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SENATE BILL NO. 1042

Offered January 11, 2023

Prefiled January 8, 2023

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.

Patron—McPike

Referred to Committee on General Laws and Technology

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 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 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 the association has not remedied the violation within 30 days of such notice or such conflict is repeated, 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, types of assistance requested, notices of final adverse decisions received, actions taken, and the disposition of each such matter, including the amount of time it takes an association to remedy an action deemed by the Director to have been in conflict with an applicable law or regulation;

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

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

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

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59 reasonable procedures for the resolution of written complaints from the members of the association and
60 other citizens. Each association shall adhere to the written procedures established pursuant to this
61 subsection when resolving association member and citizen complaints. The procedures shall include the
62 following:

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

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

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

80 C. The Director or his designee may request additional information concerning any notice of final
81 adverse decision from the association that made the final adverse decision. The association shall provide
82 such information to the Director within a reasonable time upon request. If the Director upon review
83 determines that the final adverse decision may be in conflict with laws or regulations governing
84 common interest communities or interpretations thereof by the Board, the Director ~~may, in his sole~~
85 ~~discretion,~~ shall provide the complainant and the *governing board, and if applicable the community*
86 *manager, of the association* with information concerning such laws or regulations governing common
87 interest communities or interpretations thereof by the Board. The determination of whether the final
88 adverse decision may be in conflict with laws or regulations governing common interest communities or
89 interpretations thereof by the Board shall be a matter within the sole discretion of the Director, whose
90 decision is final and not subject to further review. ~~The determination of the Director shall not be binding~~
91 ~~upon the complainant or the association that made the final adverse decision~~ *If such conflict is not*
92 *remedied within 30 days or the same conflict is repeated by the association after 30 days, the Director*
93 *shall refer the continuing conflict to the Board, which shall take action in accordance with § 54.1-2351*
94 *or 54.1-2352, as deemed appropriate by the Board.*