

SENATE BILL 740 - STRUCTURAL INTEGRITY STUDY REPORT

Work Group Recommendations

- Development of common interest communities, including initial budget reserve funding, the filing of "as built" plans and specifications with the locality and delivery of such plans to common interest community associations, along with other transition documents, and increasing requirements for the issuance of certificates of occupancy.

Recommendation: *The Commonwealth of Virginia should require developers to provide record plans, including any change orders and significant field adjustments that require plan changes, to associations before or upon transition. Associations and management shall retain and maintain record building plans, including amendments and changes.*

- Governing documents.

Recommendation: *No statutory or regulatory changes recommended.*

- Reserve study requirements, including requirements for the frequency of such studies, the qualification of persons conducting such studies, and disclosure of such studies to purchasers and existing owners.

Recommendation: *The Commonwealth of Virginia should require that independent, appropriately qualified entities perform reserve studies for common interest communities within two years of the issuance of the first occupancy permission (Certificate of Occupancy or equivalent), and every five years thereafter.*

Recommendation: *The Commonwealth of Virginia should require the scope of reserve studies to include all the capital components of common interest communities. The definition of capital components should be refined to align with industry standards.*

- Budget requirements.

Recommendation: *Reserve contributions shall be adjusted in conjunction with budget development and review, to reflect changes in reserve funding resulting from expenditure of reserve funds or changes reflected in updated reserve studies.*

- Authority of association boards to budget for reserves, expend funds for reserve projects, make special or additional assessments, and borrow funds to pay for projects.

Recommendation: *The Commonwealth of Virginia should add a source of authority (statutory support) to enable common interest communities to fund reserve contributions to levels recommended in reserve studies.*

Recommendation: *The Commonwealth of Virginia should remove statutory language allowing owners to rescind special assessments for maintenance, replacements, repair, and restoration and funding recommended reserves.*

Recommendation: *The Commonwealth of Virginia should authorize boards to have authority to borrow for maintenance, replacements, repair, and restoration of structural components and for funding recommended reserves.*

- Liability of associations and executive boards.

Recommendation: *The Commonwealth of Virginia should require community associations to fund reserve contributions to levels recommended in then- current reserve studies.*

- Inspections, including the authority of local governments to require inspections, funding for inspections, the scope, nature, and schedule of inspections, and qualifications of building inspectors.

Recommendation: *The Commonwealth of Virginia should require visual, non-invasive inspection of structural components by a registered design professional 30 years after substantial completion and every 10 years thereafter. In coastal contexts, Virginia should require visual, non-invasive inspection of structural components by a registered design professional 25 years after substantial completion and every 10 years thereafter.*

Recommendation: *The Commonwealth of Virginia should require additional professional inspection (including, but not limited to invasive testing, if indicated) if the required structural inspection indicates weakness that could compromise the integrity of the structure.*

Recommendation: *The Common Interest Community Board should update the Guidelines for the Development of Reserve Studies for Capital Components (adopted September 5, 2019) to include recommendations and best practices for inspections of common property.*

- Insurance coverage, including the scope of coverage, availability of products, adequacy or need for new or alternate products, feasibility of insurance inspections, and cost.

Recommendation: *No statutory or regulatory changes recommended.*

- Education of association board members and owners.

Recommendation: *The Commonwealth of Virginia should fund and support the offering of virtual and web-accessible, on-demand education and programming for association boards and owners through the office of the Common Interest Community Ombudsman.*

- Judicial remedies, including an option to petition a court to authorize an assessment or alternative funding.

Recommendation: *No statutory or regulatory changes recommended.*

- Common interest community association management, including manager qualifications and self-management versus professional management.

Recommendation: *No statutory or regulatory changes recommended.*

- Other Recommendations: The Work Group also discussed concerns outside the scope of the legislation related to financially distressed common interest communities, especially communities that include low- and moderate-income households.

Recommendation: *The Commonwealth of Virginia should evaluate whether existing public programs that support low-income owners sufficiently include owners of properties in common interest communities and can be effectively applied in common interest communities.*

Recommendation: *The Commonwealth of Virginia should evaluate the potential for lending to associations or owners.*

Recommendation: *The Commonwealth of Virginia should further study flexible, proactive pathways for the redevelopment of distressed properties including potential incentives for redevelopment.*

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 421

An Act to direct the Department of Professional and Occupational Regulation to establish a work group to study the adequacy of current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities; report.

[S 740]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. § 1. A. *The Department of Professional and Occupational Regulation shall establish a work group to study the adequacy of current laws addressing standards for structural integrity and for maintaining reserves to repair, replace, or restore capital components in common interest communities. In conducting such study, the work group shall consider the following: (i) the development of common interest communities, including initial budget reserve funding, the filing of "as built" plans and specifications with the locality and delivery of such plans to the association of such common interest community, along with other transition documents, and increasing requirements for the issuance of certificates of occupancy; (ii) governing documents; (iii) reserve study requirements, including requirements for the frequency of such studies, the qualification of persons conducting such studies, and disclosure of such studies to purchasers and existing owners; (iv) budget requirements; (v) the authority of association boards to budget for reserves, expend funds for reserve projects, make special or additional assessments, and borrow funds to pay for projects; (vi) liability of associations and executive boards; (vii) inspections, including the authority of local governments to require inspections, funding for inspections, the scope, nature, and schedule of inspections, and qualifications of building inspectors; (viii) insurance coverage, including the scope of coverage, availability of products, adequacy or need for new or alternate products, feasibility of insurance inspections, and cost; (ix) education of association board members and owners; (x) judicial remedies, including an option to petition a court to authorize an assessment or alternative funding; and (xi) common interest community association management, including manager qualifications and self-management versus professional management.*

B. *The work group shall be composed of representatives of (i) the Common Interest Community Board, (ii) local governments, (iii) local and state building officials, (iv) common interest community property owners, (v) developers and builders, (vi) common interest community managers, (vii) community association attorneys, (viii) reserve specialists, (ix) professional engineers, (x) auditors, (xi) representatives of financial institutions, (xii) insurance professionals, (xiii) attorneys with experience representing individuals with property or personal injury claims; (xiv) the Office of the Common Interest Community Ombudsman; and (xv) volunteer community leaders.*

C. *The Department of Professional and Occupational Regulation shall report the work group's findings and provide recommendations, including any legislative recommendations, to the Chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology no later than April 1, 2023.*

Code of Virginia
Title 55.1. Property and Conveyances
Chapter 18. Property Owners' Association Act

§ 55.1-1826. Annual budget; reserves for capital components.

A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1800;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1800;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-514.1; 2019, cc. 33, 44, 712.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

8/17/2022

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Code of Virginia
Title 55.1. Property and Conveyances
Chapter 19. Virginia Condominium Act

§ 55.1-1965. Annual budget; reserves for capital components.

A. Except to the extent provided in the condominium instruments, the executive board shall, prior to the commencement of the fiscal year, make available to unit owners either (i) the annual budget of the unit owners' association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the condominium instruments, the executive board shall:

1. Conduct a study at least once every five years to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1900;
2. Review the results of that study at least annually to determine if reserves are sufficient; and
3. Make any adjustments the executive board deems necessary to maintain reserves, as appropriate.

C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the unit owners' association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1900;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore the capital components and the amount of the expected contribution to the reserve fund for the fiscal year;
3. A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and
4. A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.

2002, c. 459, § 55-79.83:1; 2019, cc. 33, 44, 712.

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