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SENATE BILL NO. 1751

Offered January 18, 2019

A *BILL to amend and reenact §§ 19.2-389, 54.1-111, 54.1-113, 54.1-304, 54.1-500, 54.1-2349, 54.1-2354, 55-79.42:1, 55-79.97:1, 55-509.3, 55-509.6, 55-528, 55-529, and 55-530.1 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 30-19.03:1.3, by adding in Article 4 of Chapter 4.2 of Title 55 a section numbered 55-79.104, and by adding in Article 3 of Chapter 26 of Title 55 a section numbered 55-516.3; and to repeal Article 5 (§§ 54.1-1144, 54.1-1145, and 54.1-1146) of Chapter 11 of Title 54.1, §§ 54.1-2346, 54.1-2347, and 54.1-2353, and Chapter 23.4 (§§ 54.1-2355 through 54.1-2358) of Title 54.1 of the Code of Virginia, relating to professions and occupations.*

Patrons—Ruff and McDougle

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 54.1-111, 54.1-113, 54.1-304, 54.1-500, 54.1-2349, 54.1-2354, 55-79.42:1, 55-79.97:1, 55-509.3, 55-509.6, 55-528, 55-529, and 55-530.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 30-19.03:1.3, by adding in Article 4 of Chapter 4.2 of Title 55 a section numbered 55-79.104, and by adding in Article 3 of Chapter 26 of Title 55 a section numbered 55-516.3 as follows:

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is

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SB1751

59 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
60 conviction record would be compatible with the nature of the employment, permit, or license under
61 consideration;

62 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of
63 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
64 position of employment whenever, in the interest of public welfare or safety and as authorized in the
65 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
66 with a conviction record would be compatible with the nature of the employment under consideration;

67 8. Public or private agencies when authorized or required by federal or state law or interstate
68 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
69 adult members of that individual's household, with whom the agency is considering placing a child or
70 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
71 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
72 the data shall not be further disseminated to any party other than a federal or state authority or court as
73 may be required to comply with an express requirement of law;

74 9. To the extent permitted by federal law or regulation, public service companies as defined in
75 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
76 personal contact with the public or when past criminal conduct of an applicant would be incompatible
77 with the nature of the employment under consideration;

78 10. The appropriate authority for purposes of granting citizenship and for purposes of international
79 travel, including, but not limited to, issuing visas and passports;

80 11. A person requesting a copy of his own criminal history record information as defined in
81 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
82 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
83 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
84 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
85 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
86 Solvers or Crime Line program as defined in § 15.2-1713.1;

87 12. Administrators and board presidents of and applicants for licensure or registration as a child
88 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
89 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
90 volunteers at such facilities, caretakers, and other adults living in family day homes or homes approved
91 by family day systems, and foster and adoptive parent applicants of private child-placing agencies,
92 pursuant to §§ 63.2-1719, 63.2-1720, 63.2-1720.1, 63.2-1721, and 63.2-1721.1, subject to the restriction
93 that the data shall not be further disseminated by the facility or agency to any party other than the data
94 subject, the Commissioner of Social Services' representative or a federal or state authority or court as
95 may be required to comply with an express requirement of law for such further dissemination;

96 13. The school boards of the Commonwealth for the purpose of screening individuals who are
97 offered or who accept public school employment and those current school board employees for whom a
98 report of arrest has been made pursuant to § 19.2-83.1;

99 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
100 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
101 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

102 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
103 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
104 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to
105 the limitations set out in subsection E;

106 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
107 investigations of applicants for compensated employment in licensed assisted living facilities and
108 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

109 17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth
110 in § 4.1-103.1;

111 18. The State Board of Elections and authorized officers and employees thereof and general registrars
112 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
113 voter registration, limited to any record of felony convictions;

114 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
115 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
116 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

117 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
118 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first
119 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

120 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the

Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of

182 law for such further dissemination, subject to limitations set out in subsection G;

183 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening
184 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,
185 or have accepted a position related to the provision of transportation services to enrollees in the
186 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other
187 program administered by the Department of Medical Assistance Services;

188 38. The State Corporation Commission for the purpose of investigating individuals who are current
189 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
190 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any
191 other provision of law, if an application is denied based in whole or in part on information obtained
192 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the
193 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or
194 its designee;

195 39. The Department of Professional and Occupational Regulation for the purpose of investigating
196 individuals for initial licensure pursuant to § 54.1-2106.1, certification, or registration pursuant to
197 Subtitle II (§ 54.1-200 et seq.) of Title 54.1;

198 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
199 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
200 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
201 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

202 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

203 42. The State Treasurer for the purpose of determining whether a person receiving compensation for
204 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

205 43. The Department of Social Services and directors of local departments of social services for the
206 purpose of screening individuals seeking to enter into a contract with the Department of Social Services
207 or a local department of social services for the provision of child care services for which child care
208 subsidy payments may be provided;

209 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of
210 a juvenile's household when completing a predispositional or postdispositional report required by §
211 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233; and

212 45. Other entities as otherwise provided by law.

213 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
214 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
215 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
216 designated in the order on whom a report has been made under the provisions of this chapter.

217 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
218 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
219 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
220 copy of conviction data covering the person named in the request to the person making the request;
221 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
222 making of such request. A person receiving a copy of his own conviction data may utilize or further
223 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
224 subject, the person making the request shall be furnished at his cost a certification to that effect.

225 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
226 section shall be limited to the purposes for which it was given and may not be disseminated further.

227 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
228 history record information for employment or licensing inquiries except as provided by law.

229 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
230 Exchange prior to dissemination of any criminal history record information on offenses required to be
231 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
232 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
233 where time is of the essence and the normal response time of the Exchange would exceed the necessary
234 time period. A criminal justice agency to whom a request has been made for the dissemination of
235 criminal history record information that is required to be reported to the Central Criminal Records
236 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
237 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
238 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

239 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
240 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
241 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

242 F. Criminal history information provided to licensed assisted living facilities and licensed adult day
243 care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange

for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

§ 30-19.03:1.3. Evaluations to be prepared for legislation increasing or beginning regulation of an occupation.

A. For the purposes of this section, "regulation" means any statement of general application, having the force of law and affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by the Constitution and applicable statutes of the Commonwealth.

B. When any legislative bill requiring the Department of Professional and Occupational Regulation to increase or begin regulation of an occupation is filed during any session of the General Assembly, the Board for Professional and Occupational Regulation (the Board) shall prepare an evaluation of the legislation using the criteria outlined in § 54.1-311.

C. The Division of Legislative Services shall examine all bills filed during any legislative session for the purpose of identifying and forwarding to the Board those bills requiring an evaluation pursuant to this section.

As soon thereafter as may be practicable, the Board shall forward copies of such evaluations to the Clerk of the House of Delegates for transmittal to each patron of the legislation and to the chairman of each committee of the General Assembly to consider the same.

All departments, agencies of government, and the Division of Legislative Services are directed to make available such information and assistance as the Board may request in preparing the evaluations required by this section.

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

A. It ~~shall be~~ is unlawful for any person, partnership, corporation, or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.

2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

3. Making use of any titles, words, letters, or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.

5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.

6. Materially misrepresenting facts in an application for licensure, certification, or registration.

7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.

8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.

9. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.

B. Any person who willfully engages in any unlawful act enumerated in this section ~~shall be~~ is guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period ~~shall constitute~~ constitutes a Class 6 felony. In addition, any person convicted of any unlawful act enumerated in subdivision A 1 through 8 of this subsection, for conduct that is within the purview of any regulatory board within the Department of Professional and Occupational Regulation,

305 may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

306 *C. The Director of the Department of Professional and Occupational Regulation, or his designee,*
307 *may issue a notice to any person violating the provisions of subdivisions A 1 through 5 or A 8 to cease*
308 *and desist such activity.*

309 ~~B-~~ *D.* In addition to the criminal penalties provided for in subsection ~~A B~~, the Department of
310 Professional and Occupational Regulation or the Department of Health Professions, without compliance
311 with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the
312 provisions of subsection A and may institute proceedings in equity to enjoin any person, partnership,
313 corporation or any other entity from engaging in any unlawful act enumerated in this section and to
314 recover a civil penalty of at least \$200 but not more than \$5,000 per violation, with each unlawful act
315 constituting a separate violation; but in no event shall the civil penalties against any one person,
316 partnership, corporation or other entity exceed \$25,000 per year. Such proceedings shall be brought in
317 the name of the Commonwealth by the appropriate Department in the circuit court or general district
318 court of the city or county in which the unlawful act occurred or in which the defendant resides.

319 ~~C-~~ *E.* This section shall not be construed to prohibit or prevent the owner of patient records from (i)
320 retaining copies of his patient records or prescription dispensing records after the closing of a business
321 or professional practice or the transfer of ownership of a business or professional practice or (ii)
322 charging a reasonable fee, in accordance with subsections B2, B3, B4, and B6 of § 8.01-413 or
323 subsection J of § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.

324 ~~D-~~ *F.* Nothing in this section, nor §§ 13.1-543, 13.1-1102, 54.1-2902, and 54.1-2929, shall be
325 construed to prohibit or prevent any entity of a type listed in § 13.1-542.1 or 13.1-1101.1, which
326 employs or contracts with an individual licensed by a health regulatory board, from (i) practicing or
327 engaging in the practice of a profession or occupation for which such individual is licensed, (ii)
328 providing or rendering professional services related thereto through the licensed individual, or (iii)
329 having a legitimate interest in enforcing the terms of employment or its contract with the licensed
330 individual.

331 ~~E-~~ *G.* This section shall apply, mutatis mutandis, to all persons holding a multistate licensure
332 privilege to practice nursing in the Commonwealth of Virginia.

333 **§ 54.1-113. Regulatory boards to adjust fees; certain transfer of moneys collected on behalf of**
334 **health regulatory boards prohibited.**

335 *A. Following the close of any biennium, when the account for any regulatory board within the*
336 *Department of Professional and Occupational Regulation maintained under § 54.1-308 shows that*
337 *moneys collected on behalf of the regulatory board exceed 125 percent or \$100,000, whichever is*
338 *greater, of the expenses allocated to the regulatory board for the past biennium, the regulatory board*
339 *shall (i) reduce the fees levied by it for certification, licensure, registration, or permit and renewal*
340 *thereof so that the fees are sufficient but not excessive to cover expenses and (ii) distribute all unspent*
341 *or unencumbered revenue in excess of such limits to current regulants of the board.*

342 *B.* Following the close of any biennium, when the account for any regulatory board within the
343 ~~Department of Professional and Occupational Regulation or the~~ Department of Health Professions
344 maintained under § ~~54.1-308 or~~ 54.1-2505 shows expenses allocated to it for the past biennium to be
345 more than 10 percent greater or less than moneys collected on behalf of the *regulatory* board, it shall
346 revise the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that
347 the fees are sufficient but not excessive to cover expenses.

348 ~~B-~~ *C.* Nongeneral funds generated by fees collected on behalf of the health regulatory boards and
349 accounted for and deposited into a special fund by the Director of the Department of Health Professions
350 shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners'
351 Monitoring Program, and the Department and Board of Health Professions and shall not be transferred
352 to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1
353 and 54.1-3011.2.

354 **§ 54.1-304. Powers and duties of the Director with respect to regulatory boards.**

355 Each of the regulatory boards within the Department shall be a separate board. All of the
356 administrative functions of the regulatory boards shall be under the direction and supervision of the
357 Director.

358 In the performance and discharge of his duties with respect to the regulatory boards, the Director
359 shall:

- 360 1. Be the secretary of each board;
- 361 2. Maintain all records for each board;
- 362 3. Collect and account for all fees prescribed to be paid into each board and account for and deposit
363 the moneys so collected into a special fund from which the expenses of the Board, regulatory boards
364 and Department shall be paid;
- 365 4. *Report, at least annually, the fund status of each of the regulatory boards to the members of such*
366 *boards. Such report shall include (i) a detailed explanation of the actual revenues and expenditures of*

the board for the previous year in comparison to the projected revenues and expenditures for such year, (ii) the board's current fund balance, and (iii) the revenue and expense projections for the board for the following two biennia;

5. Enforce all statutes and regulations the Director is required to administer;
 5- 6. Exercise other powers necessary to function as the sole administrative officer of each of such boards; and

6- 7. Perform any additional administrative functions prescribed by the Board.

§ 54.1-500. Definitions.

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

"Accredited asbestos training program" means a training program that has been approved by the Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections, prepare management plans, prepare project designs or act as project monitors.

"Accredited lead training program" means a training program that has been approved by the Board to provide training for individuals to engage in lead-based paint activities.

"Accredited renovation training program" means a training program that has been approved by the Board to provide training for individuals to engage in renovation or dust clearance sampling.

"Asbestos" means the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite.

"Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.

"Asbestos contractor's license" means an authorization issued by the Board permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos-containing materials" or "ACM" means any material or product which contains more than 1.0 percent asbestos or such other percentage as established by EPA final rule.

"Asbestos inspector's license" means an authorization issued by the Board permitting a person to perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential asbestos-containing materials.

"Asbestos management plan" means a program designed to control or abate any potential risk to human health from asbestos.

"Asbestos management planner's license" means an authorization issued by the Board permitting a person to develop or alter an asbestos management plan.

"Asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.

"Asbestos project designer's license" means an authorization issued by the Board permitting a person to design an asbestos abatement project.

"Asbestos project monitor's license" means an authorization issued by the Board permitting a person to monitor an asbestos project, subject to Department regulations.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Asbestos worker's license" means an authorization issued by the Board permitting an individual to work on an asbestos project.

"Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.

"Dust clearance sampling" means an on-site collection of dust or other debris that is present after the completion of a renovation to determine the presence of lead-based paint hazards and the provisions of a report explaining the results.

"Dust sampling technician" means an individual licensed by the Board to perform dust clearance sampling.

"Friable" means that the material when dry may be crumbled, pulverized, or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Home inspection" means any inspection of a residential building for compensation conducted by a licensed home inspector. A home inspection shall include a written evaluation of the readily accessible components of a residential building, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components. A home inspection may be limited in scope as provided in a home inspection contract, provided that such contract is not inconsistent with the provisions of this

chapter or the regulations of the Board. For purposes of this chapter, ~~residential building energy analysis alone, as defined in § 54.1-1144,~~ *an inspection, investigation, or survey of a dwelling or other structure solely to evaluate, measure, or quantify its energy consumption and efficiency, including lighting, HVAC, electronics, appliances, water heaters, insulation, and water conservation, and to make recommendations to reduce energy consumption and improve efficiency* shall not be considered a home inspection.

"Home inspector" means a person who meets the criteria of education, experience, and testing required by this chapter and regulations of the Board and who has been licensed by the Board to perform home inspections.

"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards, including lead-contaminated dust or soil.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and lead-contaminated soil.

"Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15 U.S.C. § 2683).

"Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the Environmental Protection Agency.

"Lead contractor" means a person who has met the Board's requirements and has been issued a license by the Board to enter into contracts to perform lead abatements.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provisions of a report explaining the results of the investigation.

"Lead inspector" means an individual who has been licensed by the Board to conduct lead inspections and abatement clearance testing.

"Lead project design" means any descriptive form written as instructions or drafted as a plan describing the construction or setting up of a lead abatement project area and the work practices to be utilized during the lead abatement project.

"Lead project designer" means an individual who has been licensed by the Board to prepare lead project designs.

"Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Lead risk assessor" means an individual who has been licensed by the Board to conduct lead inspections, lead risk assessments and abatement clearance testing.

"Lead supervisor" means an individual who has been licensed by the Board to supervise lead abatements.

"Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board to perform lead abatement.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching an accredited asbestos training program, an accredited lead training program, an accredited renovation training program, or any combination thereof.

"Renovation" means the modification of any existing structure or portion thereof, for compensation, that results in the disturbance of painted surfaces, unless that activity is (i) performed as a part of a lead abatement or (ii) limited in scope to the site work or remediation as referenced in the definition of contractor in § 54.1-1100. As used in this definition, "compensation" shall include the receipt of (a) pay for work performed, such as that paid to contractors and subcontractors; (b) wages, including but not limited to those paid to employees of contractors, building owners, property management companies, child-occupied facilities operators, state and local government agencies, and nonprofit organizations; and (c) rent for housing constructed before January 1, 1978, or child-occupied facilities in public or commercial building space.

"Renovation contractor" means a person who has met the Board's requirements and has been issued a license by the Board to conduct renovations.

"Renovator" means an individual who has been issued a license by the Board to perform renovations or to direct others who perform renovations.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Training manager" means the individual responsible for administering a training program and

monitoring the performance of instructors for an accredited asbestos training, accredited lead training program or accredited renovation training program.

§ 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 and 54.1-202, 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 year. For the purposes of clause (ii), no minimum payment shall be less than \$10. 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

2. Develop and publish best practices for associations, common interest community managers, and employees 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 Such best practices shall enable an association or its common interest community manager to evaluate whether individuals providing management services possess the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria best practices shall include obtaining 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 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;

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, 3. Develop and publish model standards of conduct for associations, common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter, and employees 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;

7. 4. Establish, by regulation, an education-based certification program educational programs 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; and

8. 5. Develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act (§ 55-508 et seq.).

B. 1. 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.

2. 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.

3. For purposes of enforcement of this chapter or 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, any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

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.

D. Notwithstanding the provisions of subsection E of § 55-530, the Board may receive a complaint directly from any person aggrieved by an association's failure to deliver a resale certificate or disclosure packet within the time period required under § 55-79.97, 55-79.97:1, 55-484, 55-509.5, 55-509.6, or 55-509.7.

§ 54.1-2354. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this chapter and the provisions of 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, as applicable.

§ 55-79.42:1. Association charges.

Except as expressly authorized in this chapter, in the condominium instruments, or as otherwise provided by law, no unit owners' association may make an assessment or impose a charge against a unit owner unless the charge is (i) authorized under § 55-79.83, (ii) a fee for services provided, or (iii) related to the provisions set out in § 55-79.97:1. The Common Interest Community Board may assess a monetary penalty for a violation of this section against any (a) unit owners' association pursuant to § 54.1-2351 or (b) common interest community manager pursuant to § 54.1-2349, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

§ 55-79.97:1. Fees for resale certificate.

A. The unit owners' association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate required by § 55-79.97, and for such other services as are set out in this section. Nothing in this chapter shall be construed to authorize the unit owners' association or common interest community manager to charge an inspection fee for a unit except as provided in this section.

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

1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed \$100;

2. The preparation and delivery of the resale certificate 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 a total of \$125, for an electronic copy to each of the following named in the request: the seller, the seller's authorized agent, the purchaser, the purchaser's authorized agent, and not more than one other person designated by the requester. Only one fee shall be charged for the preparation and delivery of the resale certificate;

3. At the option of the seller or the seller's authorized agent, with the consent of the unit owners' association or the common interest community manager, expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed \$50;

4. At the option of the seller or the seller's authorized agent, an additional hard copy of the resale certificate, a fee not to exceed \$25 per hard copy;

5. At the option of the seller or the seller's 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 resale certificate; and

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

Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83, if not paid at settlement or within 60 days of the delivery of the resale certificate, whichever occurs first.

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

certificate.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners' association or its common interest community manager for compliance with the duties and responsibilities of the unit owners' association under this section. No additional fee shall be charged for access to the unit owners' association's or common interest community manager's website. The unit owners' 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 that the seller or the seller's authorized agent will know such fees at the time of requesting the resale certificate.

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit 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 resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requester, payable at settlement. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 60 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners' 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 (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit 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 a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or the seller's authorized agent, including the seller or the seller's authorized agent or the purchaser or the purchaser's authorized agent, may request a resale certificate update. The requester shall specify whether the resale certificate 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 resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requester 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 resale certificate update or financial update may be charged by the preparer, not to exceed \$50. At the option of the purchaser or the purchaser's authorized agent, the requester may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit, 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. The settlement agent shall escrow a sum sufficient to pay such costs at settlement. Neither the unit owners' 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 resale certificate update. The requester may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' association or common interest community manager may require the requester to request the specified update electronically. The seller or the seller's 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 unit owners' association. If the requester asks that the specified update be provided in electronic format, neither the unit owners' 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 the seller's authorized agent.

K. When a resale certificate has been delivered as required by § 55-79.97, the unit owners' 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 unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents

674 of the resale certificate were in error.

675 L. If the unit owners' association or its common interest community manager has been requested in
676 writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate
677 substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent
678 assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural
679 guidelines existing as of the date of the request with respect to the subject unit. The preparer of the
680 resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the
681 seller in an amount not to exceed \$1,000. The purchaser shall nevertheless be obligated to abide by the
682 condominium instruments, rules and regulations, and architectural guidelines of the unit owners'
683 association as to all matters arising after the date of the settlement of the sale.

684 M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the
685 resale certificate within 14 days against any ~~(i)~~ unit owners' association pursuant to § 54.1-2351 ~~or (ii)~~
686 ~~common interest community manager pursuant to § 54.1-2349~~ and regulations promulgated thereto, and
687 may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as applicable.

688 **§ 55-79.104. Protection of the interests of associations; appointment of receiver for common**
689 **interest community manager.**

690 A. A common interest community manager owes a fiduciary duty to the associations to which it
691 provides management services with respect to the manager's handling of the funds or the records of
692 each association. All funds deposited with the common interest community manager shall be handled in
693 a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an
694 FDIC-insured financial institution separate from the assets of the common interest community manager.
695 The funds shall be the property of the association and shall be segregated for each depository in the
696 records of the common interest community manager in a manner that permits the funds to be identified
697 on an association basis. All records having administrative or fiscal value to the association that a
698 common interest community manager holds, maintains, compiles, or generates on behalf of a common
699 interest community are the property of the association. A common interest community manager may
700 retain and dispose of association records in accordance with a policy contained in the contract between
701 the common interest community manager and the association. Within a reasonable time after a written
702 request for any such records, the common interest community manager shall provide copies of the
703 requested records to the association at the association's expense. The common interest community
704 manager shall return all association records that it retains and any originals of legal instruments or
705 official documents that are in the possession of the common interest community manager to the
706 association within a reasonable time after termination of the contract for management services without
707 additional cost to the association. Records maintained in electronic format may be returned in such
708 format.

709 B. If a unit owners' association has reasonable cause to believe that its common interest community
710 manager is unable to properly discharge its fiduciary responsibilities, the unit owners' association may
711 submit a petition to the circuit court of the county or city where the common interest community
712 manager maintains an office or is doing business for the issuance of an order authorizing the immediate
713 inspection by and production to representatives of the petitioner of any records, documents, and physical
714 or other evidence belonging to the common interest community manager subject to the petition and
715 pertaining to the petitioner. The court may issue such order without notice to the common interest
716 community manager if the petition, supported by affidavit of the petitioner and such other evidence as
717 the court may require, shows reasonable cause to believe that such action is required to prevent
718 immediate loss of property of one or more of the associations to which the subject common interest
719 community manager provides management services. The court may also temporarily enjoin further
720 activity by the common interest community manager and take such further action as shall be necessary
721 to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The
722 papers filed with the court pursuant to this subsection shall be placed under seal.

723 C. If a unit owners' association has reasonable cause to believe that a common interest community
724 manager is unable to properly discharge its fiduciary responsibilities to the unit owners' association, the
725 unit owners' association may file a petition with the circuit court of the county or city where the subject
726 common interest community manager maintains an office or is doing business. The petition may seek the
727 following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of
728 any other assets belonging to or subject to the control of the subject common interest community
729 manager; and (ii) the appointment of a receiver for all or part of the funds or property of the subject
730 common interest community manager. The subject common interest community manager shall be given
731 notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The
732 court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or
733 without surety. The papers filed with the court under this subsection shall be placed under seal until
734 such time as the court grants an injunction or appoints a receiver. The court may issue an injunction,
735 appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the

court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

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

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. Unless otherwise ordered by the court in the appointing order, the receiver shall:

1. Prepare and file with the court a list of all associations managed by the subject common interest community manager;

2. Notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment, and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager;

3. Facilitate the transfer of records and information to such successor common interest community manager;

4. Identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business;

5. Prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court;

6. Attempt to collect any accounts receivable related to the subject common interest community manager's business;

7. 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;

8. Terminate the subject common interest community manager's business;

9. Reduce to cash all of the assets of the subject common interest community manager;

10. 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

11. 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 prepared and filed pursuant to subdivision 1 of 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, 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.

I. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and (c) that an emergency exists and (ii) the board of directors of such insolvent common interest community manager approves a plan of merger of such common interest community manager into another common interest community manager, then compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the court of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12

797 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1.

798 J. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that the
799 acquisition of its assets by another common interest community manager is in the best interests of the
800 associations to which such common interest community manager provides management services, and (c)
801 that an emergency exists and (ii) the boards of directors of both common interest community managers
802 consent to the terms and conditions of such transfer, including the assumption of all or certain
803 liabilities, then the court shall enter an order transferring some or all of the assets of such insolvent
804 common interest community manager to such other common interest community manager, and no
805 compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730
806 through 13.1-741 be applicable to such transfer.

807 K. If a merger under subsection I or a sale of assets under subsection J occurs, the receiver shall
808 provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the
809 stockholders of record of the insolvent common interest community manager for the purpose of
810 providing such shareholders an opportunity to challenge the finding that the common interest community
811 manager is insolvent. The relevant books and records of such insolvent common interest community
812 manager shall remain intact and be made available to such shareholders for a period of 30 days after
813 such notice is sent. The receiver's finding of insolvency shall become final if a hearing before the court
814 is not requested by any such shareholder within such 30-day period. If, after such hearing, the court
815 finds that such common interest community manager was solvent, it shall rescind its order entered
816 pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such
817 hearing, the court finds that such common interest community manager was insolvent, its order shall be
818 final.

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

824 **§ 55-509.3. Association charges.**

825 Except as expressly authorized in this chapter, in the declaration, or otherwise provided by law, no
826 association may (i) make an assessment or impose a charge against a lot or a lot owner unless the
827 charge is a fee for services provided or related to use of the common area or (ii) charge a fee related to
828 the provisions set out in § 55-509.6 or 55-509.7 that is not expressly authorized in those sections.
829 Nothing in this chapter shall be construed to authorize an association or common interest community
830 manager to charge an inspection fee for an unimproved or improved lot except as provided in
831 § 55-509.6 or 55-509.7. The Common Interest Community Board may assess a monetary penalty for a
832 violation of this section against any (a) association pursuant to § 54.1-2351 or (b) common interest
833 community manager pursuant to § 54.1-2349, and may issue a cease and desist order against the violator
834 pursuant to § 54.1-2349 or 54.1-2352, as applicable.

835 **§ 55-509.6. Fees for disclosure packet; professionally managed associations.**

836 A. A professionally managed association or its common interest community manager may charge
837 certain fees as authorized by this section for the inspection of the property, the preparation and issuance
838 of the disclosure packet required by § 55-509.5, and for such other services as set out in this section.
839 The seller or the seller's authorized agent shall specify in writing whether the disclosure packet shall be
840 delivered electronically or in hard copy, at the option of the seller or the seller's authorized agent, and
841 shall specify the complete contact information for the parties to whom the disclosure packet shall be
842 delivered.

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

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

846 2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed \$150
847 for no more than two hard copies or (ii) electronic format, a fee not to exceed a total of \$125 for an
848 electronic copy to each of the following named in the request: the seller, the seller's authorized agent,
849 the purchaser, the purchaser's authorized agent, and not more than one other person designated by the
850 requester. The preparer of the disclosure packet shall provide the disclosure packet directly to the
851 designated persons. Only one fee shall be charged for the preparation and delivery of the disclosure
852 packet;

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

856 4. At the option of the seller or the seller's authorized agent, an additional hard copy of the
857 disclosure packet, a fee not to exceed \$25 per hard copy;

858 5. At the option of the seller or the seller's 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. The disclosure packet shall state that all fees and costs for the disclosure packet 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, if not paid at settlement or within 60 days of the delivery of the disclosure packet, whichever occurs first.

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. No additional fee shall be charged for access to the association's or common interest community manager's website. 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 the seller's 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 settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. 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 requester, 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 60 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 (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) 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 the seller's authorized agent, including the seller or the seller's authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requester 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 requester 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 the purchaser's authorized agent, the requester 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. The settlement agent shall escrow a sum sufficient to pay such costs of the seller at settlement. Neither the association nor its common interest community

920 manager, if any, shall require cash, check, certified funds, or credit card payments at the time the
921 request is made for the disclosure packet update. The requester may request that the specified update be
922 provided in hard copy or in electronic form.

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

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

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

945 M. The Common Interest Community Board may assess a monetary penalty for failure to deliver the
946 association disclosure packet within 14 days against any (i) property owners' association pursuant to
947 § 54.1-2351 or (ii) common interest community manager pursuant to ~~§ 54.1-2349~~ and regulations
948 promulgated thereto, and may issue a cease and desist order pursuant to § 54.1-2349 or 54.1-2352, as
949 applicable.

950 N. No association may collect fees authorized by this section unless the association (i) is registered
951 with the Common Interest Community Board, (ii) is current in filing the most recent annual report with
952 the Common Interest Community Board, (iii) is current in paying the annual payment to the Common
953 Interest Community Board pursuant to § 55-516.1 and any assessment made by the Common Interest
954 Community Board pursuant to § 55-530.1, and (iv) provides the disclosure packet electronically if so
955 requested by the requester.

956 **§ 55-516.3. Protection of the interests of associations; appointment of receiver for common interest**
957 **community manager.**

958 A. A common interest community manager owes a fiduciary duty to the associations to which it
959 provides management services with respect to the manager's handling the funds or the records of each
960 association. All funds deposited with the common interest community manager shall be handled in a
961 fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an
962 FDIC-insured financial institution separate from the assets of the common interest community manager.
963 The funds shall be the property of the association and shall be segregated for each depository in the
964 records of the common interest community manager in a manner that permits the funds to be identified
965 on an association basis. All records having administrative or fiscal value to the association that a
966 common interest community manager holds, maintains, compiles, or generates on behalf of a common
967 interest community are the property of the association. A common interest community manager may
968 retain and dispose of association records in accordance with a policy contained in the contract between
969 the common interest community manager and the association. Within a reasonable time after a written
970 request for any such records, the common interest community manager shall provide copies of the
971 requested records to the association at the association's expense. The common interest community
972 manager shall return all association records that it retains and any originals of legal instruments or
973 official documents that are in the possession of the common interest community manager to the
974 association within a reasonable time after termination of the contract for management services without
975 additional cost to the association. Records maintained in electronic format may be returned in such
976 format.

977 B. If a property owners' association has reasonable cause to believe that its common interest
978 community manager is unable to properly discharge its fiduciary responsibilities, the property owners'
979 association may submit a petition to the circuit court of the county or city where the common interest
980 community manager maintains an office or is doing business for the issuance of an order authorizing
981 the immediate inspection by and production to representatives of the petitioner of any records,

documents, and physical or other evidence belonging to the subject common interest community manager and pertaining to the petitioner. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.

C. If a property owners' association has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to the property owners' association, the property owners' association may file a petition with the circuit court of the county or city where the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

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

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the court a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment, and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is 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 prepared and filed pursuant to subdivision 1 of 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, 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.

I. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and (c) that an emergency exists and (ii) the board of directors of such insolvent common interest community manager approves a plan of merger of such common interest community manager into another common interest community manager; then compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the court of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1.

J. If (i) the receiver finds (a) that a common interest community manager is insolvent, (b) that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and (c) that an emergency exists and (ii) the boards of directors of both common interest community managers consent to the terms and conditions of such transfer, including the assumption of all or certain liabilities; then the court shall enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer.

K. If a merger under subsection I or a sale of assets under subsection J occurs, the receiver shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The receiver's finding of insolvency shall become final if a hearing before the court is not requested by any such shareholder within such 30-day period. If, after such hearing, the court 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 court finds that such common interest community manager was insolvent, its order shall be final.

L. The provisions of this chapter are declared to be remedial. The purpose of this chapter 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 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.

§ 55-528. Definitions.

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

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

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

"Board" means the Common Interest Community Board.

"Claimant" means upon proper application to the Director, a receiver for a common interest community manager appointed pursuant to § 54-1-2353 55-79.104 or 55-516.3 in those cases in which there are not sufficient funds to restore all funds that were or ought to have been held in a fiduciary capacity by the subject common interest community manager or to pay an award of reasonable fees, costs, and expenses to the receiver.

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

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the

association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual assessment in connection with the provision of maintenance or 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.

§ 55-529. Common Interest Community Management Information Fund.

There is hereby created the Common Interest Community Management Information 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 consist of money paid into it pursuant to §§ 54-1-2349, 55-79.93:1, 55-504.1, and 55-516.1. The Fund shall be established on the books of the Comptroller, and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but, at the discretion of the Board, shall remain in the Fund or shall be transferred to the Common Interest Community Management Recovery Fund established pursuant to § 55-530.1. Interest earned on the Fund shall be credited to the Fund.

§ 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 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 § 64.2-1502.

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 *determine the need and issue an order for 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.~~

1166 Notice to common interest community managers and the governing boards of associations of these
1167 assessments shall be by first-class mail, and payment of such assessments shall be made by first-class
1168 mail addressed to the Director within 45 days after the mailing of such notice.

1169 E. If any common interest community manager fails to remit the required payment within 45 days of
1170 the mailing, the Director shall notify the common interest community manager by first-class mail at the
1171 latest address of record filed with the Board. If no payment has been received by the Director within 30
1172 days after mailing the second notice, the license shall be automatically suspended. The license shall be
1173 restored only upon the actual receipt by the Director of the delinquent assessment.

1174 F. If any association fails to remit the required payment within 45 days of the mailing, the Director
1175 shall notify the association by first-class mail at the latest address of record filed with the Board. If no
1176 payment has been received by the Director within 30 days after mailing the second notice, it shall be
1177 deemed a knowing and willful violation of this section by the governing board of the association.

1178 G. F. At the close of each fiscal year, whenever the balance of the fund exceeds \$5 million, the
1179 amount in excess of \$5 million shall be transferred to the Virginia Housing Trust Fund established
1180 pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36. Except for payments of costs as set forth in this
1181 chapter and transfers pursuant to this subsection, there shall be no transfers out of the fund, including
1182 transfers to the general fund, regardless of the balance of the fund.

1183 H. G. A claimant may seek recovery from the fund subject to the following conditions:

1184 1. A claimant may file a verified claim in writing to the Director for a recovery from the Fund.

1185 2. Upon proper application to the Director, in those cases in which there are not sufficient funds to
1186 pay an award of reasonable fees, costs, and expenses to the receiver or to restore all funds that were or
1187 ought to have been held in a fiduciary capacity by the subject common interest community manager, the
1188 Director shall report to the Board the amount of any shortfall to the extent that there are not sufficient
1189 funds (i) to pay any award of fees, costs, and expenses pursuant to subsection G of § 54.1-2353
1190 55-79.104 or § 55-516.3 by the court appointing the receiver; or (ii) to restore all funds that were or
1191 ought to have been held in a fiduciary capacity by the subject common interest community manager, as
1192 certified by the court appointing the receiver.

1193 3. If the Board finds there has been compliance with the required conditions, the Board shall issue a
1194 directive ordering payment of the amount of such shortfall to the claimant from the fund, provided that
1195 in no event shall such payment exceed the balance in the fund. When the fund balance is not sufficient
1196 to pay the aggregate amount of such shortfall, the Board shall direct payment shall be applied first in
1197 satisfaction of any award of reasonable fees, costs, and expenses to the receiver and second to restore
1198 the funds that were or ought to have been held in a fiduciary capacity by the subject common interest
1199 community manager. If the Board has reason to believe that there may be additional claims against the
1200 fund, the Board may withhold any payment(s) from the fund for a period of not more than one year.
1201 After such one-year period, if the aggregate of claims received exceeds the fund balance, the fund
1202 balance shall be prorated by the Board among the claimants and paid in the above payment order from
1203 the fund in proportion to the amounts of claims remaining unpaid.

1204 4. The Director shall, subject to the limitations set forth in this subsection, pay to the claimant from
1205 the fund such amount as shall be directed by the Board upon the execution and delivery to the Director
1206 by such claimant of an assignment to the Board of the claimant's rights on its behalf and on behalf of
1207 the associations receiving distributions from the fund against the common interest community manager
1208 to the extent that such rights were satisfied from the fund.

1209 5. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall
1210 be considered a case decision as defined in § 2.2-4001, and judicial review of these findings shall be in
1211 accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.).

1212 6. Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of
1213 any court that is contrary to any distribution recommended or authorized by it.

1214 7. Upon payment by the Director to a claimant from the fund as provided in this subsection, the
1215 Board shall immediately revoke the license of the common interest community manager whose actions
1216 resulted in payment from the fund. The common interest community manager whose license was so
1217 revoked shall not be eligible to apply for a license as a common interest community manager until he
1218 has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of
1219 interest from the date of payment from the fund.

1220 8. Nothing contained in this subsection shall limit the authority of the Board to take disciplinary
1221 action against any common interest community manager for any violation of statute or regulation, nor
1222 shall the repayment in full by a common interest community manager of the amount paid from the fund
1223 on such common interest community manager's account nullify or modify the effect of any disciplinary
1224 proceeding against such common interest community manager for any such violation.

1225 2. That Article 5 (§§ 54.1-1144, 54.1-1145, and 54.1-1146) of Chapter 11 of Title 54.1, §§ 54.1-2346,
1226 54.1-2347, and 54.1-2353, and Chapter 23.4 (§§ 54.1-2355 through 54.1-2358) of Title 54.1 of the
1227 Code of Virginia are repealed.