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SENATE BILL NO. 1042

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 18, 2023)

(Patron Prior to Substitute—Senator McPike)

A BILL to amend and reenact §§ 54.1-2354.3 and 54.1-2354.4 of the Code of Virginia, relating to the Common Interest Community Board; enforcement power over continuing violations of common interest community associations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2354.3 and 54.1-2354.4 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2354.3. Common Interest Community Ombudsman; appointment; powers and duties.

A. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman (the Office). The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office in the performance of its duties under this article.

B. The Office shall:

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

2. Make available, either separately or through an existing website, information concerning common interest communities and such additional information as may be deemed appropriate;

3. Receive notices of final adverse decisions *and may either (i) refer such decision to the Board for further review of whether such decision is in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board or (ii) make a determination of whether a final adverse decision is in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board and promptly notify the complainant of such determination. If the Office determines that such conflict exists, the Office shall promptly notify the governing board, and if applicable the common interest community manager, of the association that issued the final adverse decision that such decision is in conflict with laws or regulations governing common interest communities or interpretations thereof by the Board. If within 365 days of issuing such determination the Ombudsman receives a subsequent notice of final adverse action for the same violation, the Office shall immediately refer the matter to the Board;*

4. Upon request, assist members in understanding the rights and processes available under the laws and regulations governing common interest communities and provide referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members;

5. Ensure that members have access to the services provided through the Office and that the members receive timely responses from the representatives of the Office to the inquiries;

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

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

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

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

10. Carry out activities as the Board determines to be appropriate.

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

A. The Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. Each association shall adhere to the written procedures established pursuant to this subsection when resolving association member and citizen complaints. The procedures shall include the following:

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

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

68 B. A complainant may give notice to the ~~Board~~ *Ombudsman* of any final adverse decision in
69 accordance with regulations promulgated by the Board. The notice shall be filed within 30 days of the
70 final adverse decision, shall be in writing on forms prescribed by the Board, shall include copies of all
71 records pertinent to the decision, and shall be accompanied by a \$25 filing fee. The fee shall be
72 collected by the Director and paid directly into the state treasury and credited to the Common Interest
73 Community Management Information Fund pursuant to § 54.1-2354.2. The Board may, for good cause
74 shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue
75 financial hardship for the member. The ~~Director~~ *Ombudsman* shall provide a copy of the written notice
76 to the *governing board, and if applicable the common interest community manager, of the association*
77 that made the final adverse decision.

78 C. The ~~Director or his designee~~ *Ombudsman* may request additional information concerning any
79 notice of final adverse decision from the association that made the final adverse decision. The
80 association shall provide such information to the ~~Director~~ *Ombudsman* within a reasonable time upon
81 request. If the ~~Director~~ *Ombudsman* upon review determines that the final adverse decision may be in
82 conflict with laws or regulations governing common interest communities or interpretations thereof by
83 the Board, the ~~Director may, in his sole discretion,~~ *Ombudsman shall provide the complainant and the*
84 *governing board, and if applicable the common interest community manager, of the association with*
85 *information concerning such laws or regulations governing common interest communities or*
86 *interpretations thereof by the Board. The determination of whether the final adverse decision may be in*
87 *conflict with laws or regulations governing common interest communities or interpretations thereof by*
88 *the Board shall be a matter within the sole discretion of the Director, whose decision is final and not*
89 *subject to further review. The determination of the Director shall not be binding upon the complainant*
90 *or the association that made the final adverse decision. If within 365 days of issuing a determination that*
91 *an adverse decision is in conflict with laws or regulations governing common interest communities or*
92 *interpretations thereof by the Board the Ombudsman receives a subsequent notice of final adverse action*
93 *for the same violation, the Ombudsman shall refer the repeat violation to the Board, which shall take*
94 *action in accordance with § 54.1-2351 or 54.1-2352, as deemed appropriate by the Board.*