

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

11. 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. 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

182 associations; and

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

184 E. The Board shall establish by regulation a requirement that each association shall establish
185 reasonable procedures for the resolution of written complaints from the members of the association and
186 other citizens, which system shall include the following:

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

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

196 F. A complainant may give notice to the Board of any final adverse decision in accordance with
197 regulations promulgated by the Board. The notice shall be filed within 30 days of the final adverse
198 decision, shall be in writing on forms prescribed by the Board, shall include copies of all records
199 pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be collected by the
200 Director and paid directly into the state treasury and credited to the Common Interest Community
201 Management Information Fund, § 55-530.1. The Board may, for good cause shown, waive or refund the
202 filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the
203 member. The Director shall provide a copy of the written notice to the association that made the final
204 adverse decision.

205 G. ~~The~~ *Except as otherwise provided in this subsection, the* Director or his designee, may *make a*
206 *written request for* additional information concerning any notice of complaint from the association that
207 made the final adverse decision. The association shall provide such information *in writing* to the
208 Director within a reasonable time upon request. *The Director's review shall be limited to the written*
209 *submissions provided by the complainant and the association.* If the Director upon review determines
210 that the final adverse decision may be in conflict with laws or regulations governing common interest
211 communities or interpretations thereof by the Board, the Director may, in his sole discretion, provide the
212 complainant and the association with information concerning such laws or regulations governing
213 common interest communities or interpretations thereof by the Board. The determination of whether the
214 final adverse decision may be in conflict with laws or regulations governing common interest
215 communities or interpretations thereof by the Board shall be a matter within the sole discretion of the
216 Director, whose decision is final and not subject to further review. The determination of the Director
217 shall not be binding upon the complainant or the association that made the final adverse decision. *The*
218 *Director shall not review any notice of complaint from an association that made the final adverse*
219 *decision, where the declaration of such association is in compliance with state or federal law.*

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

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

225 **2. That the provisions of this act amending § 54.1-2348 of the Code of Virginia shall not be**
226 **construed to affect existing appointments for which the terms have not expired. However, any**
227 **appointments or reappointments made after the effective date of this act shall be made in**
228 **accordance with the provisions of this act.**